Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Joseph Crecy De Lanux v. *The Oriental Bank Corporation (in liquidation) and John Alexander Ferguson, from the Supreme Court of Mauritius; delivered 18th May* 1895.

Present:

The Lord Chancellor.
Lord Watson.
Lord Hobhouse.
Lord Shand.
Lord Davey.

[*Delivered by Lord Watson.*]

This appeal is, happily, a very exceptional specimen of Colonial litigation. Its distinctive features are, the reckless character and large pecuniary amount of the claims preferred by the Appellant, the mass of evidence, oral and documentary, adduced in support of them, and the dearth, and, in some instances, total absence of any evidence bearing upon material facts, without full proof of which the claim must necessarily fail.

The case was very deliberately tried before Messrs. Justices Mure, Williams, and Rouillard, three Judges of the Supreme Court of Mauritius, sitting without a jury, who, after consideration, dismissed the Appellant's suit, with costs. The opinions delivered by the learned Judges, and

86477. 100.—5/95.

in especial, the opinion of Mr. Justice Mure, who deals with the facts of the case in greater detail than his brethren, appear to their Lordships, to dispose, in a clear and satisfactory manner, of all the points which were raised by him in this appeal. These points were stated and argued, with great moderation and propriety by Mr. Pollock; but it was impossible to disguise the fact that most, if not all of them, were beyond the aid of advocacy. In these circumstances, their Lordships might very well have contented themselves with simply expressing their concurrence in the decision of the Court below, and in the reasoning upon which that decision is based. Seeing, however, that some of his claims were obviously supposed by the Appellant to involve important legal considerations, their Lordships will shortly notice the various points which were argued at the bar.

It becomes necessary, in order to make these points, so far as may be, intelligible, to give a brief outline of the transactions which ultimately led to the institution of the present suit.

The Appellant, who was at that time resident in the Island of Réunion, on the 11th December 1874, purchased from Messrs. Rougier and Bonieux the sugar estate of Walhalla, in the Island of Mauritius, in conjunction with Pierre Giroday, whose fourth share of the purchase was subsequently acquired by the Appellant. The estate sold included, not only the land of Walhalla occupied as a sugar plantation, but all its produce in the shape of sugar, then lying either in the storehouses at Walhalla, or in warehouse at Port Louis. The consideration for the purchase was, in the first place, 800,000 lbs. of sugar, and, in the second, the sum of £167,779. 54c., which was to be applied in payment of certain debts to that amount, affecting the concern sold, which were specified

in a list incorporated with the deed of sale. The only one of these debts which need be referred to is thus described in the list:—"To Mr. Louis "Gonnet, merchant, the sum of £50,000 for "satisfaction and complete payment of the "balance of capital and interest to this day "shown by his current account for advances "made to the estate of Walhalla, which advances "are secured by a mortgage inscribed on this "property."

Louis Gonnet, who carried on business in Port Louis, appears to have acted as agent for various sugar estates, including Walhalla, which were, in technical language, financed by him. In other words, he advanced to his constituents the funds required to defray their expenses of management, and of cultivating and manufacturing each year's crop, mainly upon the security of the sugars of that year, which were consigned to him. He was a customer of the Respondent Bank, from whom he obtained advances to satisfy the needs of his constituents, upon the security of bills signed by him with or without other names, and upon an undertaking to assign to the Bank the sugars consigned to him at Port Louis. The Respondent, John Alexander Ferguson, was, during the whole period of the transactions now in question, manager of the Respondent Bank's branch at Port Louis; and it is by reason of his alleged actings, in that capacity, that he has been made an individual Defendant in this suit.

In April 1874, Louis Gonnet assumed, as a partner, Frederic Giroday, a brother of the gentleman who became joint purchaser with the Appellant of the Walhalla estate; and, from that time, the agency of the estate was conducted by them for Messrs. Rougier and Bonieux, under the firm name of L. Gonnet & Co. On the 11th December 1874, immediately after their

purchase was completed, the Appellant and Pierre Giroday, in part payment of the price, settled with Louis Gonnet, for his debt of $50,000 already mentioned, to the extent of of $40,000, by making over $20,000 to him, and by giving him four bills or promissory notes for $5,000 each. The agency of the estate, for crop 1875, was, at that time, transferred by the purchasers to Pierre and Frederic Giroday, who appear to have managed it until May 1875. The Appellant was not satisfied with their actings; and, in the course of that month, he purchased the proprietary interest of Pierre Giroday, and appointed one De Chazal to be his agent for the future. De Chazal remained in the management of the estate until the 30th September 1875, when he was superseded by a broker named Régnard, who continued to act for the Appellant, until his connection with the Walhalla estate was finally severed. The Appellant's agents, successively, obtained money from the Respondent Bank, for the purpose of financing the estate, just as their predecessors, Louis Gonnet, and L. Gonnet & Co. had done.

