

11, 1939

SUPREME COURT OF MAURITIUS

RECORD OF PROCEEDINGS

APPEAL IN PRIVY COUNCIL

Mrs. Ww. PAUL J. J. GUERARD

SUPLIANT

v/s

THE COLONIAL GOVERNMENT OF MAURITIUS

DEFENDANT

In re :—

M^{RS.} W^{W.} PAUL J. J. GUERARD

PLAINTIFF

v/s

THE COLONIAL GOVERNMENT
OF MAURITIUS

DEFENDANT

(Claim of Rs 44,000)

CIVIL RECORDS N^o. 1842 & 1895

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1938

RECORD OF PROCEEDINGS.

In the Privy Council.

No of 1937

Record of Proceedings

Between :—

Mrs. Widow PAUL J. J. GUÉRARD (*Suppliant*)

A P P E L L A N T

AND

THE COLONIAL GOVERNMENT OF MAURITIUS (*Defendant*)

R E S P O N D E N T

CIVIL RECORD No. 1842

SUPREME COURT OF MAURITIUS

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IN THE PRIVY COUNCIL

ON APPEAL FROM THE SUPREME COURT OF MAURITIUS

Between

Mrs. Ww. PAUL J. J. GUÉRARD

SUPLIANT

and

THE COLONIAL GOVERNMENT OF MAURITIUS

DEFENDANT

10

PART I

RECORD OF PROCEEDINGS

No. 1

PETITION OF RIGHT

To/

His Excellency SIR WILFRID EDWARD FRANCIS JACKSON,
Knight Commander of the Most Distinguished Order of
Saint Michael and Saint George, Governor and
Commander-in-Chief in and over the Colony of Mau-
ritius and its Dependencies.

No 1
—
Petition
of Right
—
18th March
1937

20

ETC. ETC. ETC.

The humble petition of Mrs. Marie Louise Fanny
Lacaussade, Widow of Paul Jules Jacques Guérard, absent from
this Colony and therein duly represented by Miss Julie Marie
Guérard, of Rose Hill, at the "Clinique du Bon Pasteur",

Most respectfully sheweth :—

1. — That your Petitioner was the registered holder of
37 debentures of the nominal value of Rs. 1,000. — each of the

PART I

Mauritius Sugar Industry Loan of 1929, bearing Nos. 464 to 469 : 472 to 476 and 477 to 502 which have been issued by the Colonial Government under the provisions of Ordinance No. 14 of 1929. --

No 1
—
Petition
of Right
—
18th March
1937

2. — That the said debentures were registered in the books of the Treasurer General in the name of your petitioner and mention of the debentures having been so registered was inscribed on the back of each and every of the said debentures pursuant to Article 6 of the said Ordinance. **10**

3. — That the said debentures were the only evidence which your Petitioner held as proof of the indebtedness of the Colonial Government towards her. —

4. — That on the application of Mr. Bernard Herchenroder who had no authority to make such application, the Treasurer General acting in breach of the contract as embodied in the provisions of Ordinance No. 14 of 1929, converted the said 37 debentures, to bearer on the following dates :—

Debentures Nos. 478 to 502 on the 4th. July 1934 ;

20

Debentures Nos. 464 to 469 and 477 on the 25th. September 1934 ;

Debentures Nos. 472 to 476 on the 24th. January 1935. —

5. — That on the very day on which the debentures Nos. 478 to 502 were converted to bearer by the Treasurer i. e. on the 4th. July 1934, the said Mr. Bernard Herchenroder, availing himself of such conversion, pledged fifteen of the aforesaid debentures. —

6. — That the said Mr. Bernard Herchenroder later on disposed of all the remaining debentures converted to

PART I

Bearer to the great loss and prejudice of your Petitioner. —

7. — That at the dates of the said debentures were disposed of by Mr. Bernard Herchenroder who appropriated to himself the proceeds thereof, they were worth on the Exchange Market Rs. 1,200. — each. —

No 1
—
Petition
of Right
—
18th March
1937

8. — That Mr. Bernard Herchenroder had no right, title or capacity to cause the said conversions to be effected and that the Colonial Government had no right to effect the said conversions without the express consent of your Petitioner or of some person duly authorised by her as prescribed by Article 6 of the said Ordinance. —

9. — That had not the Treasurer converted to bearer the said debentures, it would have been impossible for Mr. Bernard Herchenroder to dispose of the said debentures. —

10. — That the Colonial Government, acting on the said illegal transfers, now refuses to acknowledge its indebtedness towards your Petitioner. —

11. — That since the time when the said conversions were effected, your Petitioner has not received the interest due on the said debentures. —

