Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeals of Reginald Charles Frith v. *Josiah Alexander Frith, from the Court of Error and from the Supreme Court of the Turks and Caicos Islands; delivered the* 21*st March* 1906.

Present at the Hearing:

EARL OF HALSBURY.
LORD DAVEY.
LORD ROBERTSON.
LORD ATKINSON.
SIR ARTHUR WILSON.

[*Delivered by Lord Atkinson.*]

The action out of which these Appeals have arisen was one of ejectment, brought to recover possession of an estate called "the J. J. Frith Estate" situate at Cockburn Harbour, South Caicos, in the Turks and Caicos Islands. The Plaintiff (the present Respondent) sued as attorney for Elizabeth Ann Frith, the widow and executrix of J. J. Frith, deceased, the former owner, under whose will she (the widow) was tenant for life of the estate, her two sons being tenants in common in remainder. The Defendant (the present Appellant) had been appointed attorney over the estate by two deeds, dated respectively the 12th March 1902 and 18th October 1902, executed by the executrix and her said two sons and authorizing him to enter into possession of and manage the estate, to receive the rents and profits thereof, and thereout, after providing for the expenses

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of management, pay the debts due by the owners of the estate. In the month of May 1902 the Appellant entered into possession as such attorney. In the month of September 1903 notice was served upon him by the widow and the sons purporting to revoke his appointment. Shortly afterwards possession was demanded from him on behalf of the widow, but was refused by him on the ground that owing to a personal guarantee which he, with the widow's consent, had given to one W. B. Astwood, a mortgagee of the estate, to pay the mortgage debt on the day of redemption, his authority was coupled with an interest and was, therefore, irrevocable. The deeds of the 12th March and 18th October 1902 do not contain any reference to this guarantee or to the mortgage debt, and did not create any charge or lien in favour of Astwood or any other creditor of the owners of the estate, or form part of Astwood's security. And though by the payment of the latter's debt the special interest which was to keep alive the Appellant's authority would have ceased to exist, his continuance in his post is not made to depend in any way on that event. It was alleged that the Appellant had before the 12th March 1902, the date of the first deed, given security to another creditor, Messrs. Middleton & Co., of New York, but inasmuch as before it was attempted to revoke the Appellant's authority, and necessarily before possession was demanded, the full amount due to this firm had been tendered to them, it was conceded in argument that nothing turned upon this transaction, and that as far as these Appeals are concerned it might be dismissed from consideration.

At the trial which took place before St. Aubyn J. and a special jury of the Island, there was no sub-

stantial conflict of evidence. The main facts of the case were in effect admitted. The Appellant, however, tendered evidence to show that the deed of the 18th October 1902 did not disclose the entire consideration given for it, and that additional consideration for it had moved from the Appellant, namely, the above-mentioned personal guarantee given by him to Astwood with the approval of the widow, without which it was clearly established that Astwood would not have advanced the money. The learned Judge at first, apparently, thought this evidence was inadmissible on the ground that it would contradict the deed; but subsequently he admitted it. At the close of the Defendant's case he expressed the opinion that the main question at issue—namely, whether the power of attorney were revocable or not—was purely a question of law for his own decision; but at the instance of the Appellant's advocate he submitted to the jury eight somewhat involved and complicated questions. Of these three only, namely, Nos 2, 3, and 8, seem to be of any importance. The answers to these appear when taken together to amount, in effect, to a finding that there was consideration for the deed of the 18th October 1902 other than, and additional to, that mentioned in it, namely the agreement between the widow and the Appellant that the latter should give to Astwood the above-mentioned personal guarantee, as he subsequently did.

On these findings the Appellant's advocate moved for judgment, but St. Aubyn J., on the 3rd December 1903, delivered the Judgment of the Supreme Court in favour of the Respondent, holding that the parol evidence tendered to prove the additional consideration was inadmissible on the ground that it contradicted the deed, and that the authority given to the Appellant as attorney was revocable.

