Judgment of the Lords of the Judicial Committee of the Privy Council on the consolidated Appeals of Callender, Sykes, & Co. v. *The Colonial Secretary of Lagos and J. P. L. Davies, and Z. A. Williams* v. *J. P. L. Davies, from the Supreme Court of the Colony of Lagos; delivered 11th July* 1891.

Present:

LORD WATSON.
LORD HOBHOUSE.
LORD MORRIS.
SIR RICHARD COUCH.
MR. SHAND.

[*Delivered by Lord Hobhouse.*]

These suits are governed by the same legal principles, and the person interested in resisting the claim of the Appellants is the same in both cases, viz., the Respondent J. P. L. Davies. The appeals have therefore been consolidated, and Davies has been added as a Respondent in the suit against the Colonial Secretary of Lagos, to which he was not originally a party.

The main question is, whether land belonging to Davies, and situated in the Colony of Lagos, passed to James Halliday, who, on the 8th January 1877, was appointed trustee of Davies's property in bankruptcy. Davies was adjudicated a bankrupt on the 9th August 1876. On the 12th January 1877 the County Court of Lancashire made an order under Section 74 of the Bankruptcy Act of 1869, for the purpose of seeking the aid of the Court of Civil and

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Criminal Justice of the Settlement of Lagos in the administration of the bankrupt's estate. In pursuance of that order inquiries were made in the Supreme Court of the Gold Coast Colony, to which Lagos then belonged, which resulted in the discovery of property which the bankrupt had concealed. So far the facts are common to both suits.

It will now be convenient to follow the history of the property called the Broad Street property, which is the subject of the suit brought by Davies against the Appellant Williams. That property was purchased by Davies on the 31st January 1871. .On the 30th October 1878 Davies and his wife made an attempt to include it among certain properties settled on his wife himself and their children in the year 1864, by inserting it in a schedule of trust property appended to an appointment of new trustees of the settlement. That attempt has been treated in the Court below by Mr. Justice Hutchinson as fraudulent, and intended to cheat Davies's creditors. But it led to an assertion of title by the trustees, or by Davies in their names, and to litigation in the Supreme Court of the Gold Coast Colony. The dispute was for the time ended by an order dated the 4th June 1880, directing the Deputy Registrar to make delivery of the property to Halliday.

This order was made by Mr. Justice Macleod on the application of Halliday, and after hearing Davies and the trustees, under the impression that the Supreme Court possessed a bankruptcy jurisdiction, and was bound to act as auxiliary to the English Court. On the 22nd April 1881 the Supreme Court decided that no such jurisdiction existed. But Halliday had been placed in possession, and no attempt was made by the trustees to disturb him.

On the 11th November 1881 Halliday agreed

to sell the property to Williams for the sum of 400*l.* then paid by him. Immediate possession was given to Williams, who retained it up to the commencement of the action against him which was brought in the Supreme Court of the Colony of Lagos on the 26th January 1889. Davies had procured his discharge in the year 1884. In the year 1886 Lagos was made a separate Colony, with a Supreme Court of its own.

The writ of summons was headed "J. P. "L. Davies, Agent, Trustees of the Marriage "Settlement of Sarah Forbes Bonella Davies, "deceased." What exactly was intended by this ambiguous heading was not made clear; but the Court, finding that in point of fact the trustees were not taking any action, caused the heading to be amended by striking out all reference to them. The suit therefore remained, and is, that of Davies alone.

Mr. Justice Smalman Smith, who heard the case in the first instance, gave judgment for the Defendant Williams, apparently against his own opinion, and because he did not think it right to decide against the opinion of Mr. Justice Macleod. Davies appealed to the Full Court, consisting of three Judges, of whom Mr. Justice Smalman Smith was one; and that Court was unanimous in reversing the judgment below, and entered judgment for Davies. It is against that judgment that the present appeal of Williams is brought.