It is stated by the learned Judges, and it was not controverted in the Appellant's argument, that the sugar market for crop 1874 was very depressed; and that the prospects of the sugar grower became still more gloomy in 1875. One thing is certain, that the Appellant's speculation did not succeed, and that, towards the end of the year 1875, he became involved in serious pecuniary difficulties.

The Respondent Bank, who were at that time in advance to Régnard on behalf of the Walhalla estate, against current bills and sugars, in October 1875 acquired a debt of $2,824 16c., charged by mortgage upon the land of Walhalla, which they proceeded to attach for its recovery.

The Appellant having failed to comply with the usual *commandement*, or requisition for payment, the property was sequestrated, and placed under the charge of an officer appointed by the Court, by whom it was sold in the month of April 1876. After an interval of nearly ten years had elapsed, the present suit was brought by the Appellant. His declaration, which was filed upon the 18th March 1886, prays for a decree against both the Respondents, jointly and *in solido*, for the sum of 60,000*l.* sterling, as the amount of damages sustained by him through their illegal and fraudulent acts.

Their Lordships will now, following the order in which they were submitted at the bar, advert to the four different grounds of claim which were urged in this appeal.

The first of these relates to the sum of $50,000, which, in the deed of sale by Rougier and Bonieux to the Appellant, was stated to be a debt due by the sellers to Louis Gonnet, secured upon the property sold. The case stated in the Appellant's pleadings upon this point, which he endeavoured to substantiate in argument, is simply this:—that no such sum was in point of fact due to Louis Gonnet; that it was fraudulently inserted in the deed of sale, with the knowledge and connivance of the Bank through their manager, Mr. Ferguson; that the fraud was perpetrated for the benefit of the Bank, who are said to have received from Louis Gonnet, and to have illegally retained the $40,000, which the Appellant paid Gonnet to account of the debt, immediately after the sale was completed; and that the Appellant has, consequently, been defrauded by the Respondents, and has thereby suffered damage to the extent of the sums which he paid to Gonnet.

It is difficult to understand wherein the fraud, thus vaguely alleged, was really meant to

consist. That difficulty is not lessened by the fact that the Appellant himself did not enter the witness box; and that his son, Hippolyte, who made the purchase for him under a power of attorney, though repeatedly examined, gives no evidence upon the point. The $40,000 in question formed part of the money consideration agreed to be given for the estate, disencumbered of certain claims by Gonnet and others; and the Appellant does not allege that these claims formed an incumbrance upon the property transferred to him. It is not easy to conceive why Messrs. Rougier and Bonieux should have falsely stated that the estate they were selling was encumbered with a debt which did not exist. Such a mis-representation was calculated, not to enhance, but to diminish the marketable value of the estate; and no ordinary or sane purchaser would have been thereby induced to give a single dollar beyond the price which he considered its fair value to himself. The Appellant has not suggested, and has not attempted to prove, that he was induced to do so. The most explicit view of the supposed fraud submitted in argument was, that it was perpetrated by the sellers and Louis Gonnet, in concert with the Respondents, in order to put $40,000 in the coffers of the Bank. But the suggestion rested on mere speculation; and no intelligible reason was assigned, why Messrs. Rougier and Bonieux should have sold their property on the representation that it was encumbered by a debt which did not exist, in order to make a present of that sum to the Bank.

But it is not necessary, in order to dispose of this claim, to criticise farther the transaction of December 1874, between the Appellant on the one hand, and Rougier and Bonieux, and Louis Gonnet, on the other. Assuming, (what has not been shown) that there was fraud in these trans-

actions, it is sufficient to say that there is not even a *scintilla* of proof tending to connect the Respondents with it. Neither the Bank, nor their manager, took any part, directly or indirectly, in effecting the sale, or in adjusting its terms. And it is clearly proved, that the Bank never received, through or from Louis Gonnet, any payment which was not justly due on account of advances made by them in the ordinary course of business.

The Appellant's second ground of complaint hardly merits serious notice. It comprised these three charges :—(1) that some Walhalla sugars of crop 1874, which, at or about the date of his purchase, were warehoused at Port Louis, in the name of L. Gonnet & Co., disappeared, their disappearance being imputed to the fault or fraud of the Respondents; (2) that a lot of Walhalla sugars was transferred to the Bank by L. Gonnet & Co., after they had ceased to be agents for his estate, and has never been accounted for by the Respondents; (3) that another lot of Walhalla sugar, transferred to the Bank by F. De Giroday, during the period of his agency for the Appellant, has not been accounted for.