12. — That by acting as aforesaid the Colonial Government has committed a breach of the contract entered into with your Petitioner ; which said contract was a contract in respect of a loan to be reimbursed in thirty years under the conditions enumerated on the said debentures and in the Ordinance authorising such loan. —

13. — Wherefore your Petitioner humbly prays that Your Excellency may be pleased to order either :—

PART I

No 1
 —
 Petition
 of Right
 —
 18th March
 1937

(A) (i) that 37 debentures of the nominal value of Rs 1,000 each of the Sugar Industry Loan issued under the provisions of Ordinance No 14 of 1929 be delivered to your Petitioner to replace the debentures which were converted to bearer in the circumstances above described ;

(ii) that the name of your Petitioner be restored to the register kept by the Treasurer General as holder of 37 debentures of Rs. 1,000 each ;

10

(iii) that interest on the said debentures as at and from the date of the respective conversions be paid to your Petitioner ;

OR (B) that a sum of Rs 44,000 — being the market value of the said 37 debentures, plus interest on the said debentures as at and from the date of the respective conversions, — be paid to her as compensation for the loss and prejudice suffered by her for the reasons abovementioned, and in default thereof to allow your Petitioner to sue the Colonial Government before the Competent Court.

20

And as in duty bound your Petitioner will ever pray. —

Dated at Port Louis, this 18th day of March 1937.

Let right be done (provided that the Crown may take any objection to the form or to the subject matter of these proceedings including the objection that suits by Petition of Right do not lie in the Colony and that, at any rate, such suits do not lie in tort). (s) W. B. Jackson, Governor. 10th April 1937.

PART I

Registered at Mauritius on the twentieth day of April, One Thousand Nine Hundred and Thirty Seven. Reg : A 289 No 5723.

To

The Colonial Government of Mauritius represented by the Honourable The Colonial Secretary.

No 1
—
Petition
of Right
—
18th March
1937

Received copy.

20.4.37

(s) J. O. Terrière
for Colonial Secretary

10 Registered at Mauritius on the twentieth day of April, One Thousand Nine Hundred and Thirty Seven. Reg. A 292 No 1199.

No 2

STATEMENT OF DEFENCE

No 2
—
Statement
of Defence
—
7th May
1937

In limine litis : The Colonial Government contends

(a) That the Colonial Government has committed no breach of contract as wrongly alleged by the Suppliant.

(b) That even assuming for the sake of argument that all the facts disclosed and averments made in the Petition of the Suppliant are true — which the Colonial Government in fact denies — these facts and averments would only disclose a
20 “ faute ” or tort on the part of an Officer of the Treasury.

(c) That no action in tort lies against the Colonial Government.

Therefore no action can lie against the Colonial Government on the Petition of the Suppliant, who should accordingly be non-suited, with costs.

PART I**ON THE MERITS.**

No 2
—
Statement of
Defence
—

7th May
1937

1. With regard to paragraphs 1 and 2 of the Petition, the Colonial Government admits that the Suppliant was the registered holder of the debentures therein mentioned during the following periods :

- Nos C. 464 — 469 & 477 from 24.10.1933 to 25.9.1934
- " C. 472 — 476 from 24.10.1933 to 24.1.1935
- " C. 478 — 502 from 24.10.1933 to 4.7.1934.

The said debentures were issued by the Colonial **10** Government as authorised by Ordinance No 14 of 1929 and not " under the provisions of the said Ordinance " as alleged by the Suppliant.

The Colonial Government puts the Suppliant to the proof of the other averments contained in the paragraphs aforesaid.

2. With regard to paragraphs 4 & 8 of the Suppliant's Petition, the Colonial Government avers that the conversion to bearer of the debentures aforesaid was registered in the books at the Treasury at the request of Mr Bernard **20** Herchenroder, the agent and proxy of Suppliant, or of those in her rights.

3. The Colonial Government puts the Suppliant to the proof of the averments contained in paragraphs 5, 6, 7 and 11 of the Petition.

4. The Colonial Government denies the averments in paragraph 9 of the Petition.

5. With regard to paragraphs 3 & 10 of the Petition,

PART I

The Colonial Government contends that it is only indebted to the holders of debentures issued by it.

No 2
—
Statement
of Defence
—
7th May
1937

6. The Colonial Government contends that the only contractual obligations resulting from debentures issued under the authority of Ordinance No. 14 of 1929 are those enumerated in the said debentures.

7. The Colonial Government has never refused to acknowledge its indebtedness resulting from the terms of the debentures issued by it, and has, on the contrary, always met and will always meet its legal obligations thereunder.