The reasons for the judgment are very clearly stated by the three learned Judges. First they hold, in accordance with the opinion expressed by the Supreme Court of the Gold Coast Colony in 1881, and on grounds which appear to their Lordships to be quite sound, that that Court had no bankruptcy jurisdiction in Lagos. That being so, it could not be auxiliary to the English Court under the Act of

1869. That leads them to the inference that the order of Mr. Justice Macleod was a mere nullity. Their Lordships do not stop to discuss the precise effect of an order made by a Court having jurisdiction to deal with the property in a suit properly constituted, and having before it the parties interested in the dispute, but purporting to act in the exercise of a jurisdiction which it did not possess. That discussion is unnecessary, because the Court did not treat the nullity of Mr. Justice Macleod's order as conclusive against Williams, but only as leaving open the fundamental question whether the Act of 1869, under which the bankruptcy took place, did or did not confer title on Halliday.

Section 4 of that Act defines property in very general terms, "land, and every description of property whether real or personal." This is the subject matter which by Section 14 is divisible among the bankrupt's creditors; by Section 15 the divisible property is again described as "all such property as may belong to or "be vested in the bankrupt at the commence- "ment of the bankruptcy, or may be acquired by "or devolve on him during its continuance;" by Section 17 it is made to vest in the Registrar first, and, when a trustee is appointed, in the trustee; by Section 19 the bankrupt is to aid in its realization to the utmost of his power; and by Section 48, if he makes default in giving it up, his discharge may be withheld. There are other Sections in the Act, such as 73, 74, and 76, which show that it is to have operation in the whole of the British Empire. But the sections relating to property do not in express terms specify property in the Colonies, and those which expressly extend beyond England do not in express terms specify land.

The Supreme Court lay down the principle that an Imperial Act does not apply to a Colony

unless it be expressly so stated or necessarily implied; they point out that there is no case deciding that land in a Colony passes under Section 17; and they dwell on the inconvenience which would arise from conflicts of law if an English Statute were to transfer land beyond the limits of the United Kingdom. On these grounds they hold that under the word "property" land in Lagos does not pass.

Upon this reasoning their Lordships first have to remark that there is no question here of any conflict between English and foreign law. Lagos was not in the year 1869, and is not, a foreign country. How far the Imperial Parliament should pass laws framed to operate directly in the Colonies, is a question of policy, more or less delicate according to circumstances. No doubt has been suggested that if such laws are passed they must be held valid in Colonial Courts of Law. It is true that the laws of every country must prevail with respect to the land situated there. If the laws of a Colony are such as would not admit of a transfer of land by mere vesting order or mere appointment of a trustee, questions may arise which must be settled according to the circumstances of each case. Such questions are specially likely to arise in those Colonies to which the Imperial Legislature has delegated the power of making laws for themselves, and in which laws have been made with reference to bankruptcy. The contrivance of statutory transfer has grown out of the older plans of conveyance by or on behalf of the bankrupt; and probably none of the Bankruptcy Acts would be held to pass land more completely than the bankrupt himself could pass it by conveyance. But the general law of Lagos is English law, and it does not appear that in 1877 there had been, or indeed that there ever has been, any local legislation

which would prevent land being transferred in Lagos as freely as it may be in England. The only question that has been argued in this case with respect to the transfer of title is the question whether the Act of 1869 is calculated to transfer title to Colonial land; and with that question conflicts between British and foreign law have nothing to do. Nor do the learned Judges take notice that, if there is any difficulty in effecting a transfer of land not in England, it must arise and be dealt with under those Bankruptcy Acts which indisputably purport to transfer land elsewhere.