From this decision the Appellant appealed to the Court of Error of the Islands. That tribunal held that the Appellant had not taken the necessary steps to bring his Appeal before them; that the Appeal was in fact not properly before them at all; and they dismissed it with costs. From this decision the Appellant obtained leave to appeal to His Majesty in Council in the usual way. The record of the proceedings does not show what were the particular rules of practice which the Appellant was considered to have violated or failed to observe, and as the proceedings of the Court of Error appear to have been somewhat irregular, special leave was given to the Appellant to appeal from the decision of the Supreme Court direct to His Majesty in Council, in addition to the leave to appeal obtained by him from the Court of Error itself.

The Appellant's Counsel on the hearing of these Appeals contended in effect:—

(1.) That St. Aubyn J. was wrong in holding that the parol evidence of the additional consideration was inadmissible.

(2.) That the authority given to the Appellant by the two instruments of the 12th March and 18th October 1902 was, having regard to the findings of the jury in reference to the guarantee, an authority coupled with an interest and therefore irrevocable.

(3.) That the attempt to revoke the authority and to dismiss and dispossess the Appellant before the seven years for which he was appointed had expired, was so inequitable that the Respondent should be restrained by injunction from carrying it out, and that therefore the Appellant had a good equitable defence to the ejectment.

These are in effect the questions for their Lordships' decision.

In support of the first contention the case of *Clifford* v. *Turrell* (1 Y. and C. 138), which was a suit for specific performance, was cited.

The Plaintiff in that case was the lessee of a farm the stock and farming implements upon which had at the suit of the Defendant been taken in execution. The Plaintiff, with the consent of the Sheriff, executed a deed by which he purported to assign to the Defendant, for a money consideration exceeding the amount of the execution, the chattels seized, and, it was contended, his interest in the leasehold. Parol evidence was admitted to prove that additional consideration was in fact given for the deed by which the Plaintiff was induced to execute it, namely, an agreement by the Defendant that he would pay to the Plaintiff an annuity of 40*l.* per annum during his life and give to him a house worth 10*l.* a year to live in. Specific performance of that parol agreement was decreed. The Vice-Chancellor (Sir L. Shadwell) in delivering judgment in the case, lays down, in the opinion of their Lordships correctly, the rule of law upon this subject. He said :—

"Rules of law may exclude parol evidence where a written "instrument stands in competition with it, but it has long "been settled that it is not within any rule of this nature to "adduce evidence of a consideration additional to what is stated "in a written instrument."

And then adds :—

"The rule is, that where there is one consideration stated in "the deed, you may prove any other consideration which existed, "not in contradiction to the instrument; and it is not in "contradiction to the instrument to prove a larger consideration "than that which is stated."

Their Lordships think the present case comes within that rule, that the evidence proposed to be given did not contradict the deed, and that the Appellant's first contention is well founded.

In reference to the second point, it cannot be disputed that the general rule of law is that

employment of the general character of the Appellant's in this case can be terminated at the will of the employer. The proper conduct of the affairs of life necessitates that this should be so. The exception to this rule within which the Appellant must bring himself, if he is to succeed, is that where "an agreement is entered into for "sufficient consideration, and either forms part "of a security, or is given for the purpose of "securing some benefit to the donee of the "authority, such authority is irrevocable." Storey, on Agency, p. 476.

It cannot be contended that the ordinary case of an agent or manager employed for pecuniary reward in the shape of a fixed salary comes within this exception, though his employment confers a benefit upon him. And their Lordships are of opinion that the position of the Appellant under the instruments appointing him attorney over this estate, is in law that of an ordinary agent or manager employed at a salary, and nothing more, because the authority which was conferred upon him contains no reference to the special interest in the occupation of his post which his guarantee to Astwood might have given him, was not expressed or intended to be used for the purpose of subserving that interest, and has no connection with it. For these reasons their Lordships think that the authority given to the Appellant was revocable. Several cases have been cited by the Appellant's Counsel in support of his second contention. On an examination of them it will be found that the essential distinction between this case and those cited is this, that in each of the latter power and authority were given to a particular individual to do a particular thing, the doing of which conferred a benefit upon him, the authority ceasing when the benefit was reaped, while in this case, as already pointed out,