8. The Colonial Government denies being responsible for the appropriation by the agent and proxy of the Suppliant, or of any one in her rights, of any funds belonging to the Suppliant or to anyone in her rights, should any such appropriation of the funds of the Suppliant, or of anyone in her rights, by her agent and proxy be proved.

9. The Colonial Government further denies all responsibility for any loss or prejudice suffered by the Suppliant.

10. 10. The Colonial Government is not indebted to the Suppliant in any way whatsoever, and prays that her petition be dismissed, with costs.

Under all legal reservations.

Dated this 7th day of May, 1937.

No. 3

R E P L Y

1. Suppliant (in answer to paras. a, b and c of the

No 3
—
Reply
21st June
1937

PART I

No 3
 —
 Reply
 21st June
 1937

Statement of Defence) maintains that a breach of contract has been committed by the Colonial Government, even if the facts and averments alleged in the petition also disclose that a tort has been committed by the Treasurer.

2. Suppliant records the admission made in para. 1 of the Statement of Defence, and maintains that the debentures issued by the Colonial Government are governed by the provisions of Ord. 14 of 1929.

3. In answer to para. 2, the Suppliant denies that Mr. 10 Bernard Herchenroder, who was the agent and proxy of Suppliant with limited powers in virtue of a power of Attorney drawn up by Mr Notary Maigrot on the 10th of November 1933 (Reg: A 285 No. 690) had any authority to apply for the conversion to bearer of the debentures registered in Suppliant's name and Suppliant maintains that the Colonial Government committed a breach of the contract entered into by granting, under the circumstances, Mr Bernard Herchenroder's application.

4. In answer to para. 6 of the Statement of Defence 20 the Suppliant maintains that the conditions of the contract of loan entered into by the Colonial Government with the Suppliant are not only those enumerated in the debentures but also those stipulated in the several sections of Ord. 14 of 1929.

5. Suppliant maintains all the other facts, matters and things mentioned in her petition, and joins issue with Defendant on his Statement of Defence.

PART I

6. — Suppliant therefore prays for judgment in terms of her
Petition.

Dated this 21st. June 1937.

No 3
—
Reply
—
21st June
1937

No. 4

NOTICE OF TRIAL

Take notice of trial in this cause in the ensuing term

Dated this 28th. day of June 1937.

No 4
—
Notice of
Trial
—
28th June
1937

No. 5

10

PROECIPE TO SET DOWN CASE ON CAUSE LIST

28th. June 1937.

(O M I T T E D)

No 5
—
Proecipe to
set down
Case on
Cause List
—
28th June
1937

No. 6

MINUTES OF PROCEEDINGS IN COURT

On Tuesday the 17th. day of August one thousand nine
hundred and thirty seven.

Before Their Honours E. Nairac K. C., Chief Judge, L. Le
Conte and J. G. Espitalier Noel, Puisne Judges.

A. Gellé K.C., appears with M. de Spéville for the
20 Suppliant.

M. de Comarmond, Substitute Procureur General, appears
for the Defendant.

PART I

Gellé K.C., opens the case and produces Documents A & B.

Argument is heard on the point taken in limine by Defendant and Comarmond is heard.

No 6
Minutes of
proceedings
in Court
17th August
1937

He quotes : Arts. 1382, 1689 & 1690, Code Civil ; Huc Tome 7 para 95 ; Huc Tome 8 para 421 and Dissertation of Labbé in Sirey 1885. 4.26 and Sirey 1886. 4.25 ; Dalloz Periodique (D.P.) 1891. 1. 380 ; D. P. 1922. 1. 16 ; Dalloz, Jurisprudence Générale, Supplement Vo. Responsabilités No. 155 ; D. P. 1914. 1.48 ; Recueil Gazette du Palais 1907. 2.409 ; Edouard v/s Colonial Government, Mauritius Reports 1915 pp 56 & 59 ; Clode Petition of Right pp 52 to 55 & 58 ; Thomas v/s King, 1874 ; 31 L. T. p 439 ; Robertson, Civil Proceedings against Crown pp 338 & 339 ; Tobin v/s Queen 10 L. T. p 762 ; Graham v/s Public Works Commissioners 17. T. L. R. p 510 ; Roper v/s Commissioners of Works 1915 1. K.B. 45 ; Hauriou pp 14 & 57 ; Baudry Lacantinerie & Wahl, des Obligations Vol. 4 p 630 ; Dalloz, Repertoire Pratique Vo Responsabilités No. 815. 10

Case adjourned to 19th. August 1937.

No. 7

20

MINUTES OF PROCEEDINGS IN COURT

No 7
Minutes of
proceedings
in Court.
19th August
1937

On Thursday the 19th day of August, 1937.