If a consideration of the scope and object of a Statute leads to the conclusion that the Legislature intended to affect a Colony, and the words used are calculated to have that effect, they should be so construed. It has been pointed out above that some sections of the Statute clearly bind the Colonies in words which do not necessarily, but which may, apply to land. But the policy of the Legislature is clearly shown by reference to other Statutes. By the Bankruptcy Act of 1849 (12 & 13 Vict., cap. 106, sec. 142) all lands of the bankrupt "in England, Scotland, "Ireland, or in any of the Dominions, Planta-"tions, or Colonies belonging to Her Majesty, "are to vest in his assignees." By the Bankruptcy Act of 1883 (46 & 47 Vict., cap. 52, sec. 168) the property which is passed to the trustee includes "land, whether situate in England or elsewhere." The Scotch Act of Bankruptcy passed in 1856 (19 & 20 Vict., cap. 72, sec. 102) vests in the trustee the bankrupt's "real estate situate in England, Ireland, or in any of Her Majesty's Dominions." The Irish Act of Bankruptcy passed in 1857 (20 & 21 Vict., cap. 60, sec. 268), vests in the bankrupt's assignees all his land "wheresoever situate." No reason can be assigned why the English Act of

1869 should be governed by a different policy from that which was directly expressed in the Scotch and Irish Acts, and in the English Acts immediately preceding and immediately succeeding. It is a much more reasonable conclusion that the framers of the Act considered that in using general terms they were applying their law wherever the Imperial Parliament had power to apply it; and their Lordships hold that there is no good reason why the literal construction of the words should be cut down so as to make them inapplicable to a Colony.

It is true that no judicial decision to this effect can be found. But it has been the prevailing opinion among lawyers. This may be illustrated by a dictum of Sir George Jessel in the case of *ex parte* Rogers (16 Ch. Div., p. 666). It was pointed out that the law of Ceylon required registration to pass land, and the learned Judge observed, speaking of the Act of 1869, "It only passes immoveable property in the Colonies according to the law of the Colonies." That is not a decision, but it shows the impression of a very learned and accurate lawyer that the Act of 1869 did affect land in the Colonies. The same opinion is given in Mr. Justice Vaughan Williams's Treatise on Bankruptcy. In the last edition (5th), p. 181, it is said, "The Act of "1869 contained no express provision as to [the "locality of] real property, but did not seem to "be intended to alter the law." No opinion to the contrary has been brought to their Lordships' attention except the decision under appeal.

Their Lordships therefore hold that on the appointment of Halliday in January 1877 the Broad Street property vested in him, and that Davies had no interest in it subsequent to the adjudication in August 1876. His action should have been dismissed with costs. A decree to that effect should now be made in lieu of the

decrees of the Courts below which should be discharged, and Davies should also be ordered to pay the costs of the appeal to the Full Court.

The other appeal (Callender Sykes & Co. *v.* The Colonial Secretary of Lagos and Davies) relates to a property called the Oil Mills, which was one of those which Davies did not disclose to his trustee, and which he endeavoured to include in his post-nuptial settlement. The whole of the disclosed properties were purchased in the year 1877 by Messrs. Sykes and Mather, partners in the firm of Callender Sykes & Co., from the trustee Halliday. Afterwards came the inquiry by Mr. Justice Macleod, who held that the Oil Mills property was vested in Davies at the date of his bankruptcy, and that his claim to have it included in the settlement was a fraudulent claim. On the 19th April 1880 Mr. Justice Macleod made an order for delivery of this property among others to Halliday, who was placed in possession on the 28th June 1880. The trustees of the settlement were represented throughout the whole of these proceedings. They have never made any attempt to disturb the possession given under Mr. Justice Macleod's order, notwithstanding the judgment of the Supreme Court of the Gold Coast Colony in April 1881.

On the 3rd February 1881 Messrs. Sykes and Mather agreed to purchase the Oil Mills property of Halliday, and paid the purchase money. They at once entered into possession, and their title has since been confirmed by a formal conveyance. They held possession until the year 1889, when the property was wanted by the Government of Lagos, who took it under the provisions of the Public Lands Ordinance 1876, which was passed by the Gold Coast Colony when Lagos formed part of it. The value of the property was ascertained at the sum of 1,007*l.* 17*s.* 4*d.*

Messrs. Callender Sykes & Co. then brought an action for that purchase money in the Supreme Court of Lagos against the Government, the Colonial Secretary being the formal Defendant. It does not appear that Davies was made a party to the action, but he appeared in Court and cross-examined the Plaintiffs' witnesses. Neither does it appear what lines of objection were taken by Davies or by the Colonial Secretary; only that the latter appeared by the Queen's Advocate, who cross-examined the Plaintiffs' witnesses. Their Lordships must take it, on the materials before them, that the Colonial Secretary as Defendant on the record, and Davies in some less formal way, opposed the claim of the Plaintiffs to have the purchase money paid to them.

