Judgment of the Lords of the Judicial Committee of the Privy Council on Petitions for leave to Appeal of the Credit Foncier of England v. Elie Amy and others, and Walker Baily v. Elie Amy and others, from the Royal Court of Jersey; delivered Tuesday, December 8th, 1874.

Present:

LORD COLERIDGE.
SIR JAMES W. COLVILE.
SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.

IN this case two petitions have been presented for leave to appeal from the judgment of the Royal Court of Jersey confirming and registering a composition of the creditors of a large co-partnership, amounting in all to 97 persons, who were carrying on a bank as an unlimited and unincorporated partnership in Jersey; and the two petitions have been presented to their Lordships, one from the Credit Foncier of England, and the other from a gentleman of the name of Mr. Walker Baily.

In both the cases their Lordships think the petition for leave to appeal should be granted, but should be granted under the conditions and subject to the observations that their Lordships are about to make.

The partnership stopped payment in 1873, and a certain number of persons met together, and endeavoured to arrive at an arrangement between the creditors of the copartnership and the copartnership itself. Liquidators were ap-

pointed, and various steps were taken; and finally the matter, under the Jersey law of 1867, was referred to the Judge of the Small Debts Court, who acts there as what is called the Juge Commissaire, to inquire into the whole matter, to take the examinations, and to ascertain what the claims against the copartnership really were, and finally to report to the Court Royal, under the authority of the Jersey law, as to whether the composition which had been entered into, or was endeavoured to be entered into, should be confirmed and registered by that Court. The Royal Court acts under this Jersey law of 1867, and its powers are of course limited by the provisions of that Act. The earlier portions of the Act which has been before us deal with the procedure before the Juge Commissaire, and the procedure leading up to the appeals from the Juge Commissaire; and then the subsequent articles, 13, 14, 15, and 16, deal with the procedure which is to be carried into effect by the Royal Court after the Juge Commissaire has made his report. It is chiefly if not exclusively upon the supposed miscarriage by the Royal Court that this petition has been presented to their Lordships.

Now the 13th, 14th, 15th, and 16th articles are to this effect: That when the creditors appeal before the Juge Commissaire the debtor must make his propositions for composition in person, and that the Juge Commissaire is to approve those propositions in the presence of the creditors. The 15th article states that the composition must be signed by the requisite number of creditors, in conformity with the second article of the law; the second article of the law orders that there must be a consent of a number of creditors forming the majority in number, and representing at least three-fourths of the whole of the debts proved before the Juge Commissaire mentioned in the 5th article, and that when the composition has

been signed by the requisite number of creditors according to the second article, then it is to be submitted for confirmation and registration by the Royal Court. The 16th article states that the Royal Court is to allow of no opposition to the confirmation and the registration of the composition, unless it has been previously made before the Juge Commissaire; and it goes on to say that the Royal Court is to determine summarily, and that its decisions are to be without appeal.

Now there are set out in this case the various proceedings of the Juge Commissaire, by way of recital to his final report made to the Royal Court. The final report is made, no doubt, upon the 25th July 1874; but the proceedings had been going on before him, beginning on the 13th October 1873; therefore from 13th October 1873 to 25th July 1874 this matter was going on before the Juge Commissaire. Amongst other persons who appeared before him, the Credit Foncier appeared. The Credit Foncier claim against the copartnership in Jersey for a debt which they state to amount to 55,160*l*. Before they appeared they put in a protest before the Juge Commissaire, and objected to his proceeding. But they took no steps to prevent his proceeding. They made no appeal to this Court, or to any other court, to restrain his proceeding; and they apparently appeared before him, and entered into calculations, and were heard before him as to the nature of their claim, as to the subjects of the claim, and as to the amount of the claim; and finally the Juge Commissaire ascertained the claim at 53,606*l*. He admitted the claim as valid at that amount, but he referred certain questions which had been litigated before him, as to the right of the Credit Foncier to rank as a creditor at all, to the decision of the Royal Court. They were, as appears, very large claims. And there was another very large claimant, of the name of Eckford. He