A. Gellé K.C., appears with M. de Spéville for the Suppliant.

M. de Comarmond S. P. G. appears for the Defendant.

Gellé K.C., replies and refers to Palmer, Company Precedents pp 133 & 333 ; 11 A. C. 1886 p 607 ; Baudry Lacantinerie Vo.

PART I

Obligations Vol. 1 No. 355 and following; Mauritius Reports 1929 p 136; Art. 1239 Civil Code; Houpin Vol. 1 No. 400; Thomas v/s Queen 1874 L. R. 10 Q. B. p 31; D. P. 1896. 2,190; Art 1690 Code Civil.

No 7
—
Minutes of
proceedings
in Court
—
19th August
1937

He produces Document "C".

Comarmond rejoins and refers to A. C. Vol 7 p 178.

The Court reserves its decision.

No. 8

10

MINUTES OF PROCEEDINGS IN COURT

On Thursday the 2nd day of September 1937

H. H. the Chief Judge reads the judgment of the Full Bench.

Suppliant is non suited with costs.

No 8
—
Minutes of
proceedings
in Court
—
2nd Sept
1937

No. 9

REASONS OF JUDGMENT OF HIS HONOUR

EDOUARD NAIRAC K.C., Chief Judge

20

1. This is a matter of a demurrer of the Crown to a Petition of Right, based on the ground that if the facts complained of by the Suppliant were correct they might substantiate a case of tort and not a breach of contract. The facts are not admitted but we have been asked on both sides to decide the preliminary issue set out on the assumption that they may eventually be proved: we accepted to proceed as desired because our decision on the demurrer, if adverse to the Suppliant would oust her of a remedy by petition of right and put an end to this case.

PART I

No 9
 —
 Judgment of
 H. H. E.
 Nairac
 Chief Judge

2. — The Fiat of His Excellency the Governor was given in the following terms :—

“ Let right be done (provided that the Crown may take
 “ any objection to the form or to the subject matter of these
 “ proceedings including objection that suits by Petition of
 “ Right do not lie in the Colony and that, at any rate, such
 “ suits do not lie in tort)”.

The first of these objections was not taken on the pleadings which proceeded only on the second: we desire to 10
 say that the major question of knowing whether the remedy by
 Petition of Right lies at all in this Colony remains open.

3. — The suppliant became the owner by legacy of a certain number of debentures, issued by the Colonial Government under the provisions of Ordinance No. 14 of 1929, and duly transferred nominatively to her. It is alleged that her agent and proxy caused the then Treasurer to have these nominative debentures converted to bearer and that the Treasurer or other official concerned, was negligent in not ascertaining that her agent's power of attorney was inadequate to enable 20
 him to obtain on his principal's behalf the conversion to bearer of these debentures. The result of the conversion made it possible for the agent to pledge some and otherwise to dispose of the remainder of the debentures, to the loss and prejudice of his principal.

4. — It is argued for the suppliant that the terms and conditions of her contract with the Colonial Government, result from all the provisions of the Ordinance under which

PART I

the issue of debentures is authorized and that the transfer complained of having been effected on the strength of an insufficient power of attorney, the default of the Government official concerned constitutes a breach of the contract of loan between the Colonial Government and the holder of the nominative debentures under reference.

No 9
—
Judgment of
H. H. E.
Nairac
Chief Judge

I have no hesitation to hold that this position is untenable.

10 5. The main object of the Ordinance No. 14 of 1929 is to authorize the Governor to borrow on behalf of the Colony a certain amount of money by means of debentures secured upon the general revenue and signed on behalf of the Colony by the Treasurer.

6. A detailed examination of the several articles of the Ordinance shows:

(i) a statutory authority for the Governor «to raise upon debentures, as provided by this Ordinance, a loan of .» for the objects defined in art. 2 (1).

20 (ii) provisions settling the time when the debentures shall be reimbursed art. 2 (ii); the face value of the debentures; their payability to bearer or to a nominative holder; the maximum rate of interest at which the debentures shall be issued; the security of every debenture upon the general revenues of the Colony, the signature of the debenture which is to be that of the Treasurer on behalf of the Colony; the numbering, and registering, the attachment of coupons of interest to be payable half-yearly, arts. 3 (1) (2) and 4, 5;

PART I

the time for and place of payment of interest ; the repayment of debentures, (arts. 8 to 11).

No 9
Judgment of
H. H. E.
Nairac
Chief Judge

(iii) the methods of conversion, transfers and pledging of debentures, (arts. 6 & 7), to be considered in a later part of my judgment.

(iv) the remedy available in case any debenture is by accident defaced, or has been by accident lost or destroyed (arts. 12 & 13).