Mr. Justice Smalman Smith, who tried the case, rejected the claim of the Plaintiffs because, he said, it was founded on the order of Mr. Justice Macleod which was a nullity. On appeal, all parties agreed that the case must be governed by the decision in Davies *v.* Williams. It must now be governed by the decision of Her Majesty in Council. Davies's interest in the Oil Mills property passed out of him on the adjudication, and vested in Halliday on his appointment. All Halliday's interest passed to the Appellants Callender Sykes & Co. If any conflicting interest could exist, it would be that of the trustees of the settlement; and the existence of such an interest is suggested by Davies. But the trustees themselves have not come forward to assert any interest. They have never disputed the possession given to Halliday under the order of the 4th June 1880, irregular though it was. The Appellants had been in undisturbed possession for nine years when the Government took the property from them. As between them and the Crown their title is clearly established. And it would be a serious hardship on them if the claims made by or on

behalf of the trustees in the year 1880 were now to be considered as forming a substantial cloud upon their title so as to call for the further retention of the fund.

The decrees of the lower Courts should be discharged, and in lieu thereof a decree should be made declaring that the Appellants Callender Sykes & Co. were entitled to the Oil Mills property when taken by the Government of Lagos, and to the purchase money thereof, and ordering payment accordingly.

A considerable time after the argument was closed, the Colonial Secretary desired leave to appear by Counsel at their Lordships' bar for the purpose of opposing any such alteration of the decrees below as might have the effect of charging him with the costs of the litigation. He has been allowed to do so, and he has contended, with respect to the litigation in the Colony, that the Supreme Court has no jurisdiction to give such costs. It would certainly be a matter for regret if it were found that a person in quiet possession of land could be expropriated by the State, and could not get the price of his land except by taking legal proceedings and paying the costs. Such miscarriages of justice have happened here in earlier times by the oversight of the Legislature, but when notice was attracted to them the law was put on a footing which effectually prevented their recurrence. Their Lordships are glad to find that the law of Lagos is not such as to prevent justice being done in this respect. By the Public Lands Ordinance, 1876, Section VII. (1), the Supreme Court has complete jurisdiction over the matters in dispute. By Section III. of the Petitions of Right Ordinance, 1877, all claims against the Government, being of the same nature as claims preferred against the Crown in England by Petition of Right, may, with the consent of the

Governor, be preferred in the Supreme Court by a suit instituted against the proper officer. And by Section VIII. of the same Ordinance costs may be awarded in suits against the Government in the same manner as in suits between private parties. It was argued for the Colonial Secretary that the power of giving costs does not extend to proceedings which are not suits framed as required by the ordinary rules of Civil Procedure. The record is somewhat meagre as regards these proceedings, but it contains enough to enable their Lordships to dispose of this argument. The various documents are entitled as an ordinary litigation between Plaintiff and Defendant, the Colonial Secretary being the Defendant; the proceeding is called a suit, is tried as a suit, and is brought to appeal as a suit. Therefore in whatever form it may have been commenced, whether it was regular or irregular, their Lordships have no hesitation in now holding it to be a suit against the Government for the purpose of recovering money due to the Plaintiffs.

The Colonial Secretary should be charged with the costs of the action and appeal in the Colony. But, considering the part played by Davies, their Lordships think that he also should be charged jointly with the Colonial Secretary.

The Respondents must pay the costs of these Appeals.

Their Lordships will humbly advise Her Majesty in accordance with this opinion.