claimed something like 40,000*l*. Those two large claimants were sufficient, with the other persons who did not assent, to prevent the assent of the requisite number and value of creditors from being obtained so as to make the composition binding under the provisions of the law of 1867. And so in the recital in which he gives the various notes of his proceedings from day to day he reports to the Royal Court; and upon the 27th April he reports expressly that the Credit Foncier having not at that time assented, and that Mr. Eckford having not at that time assented, if the Court should decide that the Credit Foncier had a right to be considered as a claimant to the extent of 53,606*l*., at which he had ascertained their claim, no composition could be arrived at, because those two were alone sufficient to prevent the composition having the requisite legal incidents attached to it. Subsequently to that, there appears to have been a reference sanctioned by him to two Queen's counsel in England, of the matter in dispute between Mr. Eckford and the Bank; and those two gentlemen, Mr. De Gex and Mr. Fry, having ascertained the debt at 25,000*l*., Mr. Eckford no longer objected. It is mentioned in the 17th page of the petition before us, that upon that award Mr. Eckford withdrew his opposition, and became a consenting party to the composition. That left the Credit Foncier still standing out; and but for a mistake hereafter to be mentioned the requisite number and the requisite value of the creditors would have been arrived at for the purpose of validating the composition, and the composition would have been effective according to the law of 1867. To that effect the Juge Commissaire reports; and he reports that the requisite number of persons having agreed to the composition, he submits it to the Royal Court,—submitting, however, to them the question, the very important question,

not of the amount of the claim of the Credit Foncier, but whether the Credit Foncier, under the circumstances set out before him, which he details in his report, had a right to claim at all against this copartnership. The Royal Court, upon that state of things, confirmed and registered the deed, referring, in the judgment which they gave, the question of the amount for which the Credit Foncier was to stand against the copartnership to the ascertainment of their registrar. The true view of the matter is what was presented by their Lordships in the course of the argument of Mr. Field, that early in the transactions, so far back as November 1873, the Juge Commissaire had ascertained the amount of the debt due to the Credit Foncier at 53,600*l.* odd; he has ascertained that amount finally and without appeal. At least if there was to be an appeal against his so ascertaining it, it must have been prosecuted then and there, and at once; that all that he meant to refer and all that he ever did refer to the Royal Court was the legal right of the Credit Foncier to claim, and that that he referred to them on the 10th November 1873. Matters went on; and the final report, and the judgment of the court upon that final report, was given in the following July. But from November 1873 to July 1874 the present petitioners have done nothing. They allowed the matter to stand upon the order of the Juge Commissaire; they have taken no steps to disturb his decision, as far as amount went; and the matter as to whether they had a right to claim for anything at all was by the Juge Commissaire referred to the Royal Court itself.

Now they claim, the registration and confirmation having taken place, to upset it upon various grounds. First of all, they say that the original order of the 13th October 1873 of the

Superior Court was an order which they had no right to make. That is the order referring it to the Juge Commissaire, and putting the whole matter in train for investigation before him. But the Royal Court pronounced that decision on the 13th October overruling that plea, and sent them with other creditors, that their case might be examined into, before the Juge Commissaire. At the conclusion of that sentence they expressly reserved to the Appellants the right to appeal *à fin de cause*. Their Lordships are of opinion that, whatever may be the effect of that reservation, the Petitioners before them are entitled to the benefit of it, without any order made by their Lordships; but if they are entitled to nothing under that order their Lordships are not disposed to help them, because they have stood by from the 13th October 1873 to the present time; they have allowed all the expenses and trouble of this investigation and composition to be entered into; they have done nothing to dispute it, they have taken their chance of being pleased with it, and they now seek for leave to petition against that which, if they were dissatisfied with it on the ground of jurisdiction, they should have petitioned against long ago. Therefore if they have the right reserved to them by the Court, of course they can exercise it: if they have not such a right, as far as that part of the petition goes, their Lordships are not disposed to give them what they ask.

Then they claim to examine the final judgment of the Court; and they claim to examine it upon various grounds. They say, first of all, that they ought to have a right now to increase their claim from 53,600*l.* to 55,100*l.* Their Lordships are not disposed to give them any such leave. It was ascertained, so far back as November 1873, by the Juge Commissaire, that

they had a right, if at all, if the legal objections were not to be made to the whole claim, at the most for 53,000*l.* only. If they meant to dispute that, they should have disputed it then; and they must be taken as against themselves to be precluded by that judgment; and for 53,000*l.*, if at all, they must be content to prove and claim.