(v) provision exempting the debentures and transfers 10 from stamp duty and the lender from licence duty in respect of loans made. (Art. 14).

(vi) provisions for regulating the establishment of a sinking fund in detail, (arts. 15, 16 & 17).

Arts. 18 & 19 the two last articles of the Ordinance are irrelevant for our purposes.

7. — After fulfilling its main object, it is clear that the law has settled what would be the terms of the contract between the borrower and the lender, and the manner in which that contract should be evidenced. That contract is 20 evidenced by the debenture issued to the lender, and any breach of the conditions binding the borrower, as set out in the debenture in accordance with the law would be a breach of the borrower's obligations.

8. — The law in addition fixes up a number of administrative duties on the Crown's representatives or certain of its servants : for instance the obligation on the Governor to ensure the replacing of lost or destroyed debentures in

PART I

terms of articles 12 & 13; the obligation on the Treasury to keep books for registering the debentures under their consecutive numbers and of making contributions out of the general revenues, and on some official in the ordinary routine of his administrative duties of remitting those contributions to the Crown Agents. All these enactments create administrative duties, which Government officials have to perform but cannot in any way form part of the obligations of the borrower

No 9
—
Judgment of
H. H. E.
Nairac
Chief Judge

10 Government and the lender Mr A. or B. Any inobservance of the duties so imposed might be a breach of the law but assuredly not a breach of the contractual obligations of the borrower to the lender.

g. Is there any reason why the duties imposed on the Treasurer or Assistant Treasurer by articles 6 & 7 should be treated differently? These articles ensure the fulfilment of two objects: firstly to make the debentures, that is to say, the title evidencing the loan, transferable, convertible and pledgeable. I need not consider whether they were or were not

20 so under the provisions of the Civil Code or of any other law.

The Ordinance makes them so, by operation of arts. 6 & 7. But these articles do something more. they enact the rules which have to be complied with, in order that the transfer, conversion or pledge of these debentures may be valid: such rules, by necessary intendment oust other laws of like purpose of any effect they might otherwise have had on the vicissitudes of these debentures.

PART I

No 9
 —
 Judgment of
 H. H. E.
 Nairac
 Chief Judge

How can it be said that these rules are part of the conditions of the contract of loan between borrower or lender? or are such an integral part of these conditions, that the inobservance of, or faulty or negligent compliance with any of these rules, is a breach of the contract of loan. I feel bound to reject such a contention.

10. — Nor is my view in any way affected, by the fact that the alleged negligence or fault happens to be that of a Government official. If that official were in the same relation to his employer the Crown, as any servant is to an ordinary master, no doubt the employer (commettant) would be responsible for the "faute" of his servant "préposé". But the relations are admittedly different. In so far as the alleged omission of that official is concerned, his responsibility derives from tort and not from breach of contract. 10

11. — Even if it were considered, that no pledge or transfer or conversion of a right to a contract of loan is valid unless the consent of both borrower and lender be obtained, and that the Government official concerned being directed to discharge that part of the duties incumbent on the borrower, is thus made by law the agent of that borrower, this would not benefit the suppliant because the legal duty of the borrower's agent in properly effecting the transfer or conversion does not form part of the contract of loan, between Government (who on this hypothesis would be his principal) and the lender. It would be merely a tortious 20

PART I

inobservance of certain rules, which had *by law* to be observed by the borrower when consenting to a transfer, pledge or conversion of his liability, but not a breach of his contract of loan.

12. For the above reasons, I hold that the demurrer should succeed and judgment go against the suppliant.

No 9
—
Judgment of
H. H. E.
Nairac
Chief Judge

With costs.

(sd) E. NAIRAC
Chief Judge.

10

I concur and have nothing to add.

(sd) J. G. ESPITALIER NOEL
Ag. Judge.

Judgment of
H. H. J. G.
Espitalier-
Noël
Ag. Judge

I concur in the conclusions arrived at by my learned brothers and will file separate reasons of my considered judgment at a later date.

(sd) LOUIS LE CONTE
Judge.

The judgment of the Court is that the suppliant is
20 non-suited with costs.

(sd) E. NAIRAC
c. j.

2nd September, 1937.

PART I

No. 10

REASONS OF JUDGMENT OF HIS HONOUR LOUIS LE CONTE

No 10
—
Judgment of
H. H. L. Le
Conte, Judge
—
14th Sept.

This is a petition of right in which the suppliant, Widow Guerard, avers that she was the registered holder of 37 debentures of a nominal value of Rs. 1,000 each, of the Mauritius Sugar Industry Loan of 1929, which were issued by the Colonial Government under the provisions of Ordinance 14 of 1929; that these 37 debentures, which bore the suppliant's name and were payable to her, were at 10 different dates converted into debentures payable to bearer by the Colonial Treasurer at the request of a party who had no authority to make such application, contrary to the provisions of Art. 6 of the Ordinance; that under favour of such conversion these debentures were fraudulently disposed of by that party.

