

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Emile
Bennicourt v. Louis Ferdinand Le Gendre,
William Henry Collins, and Lucien Francis
Ambard, from the Supreme Court of Trinidad
and Tobago ; delivered 20th December 1899.*

Present at the Hearing :

LORD HOBHOUSE.

LORD DAVEY.

LORD ROBERTSON.

SIR RICHARD COUCH.

[*Delivered by Lord Robertson.*]

The Appellant's claim, as stated in his writ of summons, was "to have an account taken of what is due to the Plaintiff under a certain agreement dated in January 1892 for pitch dug and won from Plaintiff's land and land of one Eugenia Bennicourt (since deceased), at "La Brea." Appearance was entered but no pleadings were delivered, and the Respondents (Defendants) were called on by summons to show cause why an order for the taking of the accounts required by the writ of summons should not be granted. Thereupon it was ordered on the 18th October 1897 that the accounts "in this matter" be taken by his Honour Mr. Justice Routledge.

The scope and ambit of the account were thus finally determined by this order; and, in the absence of pleadings, the "matter" to which the order referred was necessarily that stated in the writ of summons. The account to be taken was therefore an account of what was due to the Appellant for pitch dug and won from the land

of the Appellant and the land of Eugenia Bennicourt at La Brea.

Accounts having been given in by the Respondents, Mr. Justice Routledge heard evidence relating to the matters therein disclosed. Possibly on the face of the accounts but certainly on the evidence it appeared that there had been brought into the account transactions relating to pitch dug not from the lands of either of the Bennicourts but from the lands of one Numa Joasse. *Primâ facie* those matters were extraneous to the account ordered, which related solely to the lands of the Bennicourts; and in their Lordships' opinion the Respondents failed to establish by the evidence any relation between those transactions and the Bennicourts which made them relevant to the account ordered.

At the close of the evidence, this, the true view of the matter, seems from the Judge's notes to have been presented on behalf of the Appellant, but to have been disregarded by Mr. Justice Routledge, for his Honour proceeded to intimate his decision to certify the account as correct; and in the end this was done. This and the whole of the subsequent proceedings are, in their Lordships' judgment, open to the fatal objection that the Judges went outside the true scope of the account, as fixed by the order of 18th October 1897.

In view of this radical defect, it becomes less important to notice other irregularities in the proceedings. It is quite plain that the application for judgment, of which notice was given on 5th November 1897, was premature, and that the judgment obtained cannot be supported. But, apart from this separate objection, the amended notice to vary the certificate of Mr. Justice Routledge gave the Full Court the means of restoring to the proceedings their proper limits, in conformity with the original order for

an account. Their Lordships consider that this must now be done, and they will humbly advise Her Majesty that the judgment of 11th November 1897 and the order of 9th March 1898 be reversed and that the suit should be remitted to the Supreme Court with a direction that the certificate should be varied by disallowing all entries in the account relating to the digging of pitch from the lands of Numa Joasse or otherwise than from the lands of the Bennicourts; and that the Respondent Ambard do pay the costs incurred by the Appellant from and after 18th October 1897. The Respondent Ambard must pay the costs of this Appeal.