nothing of that kind was ever provided for or contemplated. In *Carmichael's* case L.R. 2 Ch. (1896) the donor of the power, for valuable consideration, conferred upon the donee authority to do a particular thing in which the latter had an interest, namely, to apply for the shares of the Company which the donee was promoting for the purpose of purchasing his own property from him, and the donor sought to revoke that authority before the benefit was reaped. In *Spooner* v. *Sandilands* (1 Y. and C. 390) the donor charged his lands with certain debts due and to accrue due to the donees, and put the latter into the possession of those lands and into receipt of the rents and profits of them, for the express purpose of enabling the donees to discharge thereout these same debts; and it was sought to eject the donees before their debts were paid. In *Clerk* v. *Laurie* (2 H. and N. 199) a wife pledged to a bank dividends to which she was entitled to secure advances made to her husband. It was held that while the advances remained unpaid, she could not revoke the Bank's authority to receive the dividends. In *Smart* v. *Sanders* (5 C.B. 895) it was decided that the general authority of a factor in whose hands goods were placed for sale, to sell at the best price which could reasonably be obtained, could not be revoked, after the factor had made advances on the security of the goods to the owner of them, and while these advances remained unpaid. It is not necessary for the purposes of these Appeals that their Lordships should determine whether or not the Appellant has, on the authority of *Read* v. *Anderson* (L.R. 13 Q.B.D. 779) and *Turner* v. *Goldsmith* (L.R. 1 Q.B.D. 544), a right of action against the Respondent for damages for breach of agreement. However that may be, it is clear, their Lordships think, that even

if the authority conferred upon the Appellant had been irrevocable, he has not a good equitable defence to the action of ejectment, inasmuch as the contract made with him, being one entire thing incapable of being divided into independent parts, he would not, upon the authorities cited, be entitled to an injunction to restrain the Respondent from suing in ejectment. That is, as the Appellant's Counsel admits, the test. A suit for such an injunction would, in this case, amount in effect to a suit for specific performance of a contract for hiring and service, a suit which cannot be maintained. In *Ogden* v. *Fossick* (4 De G.F. and J. 426) the suit was instituted for specific performance of an agreement to grant a lease of a coal wharf. The agreement contained a provision that the Plaintiff should, during the term, be appointed manager of the coal wharf at a specified salary. It was held by the Lord Justices that the two parts of the agreement were inseparably connected, and as a decree for specific performance of the contract for personal service could not be granted, the suit must be dismissed. In *Stocker* v. *Brockelbank* (20 L.J., N.S. pt. 1, p 401) the Plaintiff, who was entitled to certain letters patent, by deed granted to the Defendant for a money consideration an exclusive licence to use the patent, and by the same deed covenanted with the Plaintiff that he (the Plaintiff) should act as manager of the Defendant's works for the same period. The Plaintiff was dismissed. He thereupon filed a bill claiming to be a partner in the business, and praying that the Defendant might be restrained from excluding him from the works. In delivering Judgment the Lord Chancellor (Lord Truro) said:

"I therefore am clearly of opinion that . . . there was "no partnership, that it was simply a contract of hiring and "of service, the remuneration to be measured with reference "to the amount of the profits of the business. If that be so,

" is there any instance . . . where it has been supposed " that a contract of hiring and service could be made the " subject of an application to this Court if the employer " claimed . . . to dismiss his servant, or his manager, " or by whatever name the party to perform the service is " to be denominated? I do not recollect any instance of any " attempt on the part of a Court of Equity to compel the " employer to retain the servant, agent, or manager, and not " to forbear to leave him to his remedy at law for the breach " of it."

Their Lordships are accordingly of opinion that the Appellant's third contention, like his second, cannot be sustained, and that the Appellant is not entitled to withhold from the executrix the possession of the lands which he obtained as her and her sons' attorney or agent.

Their Lordships will therefore humbly advise His Majesty that both these Appeals should be dismissed. The Appellant must pay the costs of them.