Article 6 of Ordinance 14 of 1929 reads as follows:

It shall lawful for the Receiver General upon the application of the holder of a debenture payable to bearer to register such 20 debenture in the name of the holder in the books of the Receiver General by means of an entry to be made in a register kept for that purpose. Such entry shall state the nature of the application, its date, the name of the holder and the number of the debenture.

PART I

Each entry shall be signed by the holder and by the Receiver General or Assistant Receiver General, and mention of the debenture having been registered shall be inscribed on the back thereof and signed as above.

No 40
—
Judgment of
H. H. L. Le
Conte, Judge
—
14th Sept.
1937

10

The debenture thus registered shall be transferable only by means of an assignment to be entered in a register and to be signed by the transferor and the transferee, or by the holders of their power of attorney, and by the Receiver General or Assistant Receiver General: mention of the transfer shall be endorsed on the debenture and signed as above, and the transferee shall thereby become entitled to receive the principal moneys and interest, respectively, secured or represented by the debenture and the coupons attached thereto.

20

Provided that any debenture in a holder's name may be converted into a debenture payable to bearer. Such conversion shall be effected by means of an entry in the aforementioned manner.

The suppliant avers that by acting as aforesaid the Colonial Government has committed a breach of contract, and prays that 37 similar debentures be issued, and interest from the dates of the respective conversions be paid to her, or that a sum of Rs. 44,000, being the market value of the said debentures, be given to her as compensation for the loss and prejudice she has suffered.

PART I

No 10
 —
 Judgment of
 H. H. L. Le
 Conte, Judge
 —
 14th Sept.
 1937

The Colonial Government has put in a defence in which it contends *in limine litis* that, even assuming that all the averments made in the petition are correct, (which is denied), such averments would only disclose a *faute* or tort, and that no action in tort lies against the Colonial Government.

Mr Gelle, K.C., for the suppliant agreed that, if his action was based on tort, and on tort only, he could not succeed. (On this point see Clode, *Petition of Right*, 1887 10 edition, page 53, — and *Edouard v. Colonial Government*, 1915, M. R. 56.) But he contended that the facts complained of by his client amounted to a breach of contract, and if that proposition were found to be correct, the question whether such facts also constituted a tort was immaterial; the moment it was proved that a breach of contract had been committed, the maxim “The King can do no wrong” did not apply. (With regard to the Crown’s liability arising out of contract, see *Thomas v. Queen*, 31 L. T. 1874, page 439, — and *Windsor and Annapolis Railway Company v. The Queen* 20 and the *Western Railway Company*, 11, A. C., P. C. 1886, page 607.)

I shall now proceed to examine whether the Treasurer, by converting into debentures payable to bearer the 37 nominative debentures of the suppliant, without complying with the formalities imposed by Art. 6 of Ordinance 14 of 1929, has or has not committed a breach of the contract of loan.

PART I

On this point Mr Gellé submitted that his client's action was based not on tort, but on contract, the conditions whereof had been embodied in Ordinance 14 of 1929; the Ordinance empowered Government to raise money and fixed the conditions of the loans for capitalists; instead of having one separate contract for each lender, the conditions of the contract for all lenders were recited in the law; it had been agreed between Government and the suppliant that if the
 10 latter at any time wanted to have her *titres nominatifs* converted into *titres au porteur*, such conversion would be made in the manner described in Art. 6 of Ordinance 14 of 1929; the Government had violated such agreement by converting 37 debentures into debentures payable to bearer without fulfilling the requirements of article 6; by so doing it had violated the terms of the contract.

Mr de Comarmond, Substitute Procureur General, submitted for the Crown that the manner in which the shares were transferable from one person to another, or convertible
 20 from *titres nominatifs* into *titres au porteur* or vice versa, had nothing to do with the contract of loan itself. Likewise the procedure laid down by the Ordinance for the pledging of the debentures touched on a matter completely distinct from the main obligation by which the lenders had placed certain sums of money at the disposal of the borrower, on condition that the latter should refund the same within a specified period with interest. He strongly demurred to Mr Gellé's

No 10
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 Judgment of
 H. H. L. Le
 Conte, Judge
 —
 14th Sept.
 1937

