Judgement of the Lords of the Judicial Committee of the Privy Council on the Appeal of Sir Charles Tennant and others trading as Charles Tennant, Sons, and Company v. *William Howatson, Trustee of the estate of Agostini and Ambard, from the Supreme Court of Trinidad; delivered 3rd March* 1888.

Present:

LORD WATSON.
LORD HOBHOUSE.
SIR BARNES PEACOCK.
SIR RICHARD COUCH.

[*Delivered by Lord Hobhouse.*]

The question to be decided in this appeal turns entirely on the construction of the Trinidad Ordinance No. 15 of 1884 relating to bills of sale. The material facts are few and are not in dispute.

The Respondent is the trustee appointed in the bankruptcy of Joseph Leon Agostini and Lucien Francois Ambard. These two gentlemen carried on business in Trinidad as growers of sugar, in partnership with John Bell Smyth, under the firm of A. Ambard and Son. The Appellants are London merchants who had dealings with A. Ambard and Son.

On the 13th November 1885 an agreement was made between the Appellants and A. Ambard and Son, in the form of a letter addressed by the

52725. 100.—3/88. A

latter firm to the former, the first paragraph of which runs as follows :—

"In consideration of your accepting our drafts now on the way for 11,000*l.*, and of you agreeing to our postponing the remittance to you of 19,000*l.*, the estimated net proceeds of rice paid for by you and sent by you to us for sale on joint account as regards profit and loss, making together 30,000*l.*, we hereby charge and assign to you the canes now growing on the several estates now held with and known as the St. Augustin estate, in Trinidad, comprising about 2,154 acres, and we agree to cultivate, reap, and manufacture at our own cost, and ship to your order from time to time, as soon as manufactured, all the sugar produced from the canes on this estate, and all the sugar we may manufacture from canes we may bring to and grind at the St. Augustin factory ; you to sell the same, and to apply the net proceeds after deducting costs of insurance, freight, charges, commission, and brokerage, to the repayment of the before-mentioned 30,000*l.*"

The rest of the letter made other provisions relating to the proceeds of the crop of 1885, and provisions of a like kind with respect to the crop of 1886.

On the 9th July 1886 Agostini and Ambard were adjudicated bankrupt. At that time the crop of 1885 had been cut and made into sugar, and it is this sugar which is claimed by the Appellants against the Trustee.

The Trustee does not claim the sugar as being in the order and disposition of the bankrupts, because it was in the hands of A. Ambard and Son, and the bankrupts are only two of the partners in that firm. But he contends that the letter is a bill of sale, not registered, and that for want of registration it cannot pass any property to the Appellants.

The Ordinance in question, with the exception of the interpretation clause, which is taken from the English Act of 1878, is copied from the English Act of 1882, with some variations, one of which gives rise to the principal difficulty in this case. The letter of November 1885 is clearly comprised within the range of general transactions which the interpretation clause de-

clares that the expression "bill of sale" shall include. And the first question is whether it also falls within one of the classes of special transactions which the same clause excludes.

It is contended that the transaction in question falls under the head of "Transfers of "goods in the ordinary course of business of any "trade or calling," which are excluded from the operation of the Act. Several Trinidad merchants have made affidavits to show that it is a common custom in Trinidad for the owner of a sugar estate to borrow money of a merchant for the expenses of getting the crop and making the sugar, upon an agreement to deliver to him the sugar when made, to sell on commission, and to retain his debt out of the proceeds. Such agreements, it is said, are known as working agreements, and are not usually registered as bills of sale.

But three of these witnesses who were cross-examined explained that working agreements are usually joined with, or subsidiary to, mortgages, evidently meaning mortgages of the estates; and one said that mortgages are the rule, and working agreements the exception. Though therefore the working agreement, standing alone, is of frequent occurrence, it cannot be said to be the common practice. And their Lordships doubt very much whether the special arrangement made by the letter of November 1885 is such an advance for the purposes of the estate as to make it an ordinary working agreement.

If the evidence leaves it doubtful whether the agreement in question is a working agreement, and falls short of showing that even a working agreement is the common practice in Trinidad, still further is it from showing that the agreement is a transfer "of goods in the ordinary "course of business." Their Lordships think

that the word "goods" in this context does not include growing crops. The expression "personal chattels" is defined to mean "goods, "furniture, other articles capable of complete "transfer by delivery, and (when separately "assigned or charged) fixtures and growing "crops." If it were not for this express definition growing crops would not be personal chattels, and the word "goods" is not at all calculated to include them. Moreover, though it is not easy to say with any precision all that is meant by the expression "the ordinary course of business," their Lordships are of opinion that it does not point to the borrowing of money on mortgage or special agreement, though such a thing may be frequent among certain classes of persons. And they are clear that an agreement such as has been made in this case is not (as to be withdrawn from the operation of the Act it must be), a document "used in the "ordinary course of business as proof of the "possession or control of goods, or authorizing, "or purporting to authorize, either by endorse-"ment or by delivery, the possessor of such "document to transfer or receive goods thereby "represented."

