*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Heirs Martin* v. *Boulanger and others, from the Supreme Court of Mauritius; delivered February* 21*st*, 1883.

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Present:

LORD BLACKBURN.
SIR BARNES PEACOCK.
SIR ROBERT P. COLLIER.
SIR RICHARD COUCH.
SIR ARTHUR HOBHOUSE.

THE great difficulty in this case has been to gather from the complicated record what the facts were upon which the Court below decided, so as to understand the judgment, which, of course, ought to be thoroughly understood before we could say that it was not right. Now that it has been explained, it is pretty clear what it was.

The first thing to look at is the declaration of the widow Bussié and others, the now Respondents, at page 169 of the record. On the 9th June 1870 they brought an action for a large sum,—more than 12,000 dollars,—which they claimed to be due. They claim from the Court "Judgment condemning you, the said "Defendants, in your above-named capacity of "members of the committee of management, "control, and supervision of the said 'Guildiverie "Centrale,' to pay to Plaintiffs the sum of 12,439 "dollars and 70 cents." This claim is made against the Defendants as representatives of the Guildiverie Centrale, and they claim judgment against that Company.

This is made still more clear by the pleas

One of the Defendants, Rochecouste, makes his appearance and avers that, as far as the Guildiverie Centrale is concerned, he has nothing to say; but he points out that they cannot touch the portion of the land on which this distillery is built. He says they cannot take that because it is held on lease under himself and that the lease will expire in a year. He objects that they cannot take that, and that they cannot touch him personally. The replication to this plea is:—"That, without in any way admitting "the several allegations contained in the said "pleas, the Plaintiffs reply that they have merely "asked a condemnation against the above-named "Defendant,"—that is, Rochecouste,—"in his "capacity of member of the committee of "management, control, and supervision of the "Guildiverie Centrale, and that the issue "whether the said De Rochecouste is personally liable for the amount claimed is not "before the Court." So that it is clear that they are claiming against the Guildiverie Centrale, and against the Guildiverie Centrale, only. The other parties plead, in their capacity of managers of the Guildiverie Centrale, that there is no debt, which, of course. is a different issue altogether.

Then come Daniel Martin, Daniel Pelicier to whom Martin had mortgaged his claims against the Guildiverie, and Henry Ryder who was trustee for Martin's creditors (*Rec.*, *p.* 174). They seek to intervene, and are permitted to do so by Order of the 2nd August 1870 (*Rec.*, *p.* 180). In December 1871 Martin dies, and afterwards his heirs ask that Pelicier and Ryder may be put out of the cause, and that the heirs of Martin may continue his intervention (*Rec.*, *p.* 179). Pelicier and Ryder were put out by Order of 12th March 1872 (*Rec.*, *p.* 181), but it does not distinctly appear when the heirs of Martin

were permitted to intervene in his place. That this permission was granted at a subsequent time is certain.

Then, on the 7th October 1872, comes the judgment, stating that "Saving and excepting "the land on which the Guildiverie is built,"—that is, the land mentioned in the plea of the first Defendant,—"and any personal liability of "the Defendants"—that again is what had been mentioned by him, and these points are put out of the question, the Court deciding nothing as to them: "the Court, to this extent, and no further, "gives judgment for the Plaintiffs against the "said Guildiverie Centrale." That, clearly, is a judgment against the Guildiverie Centrale. Whether the heirs of Martin had as yet been permitted to intervene is not clear; but the Court goes on to say:—"And inasmuch as "Daniel Martin, under a judgment of reference "made a rule of this Court dated the 12th day "of December 1865, was in his lifetime in "possession of the Guildiverie Centrale, pos-"session of which has been retained by his "widow and representatives to enable them to "work off Martin's debt, the Court makes a "remit to the Master to examine the accounts "of Martin in presence of Plaintiffs, and to state "the balance, whatever it may be, as at the "present date; other questions of costs reserved."