PART I

No 10 contention that, by doing what the Treasurer is alleged
 —
 Judgment of by the suppliant to have done, the borrower, Government,
 H. H. L. Le had paid the value of the debentures to the wrong
 Conte, Judge person ; all that official had done was to change the
 —
 14th Sept. nature of the debentures, but the obligation to pay
 1937 interest and capital to the suppliant or to any other
 bearer remained absolutely entire. It would be incor-
 rect, he further submitted, to say that Ordinance No. 11
 of 1929 embodied nothing else than the conditions of the 10
 contract ; many of the provisions of the ordinance regulated
 matters already provided for by our common law, such as,
 for instance, the transfer of shares ; such transfer should
 have been done conformably to the requirements of articles
 1689 and following of the Code Napoleon, were it not for
 the fact that art. 6 of the Ordinance lays down a special
 procedure for the transfer of the debentures ; such provi-
 sions of the law regulating matters connected with, but
 clearly distinct from the contract of loan itself, were
 not conditions of such contract ; its real conditions were 20
 to be found in the debenture itself and in the notice
 published in the Government Gazette of the 10th August
 1929, and in neither of these documents was any reference
 made to the manner in which the debentures were to be
 transferred.

In support of the above views, which appear to me
 to be sound, Mr de Comarmond quoted to us a decision of the

PART I

Cour de Cassation reported in the Repertoire de Dalloz, Supplement, Vo Responsabilité No 155, note (1). That decision is extremely interesting and illuminating, because the facts are on all fours with those of the present case. It was an appeal from a judgment of the Court of Guadeloupe.

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10

Attendu qu'aux termes de l'article 7 (des statuts des banques coloniales annexés à la loi du 24 juin 1874) les transmissions des actions de la banque de la Guadeloupe doivent s'opérer, dans la colonie, au siège de la banque, par une déclaration de transfert signée du propriétaire ou de son fondé de pouvoirs, et visée par un administrateur sur un registre spécial à ce destiné;—Attendu que l'arrêt attaqué, par une appréciation souveraine des faits de la cause et de l'intention des parties, a déclaré que la banque avait, à la Pointe-à-Pitre, opéré sur ses registres le transfert des actions, cause du litige, appartenant à Defresnay, sans se conformer aux prescriptions de l'art. 7, et sur la simple déclaration de Tandon, qui n'avait pas reçu mandat pour consentir au transfert; Attendu que ce même arrêt a constaté que cette infraction de la banque à ses statuts, constitutive d'une faute, avait ouvert la porte à la fraude et à l'infidélité de Tandon et facilité le détournement par celui-ci des dites actions;— Attendu que, par ces constatations établissant tout à la fois la faute commise par la banque de la Guadeloupe et

20

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44th Sept.
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le préjudice qui en est résulté pour Defresnay, la cour a donné une base juridique à sa décision, et justifié l'allocation des dommages-intérêts par elle prononcés contre ladite banque en faveur de Defresnay ; — D'où il suit que, loin de violer les articles visés au pourvoi, l'arrêt attaqué en a fait une juste application ; Rejette etc.

3 mai 1882, Chambre des Requêtees.

10

The upshot of the matter is that, in a case where the facts were practically the same as in the present one, the Defendant was sued not for breach of contract, but for tort under art. 1382 and the following of the Code Napoleon ; and the Cour de Cassation ruled that the arrêt appealed from, far from violating the articles mentioned in the grounds of appeal, i. e. art. 1382 C. Nap. and art. 7 of the rules of the colonial banks, had in fact strictly complied with them.

Commenting upon this decision, Mr Gellé submitted that 20 the mere fact that the Court of Cassation has approved of the action being entered in tort did not necessarily show that the appellants had not at the same time been guilty of a breach of contract ; the judgments of the Court of Guadeloupe and of the French Supreme Court, he submitted, might have been the same, *mutatis mutandis*, had the original action been entered for breach of, —
contract

PART I

the reason for this being that the same facts may at the same time constitute a tort and a breach of contract.

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I am unable to agree entirely with this view. No doubt the same acts may, according to circumstances, constitute a tort or a breach of contract. Huc illustrates the truth of that proposition by a very good instance, but he at the same time very properly calls attention to the different legal consequences that will follow in each case. See his

10 *Commentaire théorique et pratique du Code Civil, vol. 7, No 95 :*

La levissima culpa ou faute *aquillienne*, appelée quelquefois faute *délictuelle* n'existe jamais dans les rapports contractuels. L'obligation de réparer le dommage résultant d'une faute quelconque ne se retrouve que dans les délits et les quasi-délits.