Well then they say that they are entitled to have this matter inquired into, because they say that the Court has acted without jurisdiction. In truth that is what the objection comes to. They say that the jurisdiction of the Court to confirm and register the composition must be limited to confirming and registering a composition which by law could be entered into, and that the Court cannot give itself jurisdiction if the law does not give it. They say that here they are in a position to prove that a sum of 3,800*l.* has by some mischance been omitted from the schedule of debts; that is the sum represented by Mr. Walker Baily's debt; and that the debt of another gentleman, of the name of Mourant, has been counted twice over. His debt is a thousand and odd pounds, and that would bring the error up to an error of near 5,000*l.* They say that there has been an error to the extent of something near 5,000*l.* in the casting up of the accounts, and that debts to that amount have not been taken into the account in estimating the three fourths in value and number which the second article of the law of 1867 requires. Their Lordships think that this is a very serious matter, and that upon that point the Petitioners should have leave to appeal; that it would be right that this question, if it be a mistake, and still more if anything of this kind should be done intentionally, is one which it is very fit should be inquired into by appeal.

The difficulty that presented itself to their Lordships was that portion of the 16th article of

the law of 1867 which states that the Royal Court shall have the confirmation and registering of compositions, and that in such matters the Court shall determine summarily, and that its decisions shall be final. But without saying, and without intending to intimate, that the words of that 16th article do or could take away from Her Majesty in Council the right to re-examine on appeal cases where it was clear that a miscarriage of justice had arisen, or the Court had clearly exceeded its powers, or had done that which was manifestly wrong, it is enough to say in this case that their Lordships are of opinion that the law must be construed as a whole, that the 15th and 16th articles must be taken together; and that as the 15th article states that a composition, to be binding, must be signed by a particular portion of creditors, and as it is only such a composition that the Royal Court is entitled to register, and it is only in reference to such a composition that the decisions of the Court are to be final, the Court is satisfied that the very foundation of the jurisdiction of the Jersey Court would be wanting if the errors suggested as having taken place can be proved to have taken place in fact. And without at all intending to infringe on the cases which have been determined upon other states of circumstances and under other Acts of Parliament or Acts of Colonial and Foreign Legislatures, it is enough to say that here it seems to their Lordships that the foundation of the jurisdiction of the Jersey Court would be wanting, if the facts which are stated to their Lordships should be ultimately proved at the hearing of the Appeal. Upon that ground it is plain that this is a matter to be examined into by the Court of Appeal, and that upon that ground the leave to appeal ought to be given.

Their Lordships limit the leave to appeal to those two points:—the point as to Mr. Walker

Baily's debt, and the point of the mistake as to Mourant's debt being stated twice over. And upon those grounds only they think that it would be fit that the decision of the Royal Court of Jersey of the 8th August 1874 should be reconsidered and heard upon Appeal.

Their Lordships have said nothing on the ground of doléance. It is far better, when there is a fair ground of raising all that their Lordships think fit to be raised,—apart from all personal questions,—so to raise it. A doléance, in Mr. de Geyt's book on the Laws of Jersey, is very properly described as an odious proceeding. It is a personal charge against a judicial officer,— a personal charge either of misconduct or of negligence; and if all that could be gained to a Petitioner by a doléance is gained to him by the ordinary appeal in the manner in which their Lordships think it open to this Petitioner, their Lordships think it right to confine him to that ordinary appeal, and to dismiss the matter as regards the doléance, and as regards the personal negligence of the officer whose character would be impeached by granting leave to bring such a doléance before this Committee.

With regard to the matter on which we heard Mr. Cohen, the Judgment already pronounced sufficiently shows what the opinion of their Lordships is. It is right that Mr. Walker Baily should have his leave to appeal upon the grounds stated,—that his 3,800*l.* has been omitted from the schedule of debts, and that he has therefore had no opportunity of either assenting or dissenting; and that the absence of his 3,800*l.* reduces the number of assents below the statutory requisite; of course being the person whose 3,800*l.* is omitted, has a right to inquire into the same decree of the Royal Court on those same grounds.

Their Lordships will therefore humbly recommend Her Majesty to grant leave to appeal from the Judgment of the Royal Court of Jersey of the 8th August 1874, to the Petitioners, but this appeal is to be restricted to two questions; viz., 1st, whether the sum of 3,800*l.*, being the amount of Mr. Walker Baily's debt, has been omitted from the schedule of debts; and, 2ndly, whether the debt of Mr. Mourant has been counted twice over. These appeals will be heard together with the appeals now pending between the same parties before Her Majesty; but 150*l.* is to be lodged by each of the petitioners within one fortnight as security for the further costs occasioned by these proceedings.