The other reason assigned for withdrawing this agreement from the Ordinance is that by Section 10 it is declared that, "Nothing contained "in this Ordinance shall render a bill of sale void "in respect of any of the following things:— "(1) Any crops separately assigned or charged "when such crops were actually growing at the "time when the bill of sale was executed; (2) "any fixtures separately assigned or charged, "and any plant or trade machinery, when such "fixtures, plant, or trade machinery are . . . "in substitution for any of the like fixtures, "plant, or trade machinery specially described in "the schedule to such bill of sale."

If an exact literal construction is to be given to this Section, then Section 11 of the Ordinance, which requires registration and in default of it avoids a bill of sale, must be taken not to avoid it in respect of crops actually growing at the date of the bill of sale. But then it will be found that nothing is left in the Ordinance capable of application to such crops, except possibly, and under very exceptional circumstances, Section 17, which relates to personal chattels liable to distress for taxes, and provides that a bill of sale shall not protect them. It is impossible to suppose that for so trivial a purpose these growing crops would be brought under the definition of "personal chattels," which in their nature they are not. And nobody has been able to find any reason why the Legislature should frame an artificial definition for the purpose of treating separately assigned growing crops as personal chattels, of bringing them within the operation of bills of sale, and within the provisions requiring registration for a valid assignment of them, while after all the most important of such crops, the most likely to be assigned separately, viz., those growing at the date of the bill of sale, are to be wholly exempted from the policy of the Law. Nor is it any easier to find a reason why substituted fixtures or plant should be so exempted.

This grave difficulty compels a close examination of the other sections of the Ordinance, to see if they can afford some clue to a construction of the words, "Nothing contained "in this Ordinance," which, though only a secondary meaning, may yet be found on valid judicial grounds to be the true meaning of the framers of the Law. And their Lordships think that such a clue is to be found on a careful comparison of Section 10 with the two preceding

sections and the succeeding one. Section 8 is as follows :—

" Every bill of sale shall have annexed thereto or written thereon a schedule containing an inventory of the personal chattels comprised in the bill of sale, and such bill of sale, save as herein-after mentioned, shall have effect only in respect of the personal chattels specifically described in the said schedule, and shall be void, except as against the grantor, in respect of any personal chattels not so specifically described."

Now what is the saving " herein-after mentioned." None is mentioned except the saving in Section 10. Growing crops cannot be described more specifically in a schedule than they would be in the operative part of the instrument, and chattels not in existence cannot be specifically described at all. There is good reason for saving them out of that provision which requires specific description in a schedule, and saved they are accordingly. The salvo is satisfied by Section 10, and by nothing else in the Ordinance, and Section 10 is made sensible by reference to the salvo, and leads to strange consequences if extended beyond the salvo. There is then a strong inference that these two parts of the instrument were designed to fit one another.

The inference is strengthened by examining Section 9, of which precisely analogous remarks may be made. It is in these terms :—

Section 9. " Save as herein-after mentioned a " bill of sale shall be void, except as against the " grantor in respect of any personal chattels " specifically described in the schedule thereto, " of which the grantor was not the true owner " at the time of the execution of the bill of sale."

This section too contains a salvo, which is explained and satisfied by Sub-section (2) of

Section 10, and which is necessary because the grantor cannot at the time of sale be the true owner of fixtures to be afterwards substituted. And the salvo refers to nothing else in the whole Ordinance.

It is also to be remarked that the expression "save as herein-after mentioned" occurs nowhere in the Ordinance except in the two sections just commented on. If Section 10 were intended to exempt actually growing crops and substituted fixtures from the necessity of registration, it would be important to insert a salvo in Section 11, which requires registration, and it would be a mere superfluity to insert it in Sections 8 and 9, which only deal with some subordinate parts of the thing to be registered. Yet we find it in Sections 8 and 9 where it is not wanted, and we do not find it in Section 11 where it is much wanted.

We find then on the face of the Ordinance the following phænomena: that the literal construction of the opening words of Section 10 makes it impossible to understand why growing crops should be mentioned at all; that, on the same construction, the words expressly saving bills of sale from provisions that make them void are not found where they ought to be, and are found where they need not be: whereas if Section 10 is construed with reference only to the matter of the two foregoing sections, everything falls into its place; the express salvoes in Sections 8 and 9 are fully explained and satisfied, the reasons for the exemptions of Section 10 become perfectly intelligible, and Section 11 is properly framed without any saving clause. Their Lordships think that these considerations require them to construe Section 10 as if it began with the words, "Nothing contained in "the two foregoing sections of this Ordinance,"

or " Nothing in this Ordinance which requires a " schedule of personal chattels."

The result of such a construction is that the assignment to the Appellants is void for want of registration. As the decree appealed from is founded on the same conclusion, it should be affirmed, and the appeal dismissed. Their Lordships will humbly advise Her Majesty to that effect, and the Appellants must pay the costs of the appeal.