So far what the Court does seems to their Lordships to be, in every point of view, perfectly right. They give judgment against the firm the Guildiverie Centrale to take the firm's property; and as the Court had been informed that Martin or Martin's representatives were in possession of this property, not having sold it, but holding it to work off Martin's debt, they say an account must be taken to see for how much Martin's heirs are entitled to hold this land. That was

intelligible and right, and that went before the Master. But here there is some confusion, though it certainly appears that the heirs of Martin were permitted to be parties to the reference before the Master. It is better to take the statement in the preamble to the judgment appealed against for what happened; it is in the following terms:—

"Guibert, of Counsel for the Defendants, con-
" tended on the other hand that the accounts
" anterior to the award of Chauvin, the umpire,
" had been fully examined by the arbitrators,
" their correctness affirmed by the latter, and
" sanctioned by the umpire, whose award was
" subsequently affirmed without any reservations
" by the Supreme Court, and made a rule of
" Court; that the Supreme Court never in-
" tended to reopen the discussion upon the
" accounts anterior to Chauvin's award, but
" merely wished to know, after examination of
" the new accounts furnished by widow and heirs
" Martin since the award, the final balance which
" may be due as at the present date to widow and
" heirs Martin, who have been allowed to retain
" possession of the 'Guildiverie Centrale,' to
" work off Martin's debt, fixed by the above
" award and judgment.

"The Master ruled in the sense advocated by
" Guibert, and accordingly examined the new
" accounts furnished by the widow and heirs
" Martin (two in number) from the date of the
" judgment of the 12th of December 1865, and
" arrived as best he could at a certain balance in
" favour of the widow and heirs Martin. Against
" the finding of such balance the Plaintiffs raised
" certain objections, which the Master declined
" entertaining for the reasons assigned by him,
" and the Plaintiffs were directed to bring the
" present action before the Court to obtain from
" us a judgment which might warrant the Master

" to travel into the examination of the accounts
" anterior to Jules Chauvin's award, along with
" the later accounts since such award."

Who directed the Plaintiffs to bring the present action does not appear. It could not have been the Court which directed, because, as far as the proceedings show, they had not gone to the Court. It hardly could have been the Master who directed them, because he was not entitled to do so. They did, however, in fact, commence this further proceeding, and this further proceeding is the one the judgment in which is attacked.

They give their reasons in their pleadings why they should have this award opened and the matters gone into prior to the award as well as what passed since. Their Lordships remark that there is no assertion or attempt to show that the award was obtained by collusion: there was no collateral fraud, no fraud that would have enabled anyone to say that this was a collusive judgment which ought to be set aside.

Upon that the case came before the Court, and now we have to see what is the judgment which the Court gives. Passing by the preliminary inducement, the Judge says:—" The facts above " stated clearly show the parties to the suit " leading to the arbitration and final adjudi- " cation by the umpire were not the same as in " this action." Now in one sense that is quite true. Robert had instituted the suit in order to have the account stated as between Martin and the Guildiverie Centrale, and the persons who represented the Guildiverie Centrale had intervened; and, no doubt, it is true that the parties in the suit commenced on the 5th June 1870 are the present Respondents and the Guildiverie Centrale, and those in the proceeding in which the judgment appealed against is given are the Respondents and the heirs of Martin, and that

the parties are not the same in that sense. The Court goes on to say:—" The action filed on the " 9th of October 1863 was brought by Richard " Ambroise Robert against one Daniel Martin, " and the object thereof was to obtain from the " latter an account of the sums received by Daniel " Martin from the sale of a large quantity of rum " consigned to him by the said Robert from the " Guildiverie Centrale Mahebourg, in payment of " certain advances made by Martin to the said " Robert for the working of the Guildiverie Cen- " trale, upon the condition, secondly, of accounting " to Robert for any surplus over and above the " repayment to Daniel Martin of all his advances " to Robert." Their Lordships think the claim was that he was to account to Robert for the Guildiverie Centrale, so that it was really the Guildiverie Centrale that was suing. Then the order of reference was made, and the four members of the committee were in that capacity admitted as intervening parties. The Court goes on to say:—" The parties to that suit " were therefore the Plaintiff Robert and the " Defendant Martin, plus the intervening parties " just mentioned. They were the parties who " appeared before the arbitrators and umpire, " and were heard by them. Whatever was " decided by the arbitrators, and finally affirmed " by the umpire, and subsequently by the Court, " can apply to and be binding on no one but " the parties to the reference." It certainly seems to their Lordships that this is not quite accurate. What was found on the reference is binding, not only on the parties to the reference, but also on every one who would, in English law, by claiming through or under them, be privy to it. The same thing seems to be the law in France, and in truth the law must be in every country the same. It is not merely that a judgment shall be binding on the parties who are