As to the first of these charges, if there be evidence to show that the sugars said to have disappeared ever existed, which is at least doubtful, there is certainly no evidence that these sugars ever came into the possession, or under the control of the Respondents. With regard to the second, the only evidence bearing upon it shows, that the lot of sugar, the warrant for which was in the name of L. Gonnet & Co., was duly given in security to the Bank, not by that firm, but by F. De Giroday, against advances made to him as the Appellant's agent. The only evidence upon which the Appellant could rely in support of the third charge was a memorandum of insurance, effected by F. De Giroday

upon a lot of sugar lying in store to the order of the Bank. The evidence of that gentleman, which is borne out by the documents, shows that these sugars formed the unsold balance of a larger lot previously assigned to the Bank, and for which they have fully accounted.

The third ground of action, submitted by the Appellant, and also the fourth and last, relate to the proceedings taken in execution by the Bank, which terminated in the judicial sale of the Walhalla estate.

The third ground was formulated under three heads. The first of these was that the Appellant's agents, De Chazal and Régnard, without his knowledge, were employed by and secretly acted as agents for the Bank, the object of the Bank being to oust the Appellant from the management of his estate, and to get the benefit of its produce. The second was, that the estate was purchased at the judicial sale by one Lagesse, who bought under the instructions and for behoof of the Bank; and that the Bank acquired the mortgage debt with the view of accomplishing that object. The third was, that the seizure and sale of the estate were illegal, inasmuch as, at the dates of the *commandement* and of the seizure, and afterwards, Régnard had in his hands moneys belonging to the Appellant, which were applicable and amply sufficient to satisfy the Bank's claim under the mortgage.

The first two of these propositions are allegations of fact, and are not only unsupported, but are disproved by the evidence. The third of them involves law as well as fact.

The assertion that De Chazal and Régnard acted secretly as agents for the Bank was obviously meant to raise the plea that the Bank, as his employers, became responsible in law, for the alleged failure of Régnard to pay the debt for

which the estate was attached. As appears from the evidence, the Bank, in the year 1875, from time to time made advances to these two gentlemen, the agents for the Walhalla estate, upon the security of bills which they discounted, and of a sugar crop, which had not yet been grown, or had not been manufactured. No prudent lender, in the then state of the sugar market, would have made, or continued to make such advances, without being fully informed as to the necessary outlays required for management and cultivation, and as to the prospects of the crop. The Bank did nothing beyond what was necessary in order to obtain such information, through the estate agent for the time being, who was neither in a legal, nor in any other sense agent for the Bank.

With regard to the second proposition, their Lordships must observe that, in acquiring the mortgage debt, the Bank were acting within their legal rights, and could not be precluded from making the acquisition by the fact that they were entitled to security over the crop of the estate, in respect of a debt which was due to them, not by the Appellant, but by his estate agent. The allegations, that Lagesse purchased the estate, by the directions of, and for the benefit of the Bank, appear to their Lordships, as they did to the Court below, to have no foundation in fact.

Their Lordships have had little difficulty in coming to the conclusion, that the third of these propositions has no better foundation in law than its predecessors have in fact. The Bank owed the Appellant nothing, and had no moneys of his in their hands. Any Walhalla sugars which they then held were specially pledged to them, in security for their advances; and, except for the purpose of meeting these advances, the Bank had no right to convert the sugars into

money. It is equally clear, that the Bank had no control over the Appellant's estate agent, or over any property or moneys of the Appellant, which might be in his hands. In these circumstances, the Respondents cannot be held responsible for the alleged failure of Régnard to pay off the mortgage debt, and so prevent the sale of the estate. The provisions of the Code, which were brought under the notice of their Lordships, have, in their opinion, no application to the facts of this case.

It therefore becomes unnecessary, for the purposes of this appeal, to determine whether there was any failure in duty on the part of Régnard.

The fourth and last charge made against the Respondents was, that the Bank stifled and prevented biddings at the sale, and so enabled Lagesse to become the purchaser at a lower price than would have been obtained, had it not been for their interference. There can be no doubt that, if these allegations were established by proof, the Bank would be liable in damages to the Appellant. But, again, the requisite proof is wanting. The intending bidder, whom the Bank are supposed to have obstructed, was one Labistour, an insolvent without means or credit, whose only possessions consisted of liabilities which he could not meet. It was admitted that Labistour never was in direct communication with the Bank or its manager; but they are said to have operated upon him through the instrumentality of Jules Langlois, who was a brother-in-law of Lagesse, the purchaser at the sale. Langlois was not called as a witness by the Appellant; and the Respondent Ferguson, in his evidence, denies that Langlois was employed by, or had any authority from, the Bank, to interfere with the intentions of the insolvent to become a bidder at the sale.

In making these observations upon the points

argued before them, their Lordships have endeavoured to avoid details, because they are entirely satisfied with the reasons assigned for their decision by the learned Judges of the Supreme Court. It has never been their Lordships' duty to listen to a more groundless appeal. They will humbly advise Her Majesty to affirm the judgment appealed from. The Appellant must pay to the Respondents their costs of this appeal.