

UGANDA / JUDGMENT

Preston v Ortlepp (C.A. 10/1934.) [1937] EACA 119 (1 January 1937)

[1937] EACA 119

COURT

East African Court of Appeal

BEFORE

Law, C.J (Zanzibar), Lucie-Smith Ag CJ (Kenya),
Webb, J

CASE / FILE NUMBER

C.A. 10/1934.

Source: ulii.org · Research copy typeset by Esheria. Not court-issued or certified.

COURT OF APPEAL FOR EASTERN AFRICA.

Before LAW, C. J. (Zanzibar), LUCIE-SMITH, Ag. C. J. and WEBB, J. (both of Kenya).

RONALD OWEN PRESTON (Appellant) (Original Defendant) $\mathbf{\$}$ **MRS. ANNA ALIDA MARGARET ORTLEPP (Respondent) (Original Plaintiff).****C. A. 10/1934.**

- Contract to let premises—Evidence and correspondence showing what the agreed rent was—alleged new agreement entered into between plaintiff's attorney and defendant—Whether evidence is admissible on the ground that what a party says is primary evidence against himself as an admission though it relates to the contents of a written instrument. Indian Evidence Act, section 91—alleged new agreement entered into by attorney—Whether binding on principal without ratification—Indian Contract Act, section 237.
- Held (28-6-34).—That the evidence and correspondence supported the trial Judge's finding that the agreed rent was Sh. 300 per mensem.
- Held Further.—That verbal evidence by a party and her attorney that a Power of Attorney contained a full power is admissible on the ground that what a party says is primary evidence against himself as an admission, though it relates to the contents of a written instrument. *Slatterie v. Pooley*, E. R. (Exchequer), Vol. 151, page 579 referred to.

- Held Further.-That, even if the attorney had entered into a new agreement with the defendant (tenant), such an act, being to the knowledge of the defendant beyond the scope of his authority would not bind the plaintiff (landlord) unless ratified by her. (Indian Contract Act, section 237.) Appeal dismissed.

Appeal from Supreme Court of Kenya.

Allan for appellant.

Angus for respondent.

Allan.—Croxford's evidence. Full attorney. Ratification clause confirms what attorney does. *Bristow v. Whitmore*, 1861, 11. English Reports. Contract must be taken to include benefits and liabilities. Authority exceeded in best interests of principal principal bound. L. R. 2 Exchequer p. 259. Principal responsible for what agent does. Agent put in principal's place. Section 196 Indian Contract Act cannot apply. This is an unauthorized act. Inadmissibility of evidence. Admissions section 58, Contract Act, *Slatterie v. Pooley*, E. R. (Exch.), Vol 151, p. 579. Value of secondary evidence. Onus of proof on plaintiff.

Angus.—Points of fact found by Judge. Contract for one year at Sh. 300 p.m. Indian Contract Act, section 237; principal bound by agent's acts. Notice of excess of authority.

Allan replied.

WEBB, J.-In my opinion this appeal fails. On the facts there is ample material in the evidence of the plaintiff and in the correspondence to support the finding of the learned Judge that, at the interview of the 8th or 10th December, 1932, a contract was concluded by which the plaintiff agreed to let and the defendant agreed to take the Eldorean Hall for the year 1933 at a rent of Sh. 300 per month. The only evidence to the contrary was that of the defendant and his wife, which did not favourably impress the learned Judge, and that of Captain Peacock, as to which the plaintiff was not cross-examined.

It is argued that in any event an agreement was subsequently concluded between Mr. Croxford and the defendant by which Mr. Croxford, on behalf of the plaintiff, agreed to let the hall to the defendant on a monthly basis at a rent of Sh. 200 per month, and it is said that this agreement is binding on the plaintiff in virtue of the power of attorney which she had granted. to Mr. Croxford before her departure to South Africa. The power of attorney was not produced but the plaintiff and Mr. Croxford admitted that it was a full power.

The learned Judge held that this was verbal evidence of the contents of a written document and was inadmissible under section 91 of the Indian Evidence Act. In my opinion the evidence was admissible on the ground that what a party says is primary evidence against himself as an admission, though it relates to the contents of a written instrument. *Slatterie v. Pooley*, 10 L. J. Ex. 8.

But, even so, it is clear from the evidence that Mr. Croxford made it plain to the defendant that his instructions only authorized him to accept rent at Sh. 300 per month, and that, when the defendant assured him that the previous arrangements between himself and the plaintiff "had been washed out", he said that he must refer the matter to her. In these circumstances even if Mr. Croxford had entered into a new agreement with the defendant, such an act, being to the knowledge of the defendant beyond the scope of his authority, would not bind the plaintiff unless ratified by her. (Indian Contract Act, section 237).

For these reasons I am of opinion that the conclusion arrived at by the learned Judge was correct and that the appeal should be dismissed with costs.

Law, C. J.—I agree.

LUCIE-SMITH, Ag. C. J.—I agree.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ulii.org/akn/aa/judgment/eaca/1937/119/eng@1937-01-01>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/preston-v-ortlepp-ca-101934-1937-eaca-119-1-january-1937-unknown-topic-unknown-court-1937>

Prepared on 13 October 2026 · Esheria