the actual parties to the suit, but it must be binding upon all who claim under or through the party to it in respect to the property in dispute. Otherwise there would be interminable litigation, and every judgment would be opened again and again, and the maxim "*interest reipublicæ ut sit finis litium*," to say nothing of justice and convenience between parties, would be completely lost sight of. The Judge then adds:—"It is not possible that "the rights of the Plaintiffs in the case now "before us, who are perfect strangers to the "reference, should be affected by the pro-"ceedings before the arbitrators and umpire, "though made a rule of this Court. There is "undoubtedly *res judicata* as to the parties to the "reference, but certainly not as to the Plaintiffs "and Defendants in the action now before the "Court." This seems to their Lordships to be a mistake. The Plaintiffs were, no doubt, in one sense hostile to the Guildiverie Centrale until they obtained their judgment. They were saying, "We are entitled to a judgment, under which "judgment we are entitled to take your pro-"perty." But when they obtained that judgment, and were seeking to take the property, they were claiming distinctly under the debtor against whom they had obtained the judgment. This proposition is obvious, and it is borne out entirely by the authorities from the French law which have been cited to their Lordships. The Judge then says:—"The correctness of the accounts "before the arbitrators and affirmed by the "umpire could only be so found and affirmed "as to the parties to the arbitration, who alone "had the right and opportunity of criticising "those accounts, a right which could not be, "by any possibility, exercised by the Plaintiffs "in this case." Certainly it could not; but the Plaintiffs claim under the Guildiverie Centrale,

who could and did exercise those rights. He then proceeds to say:—"This action, therefore, " though not so in terms, is in fact and in law " neither more nor less than a tierce opposition " to the judgment arbitral which is sought to be " enforced against the Plaintiffs so as to shut " them out of the possibility of examining or " criticising the accounts furnished by the " Defendant in a quite different suit between " the Defendant Martin, Robert, and other " parties, to which suit, however, as already " observed, the Plaintiffs were no parties in " person, nor were they nor could they be repre- " sented on the reference by any of the parties " thereto, whose interests were in the first place " adverse to those of the Plaintiffs in the cause " now before the Court; and, secondly, the " Plaintiffs in this cause do not derive their " rights under any of the parties to the refe- " rence,"—referring to the article 474 in the Code de Procédure Civile, in which it is said that those who derived their rights under the parties to the reference, or those who represented them, were as much bound as if they were themselves parties. The learned Judge does not cite any authority at all upon this point, but the reason of the thing, as well as the authorities which have been brought to the notice of their Lordships, shows strongly that though, as has been truly said, the creditor is not a party up to the time when he has obtained judgment and is hostile up to the judgment, yet when he has obtained judgment against his debtor he acquires the rights of the debtor, and when he takes property of the debtor is claiming under him within the meaning of the phrase that has been used. Their Lordships think that the Judge has made a mistake on that part of the case, and that he ought to have said that the Master was perfectly right in considering that

this was *res judicata;* that it was settled as between the firm and Martin by Chauvin's award, and was consequently settled as between Martin and anyone claiming under or through the firm; that the Plaintiffs, being creditors, claimed under the firm within the meaning of that decision; and that consequently the award ought to be considered *res judicata* against them, and that they should start from the fixed basis that the account stated at that time was right and was not to be departed from, nothing in the nature of collusion or fraud which would enable it to be set aside being alleged. That being so, the judgment given in this case that it should go back to the Master to open up that account was wrong, and the subsequent proceedings ending in the final judgment were wrong also.

Their Lordships will therefore humbly advise Her Majesty to reverse the judgment of the Supreme Court of Mauritius of the 11th February 1874, and the judgments consequent thereupon. The suit in which that judgment of the 11th February 1874 was given will be dismissed with costs, and the Respondents will be ordered to pay the costs of this Appeal.