

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Rochecouste and another v. Dupont and others, from the Supreme Court of the Island of Mauritius; delivered the 10th December, 1864.*

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Present:

LORD JUSTICE KNIGHT BRUCE.

SIR EDWARD RYAN.

LORD JUSTICE TURNER.

IN this case, considering the general law prevailing in the Island of Mauritius on the subject of goods sold and delivered on credit, as to which default has been made in payment according to the contract, and considering, also, the language of the instrument of the 22nd of September, 1859 (page 26, *et seq.* of the printed Record), and especially the clauses in it which begin "Le matériel et les plantations présentement vendus restent garants des termes," and "Les acquéreurs ont néanmoins," their Lordships are of opinion that the good or bad faith of the Respondents (by which designation we mean the seven first named Respondents), in the transactions brought before the Committee by the present Appeal, is immaterial as to the validity or invalidity, the soundness or unsoundness, of either of the Judgments under Appeal.

The important question, in their Lordships' opinion, is whether the instruments and transactions subsequent to September 1859, destroyed, weakened, or prejudiced the right of the Appellants under the instrument of the 22nd of September, 1859, registered in October 1860, to be paid for the "plant" sold by them to Messrs. Bonnier and Mailloux according to the terms of that instrument, and to be secured

and protected in that respect according to its provisions. And their Lordships' opinion is that that right remained in full force notwithstanding the instruments and transactions subsequent to September 1859, and that whether the proceedings, by means of which the decision of the 28th of March, 1861 (page 8 of Record) was obtained (proceedings to which the Respondents were not parties), were wholly regular or not in all respects regular—that Decision upon grounds of general law, and especially also by reason of those clauses of the instrument of the 22nd of September, 1859, to which particular reference has been made, was consistent with right and justice, and not at variance with any title vested in the present Respondents, and that the Respondents' action or proceeding of tierce opposition was unfounded and should have failed.

Their Lordships, therefore, must humbly advise Her Majesty to discharge the Order of August 1861, under Appeal, to declare groundless the action of tierce opposition in which that Order was made, and to stay all further proceedings in it except for the recovery by the present Appellants of their costs of it, and to direct those costs and the present Appellants' costs of the present Appeal to be paid by the seven first-named Respondents, but to declare also that Her Majesty's Order is to be without prejudice to any question of account between the Appellants and those Respondents, if and in so far as any such question is or may be open between those parties.

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