

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Belisle Du Boulay and others v. Jules R. H. Du Boulay from the Supreme Court of the Island of Saint Lucia, and the Court of Appeal for the Windward Islands; delivered 15th March, 1869.

Present:

LORD CHELMSFORD.

SIR JAMES W. COLVILLE.

JUDGE OF THE ADMIRALTY COURT.

LORD JUSTICE SELWYN.

LORD JUSTICE GIFFARD.

THIS is an Appeal from a Decree of the Court of Appeal for the Windward Islands, reversing a Decree of the Royal Court of Saint Lucia in favour of the Appellant.

The Suit was instituted in the Royal Court of Saint Lucia, for the purpose of having it ordered and decided that the name of Du Boulay belongs to the Appellants and their family, with defence and prohibition to the Respondent to take, bear, and sign in future the said name of Du Boulay.

The question to be determined upon this Appeal is whether an action of this description is maintainable under the French law, which at the present time is the governing law in the Island of Saint Lucia.

When a Judge is called upon to decide a question depending upon foreign law, there is always some danger of his being influenced by notions derived from that law which he is in the daily habit of administering. In this country we do not recognize the absolute right of a person to a particular name to the extent of entitling him to prevent the assumption of that name by a stranger. The right to the exclusive use of a name in connection with a trade or business is familiar to our law; and any

person using that name, after a relative right of this description has been acquired by another, is considered to have been guilty of a fraud, or at least of an invasion of another's right, and renders himself liable to an action, or he may be restrained from the use of the name by injunction. But the mere assumption of a name, which is the patronymic of a family, by a stranger who had never before been called by that name, whatever cause of annoyance it may be to the family, is a grievance for which our law affords no redress.

The Appellants, however, say that by the French law, which is in force in Saint Lucia, they have a right to maintain a civil action against the Respondent for assuming their family name of Du Boulay.

The following are the facts admitted in the case : The name of Du Boulay had been the family name of the Appellants for a very long period. The Respondent is the illegitimate son of an emancipated female slave, named Rose, and was born at Martinique on the 17th February, 1835. Before his birth his mother had assumed the name of Du Boulay, and was so called in a judicial proceeding of the Tribunal of First Instance of Saint Pierre, Martinique, on the 20th August, 1831. In 1840 she left Martinique and took up her abode in Saint Lucia, where she was publicly called and known by the name of Rose Du Boulay down to the time of her death in 1854. The Respondent continued in Martinique till after the death of his mother, when he removed to Saint Lucia, being at that time about the age of nineteen. It does not appear when he first took the name of Du Boulay. He certainly had not done so in the early part of the year 1844, for on the 22nd February in that year (though only nine years old), he stood godfather to a child, and signed the register by the name of Jules René. In the year 1852, he had a passport granted to him and registered in the registry of passports for the interior of the Island of Martinique, in which he is described as "Mr. Du Boulay Jules René Herméne-gilde, seventeen years old." In the year 1855, having then fixed his residence in Saint Lucia, he advertised in an island newspaper his intention to commence business under the firm of Du Boulay Brothers and Co., and in the following year he advertised the dissolution of this firm, and his intention to continue the business in his own name. In

1856 the Respondent's brother died, and he was nominated administrator of his brother's succession. Public notice of this nomination was given by the Royal Court by advertisement in the official gazette, in which the Respondent was called Jules René Herménegilde Du Boulay *alias* Herman Du Boulay. From the time of his use of the name of Du Boulay, in Saint Lucia, down to the time of the institution of the suit by the Appellants on the 21st April, 1865, his right to use it was never questioned. During this period he carried on business publicly and notoriously under the name of Du Boulay, and the fact must have been well known to all the Du Boulay family resident in Saint Lucia. The Appellants describe themselves in their plaint as dwelling in the Quarter of Souffrière, in the Second District of the Island. The reason given by their Advocate for their not having proceeded against the Respondent sooner, as stated by him upon their authority, is, "that during the period mentioned by "the Respondent, those of the members of the Du "Boulay family who could have protected their "family name were in Europe for their education, "or for other purposes." And "the head of the "family, Mr. Belisle Du Boulay, was then affected "with a chronic disease which deterred him from "attending to any kind of business."

It was necessary for the Appellants, in order to establish their case against the Respondent, to show,—

First. That the existing law of Saint Lucia entitled them to maintain their action; and,

Secondly. That delay in asserting their right, or acquiescence in the use of the name of Du Boulay, by the Respondent, did not prevent their proceeding against him.

Upon the first question, the learned Counsel for the Appellant undertook to prove that by the old French law which prevails in Saint Lucia, a family had a property in their patronymie, and might prevent any person calling himself by their name who had no right or title to do so. For this purpose he quoted a modern work, the 'Dictionnaire du Notariat,' s. 3, Title "De la Propriété des Noms," where it is said, "Le nom que chaque individu "porte est pour lui une propriété. Il a le droit de "s'opposer à ce qu'il soit pris par un autre.

“L’usurpation d’un nom donne lieu à une action devant les tribunaux. Cette action est purement civile.” The learned Counsel, upon being pressed for some instance of an action of this description having been brought under the old French law, confessed that he had no early precedent to produce. The only cases which he mentioned were two, which are to be found in the record of the proceedings. One of them is the case of *De Lacarelle v. Durien de Lacarelle*, before the Tribunal of Villefranche, in the year 1859, respecting which nothing is stated except the opinion of the Tribunal, that a person who has the right to bear a name is entitled to prevent another from usurping it, without being compelled to account for the motive of his proceeding; and the other *Lawless v. Pierre*, falsely called *Lawless*, before the Tribunals of Martinique, in the year 1860, which, like the present, was the case of the assumption of a name after emancipation from slavery.

It is extremely doubtful whether, prior to the Ordinance of 1555 (to be presently mentioned), the assumption of a name by a person who had originally no right to call himself by it, was the subject of any proceeding, penal or civil.

Merlin, in his ‘*Répertoire de Jurisprudence*,’ title “*Nom*,” s. 3, after stating that by the Roman law changes of names were absolutely free, says: “Il fut un temps en France où conformément à cette loi on changeait de nom sans aucune solennité.” He then gives a variety of instances prior to 1555, in which changes of name had been made without authority, and without any solemnity. He then proceeds, “Mais comme cette licence de changer ainsi de nom et d’armes produisait les plus grands abus, le Roi Henri II y remédia par une ordonnance donnée à Amboise le 26 mars, avant Pâques, 1555, art. 9.”

The right, therefore, to bring a civil action in Saint Lucia for the usurpation of a family name must be founded either upon this Ordinance of 1555, or upon some law subsequently passed and introduced into the island. The Ordinance of 1555 gives no right of civil action for an unauthorized change of name; and according to Merlin, in the passages just cited, such an action could hardly have been previously maintained. The Ordinance subjects the

person changing his name without authority to penal consequences only. It says, "Pour éviter
 " la supposition des noms et des armes, défenses
 " sont faites à toutes personnes de changer leurs
 " noms, et leurs armes, sans avoir obtenu des lettres
 " de dispense et permission, à peine de 1000 livres
 " d'amende, d'être punis comme faussaires et être
 " exautorés et privés de tout degré et privilège de
 " noblesse."

There seems to be great doubt whether this Ordinance of 1555 ever had any practical operation, even in France. Merlin, in his 'Répertoire,' title "Promesse de changer de Nom," says, the Ordinance not having been registered, never became law in France. But Dalloz, in his 'Dictionnaire,' title "Nom et Prénom," after mentioning this opinion of Merlin, says, "Mais la Jurisprudence est contraire à cette opinion." At all events, it is not shown that this unregistered Ordinance ever formed part of the law of Saint Lucia. It is to be observed that the Chief Justice of Saint Lucia founds his Judgment in favour of the Appellants upon a different Ordinance, never referring to the Ordinance of 1555 as having any existence, or at least, as having any bearing upon his decision. He says, "In France, under the law 'De Mutatione Nominis,' names were changed according to the whim or caprice of individuals without any solemnity or formality, but such an unrestrained license brought forth great confusion; names of living families were arbitrarily taken, and towards the commencement of the Nineteenth Century, to wit on the 11th April, 1803, a law was made to check that dangerous system." And he adds, "It is not amiss to observe that that law is not only still in force in this Colony, but has been retained entire by the modern legislators of France, and now forms part of the existing laws of that country."

Notwithstanding the opinion of the Chief Justice that the Ordinance of 1803 is in force in Saint Lucia, it may fairly be questioned whether it ever became part of the law of the Island before it was taken by this country, on the 23rd June, 1803. On that day a Proclamation was issued which assured and guaranteed to the inhabitants the full enjoyment of their property under the laws which existed in the Island at the time immediately prior to the last session."

It is not very probable that the Ordinance of 1803 was one of these laws. It was passed in France a little more than two months before Saint Lucia was brought under British dominion, and not being of any peculiar local importance, it was not likely in the critical position of the French West Indian Colonies at this juncture that any care would be taken to transmit it, in order that it might form part of the law of the Island.

If the Chief Justice is right in saying that this law was made to prevent persons arbitrarily taking the names of living families, it would seem to show that before 1803 no civil action could be brought, or at all events, that none was ever brought to protect a family name from usurpation.

If the law of 1803 is out of the question, it is difficult to see upon what other foundation the Appellants can rest their right to maintain the action. The old French Law on which their learned Counsel mainly relied has already been considered. The Ordinance of 1555, or one of a similar description made in 1629, was the only law upon the subject of changes of name at the time of the French Revolution. That Ordinance fell with the kingly authority. In 1794, during the Revolutionary Government, an Ordinance was passed which absolutely prohibited any change of name, but the learned Counsel was unable to show that this Ordinance, any more than that of 1803, ever had the force of law in Saint Lucia. He failed altogether in his endeavour to prove that the existing law of the Island entitled the Appellants to maintain their action, whether he relied upon the old French law independently of the Ordinances, or upon proof that the Ordinances ever formed part of the law of Saint Lucia, or even if they did, that they gave a family a right to proceed by civil action against a person calling himself by the family name without authority, and to compel him to discontinue to use it.

Their Lordships are unwilling to dispose of the case without adverting to the question arising from the delay of the Appellants in instituting their suit. Supposing an action of this kind to be maintainable, there must be some reasonable limit within which a family ought to be bound to proceed. In the present case, the family of Du Boulay, resident in Saint Lucia, could not have been igno-

rant that for ten years the Respondent had been carrying on business openly under the name of Du Boulay, that he had been recognized by that name in public acts, and that he had undoubtedly acquired the name by reputation. At what time some of the Appellants were absent from Saint Lucia, and when they returned, is left in uncertainty; but the head of the family appears to have been continually resident in the Island, and no sufficient reason is assigned for his not taking earlier steps to protect the family name from the Respondent's alleged unauthorized assumption of it. Under these circumstances, whether any other member of the family might have questioned the title of the Respondent to call himself by the family name is unnecessary to be considered, but all the Appellants have placed themselves under a personal exception by standing by (as it is called) and permitting the Respondent to become known to the world by the name of Du Boulay. After their long acquiescence, it would be unreasonable and unjust to sanction the attempt of the Appellants to deprive the Respondent of his right to use a name which he had acquired by reputation, and by which alone he had been known in the Island during the whole period of his residence there.

Their Lordships will recommend to Her Majesty that the decree appealed from be affirmed.