20

Il faut remarquer, en effet, que celui qui procède à une opération quelle qu'elle soit, en vertu d'une convention qui l'y autorise, ne peut pas encourir la même responsabilité que celui qui a procédé à la même opération sans y être autorisé. Quelles que soient les précautions prises par ce dernier, il sera tenu en cas d'accident dommageable. Il en sera ainsi, par exemple, de celui qui, voyant chez autrui une pendule arrêtée, veut la faire marcher quoique personne ne l'en ait chargé. Il aura beau s'entourer de toutes les précautions voulues, sans en négliger aucune, il sera responsable en cas d'accident.

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Il n'avait en effet qu'à s'abstenir; il a volontairement couru au-devant de son obligation.

Au contraire, dans la même hypothèse, celui qui aura agi en exécution d'un contrat, qui aura voulu faire marcher la pendule parce qu'il en avait été chargé, n'encourra aucune responsabilité en cas d'accident s'il a pris toutes les précautions réclamées par les circonstances.

Again in the same work, vol. 8, No 424:

10

La décision ne serait plus la même s'il s'agissait d'une faute contractuelle. La distinction entre la faute délictuelle et la faute contractuelle n'est pas sérieusement contestable. La cour de Cassation proclame que la règle d'après laquelle toute faute quelconque oblige son auteur à réparer le dommage qui en résulte, ne s'applique qu'en matière de délits ou quasi-délits, et ne concerne pas les fautes qui peuvent être commises dans l'exécution d'une 20 convention. (D. 91. 1. 380.) Il est certain qu'il y a entre le domaine du contrat et celui du délit une séparation complète, et que l'existence d'un contrat entre l'auteur et la victime d'un dommage *exclut* l'application de l'art. 1382. C'est un point que nous avons déjà établi. (Tome 7, No 95, *supra*.)

PART I

.... Quand les parties étaient liées par un contrat, le dommage éprouvé au cours du fonctionnement du contrat, et à propos de ce fonctionnement, se traduit soit par une non-exécution du contrat lui-même, soit par une exécution insuffisante ; la victime du dommage n'a qu'à prouver le fait matériel d'où résulte l'inexécution ou l'exécution insuffisante, la faute de l'autre partie est ainsi établie. (art. 1147).

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See also in Sirey 1885.4.25 M. Labbé's disquisition, specially on page 26, columns 1 and 2.

In 1922 the Cour de Cassation gave the following ruling which is reported in D. P. 1922,1.16 :

C'est seulement en matière de délit ou de quasi-délit que toute faute quelconque oblige son auteur à réparer le dommage ; les arts. 1382 et suiv. c. civ., sont sans application lorsque la faute a été commise dans l'exécution d'une obligation résultant d'un contrat ; dans ce cas, le débiteur ne répond que de la faute que ne commettrait pas un bon père de famille.

20

The differences between la *faute contractuelle* and la *faute délictuelle* are clearly set out in Baudry-Lacantinerie, vol. XII, No 356 :

1o. Le demandeur en dommages intérêts n'a pas à prouver la faute contractuelle ;

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 1937

20. Une mise en demeure est nécessaire pour obtenir les dommages et intérêts dus à raison d'une faute contractuelle. Art. 1139 et 1146. Au contraire celui qui est recherché à raison d'une faute délictuelle est en demeure de plein droit. Argument tiré des arts. 1382 et suiv.;

30. L'art. 1150 ne reçoit pas son application à la faute délictuelle. En 10 effet la décision que donne ce texte est fondée sur l'intention présumée des parties contractantes; or, ici, nous n'avons pas de parties contractantes;

40. L'auteur d'un délit ou d'un quasi-délit répond même de sa faute très légère; il en est autrement de l'individu soumis à la responsabilité contractuelle; il ne répond que de la *culpa levis in abstracto*.

The above was quoted with approval by this Court in 20 the case of de la Giroday v. Mc Donald (1929. M. R. 140) in which this Court decided that a «faute contractuelle» is distinct from a «faute délictuelle», and that there was a corresponding distinction between «responsabilité contractuelle» and «responsabilité délictuelle».

Such being the principles of the Code Napoleon (which is also our common law in matters of tort and contract) it

PART I

is hard to conceive how the Court of Cassation could, in the Guadeloupe case, have ruled that the decision of the Court of Guadeloupe was sound, based as it was on art. 1382 of that code, if the facts complained of had constituted a breach of contract.

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 Judgment of
 H. H. L. Le
 Conte, Judge
 14th Sept.
 1937

In the words of Huc, the existence of a contract entered into by the author and the victim of a prejudice excludes the application of art. 1382; in those of the Court of Cassation, articles 1382 and following are not applicable where the *injuria* has been committed in the performance of an obligation arising out of a contract. In fact, art. 1382 is an integrant part of Title IV of Book III of the Code Napoleon which is headed: Des Engagements qui se forment *sans convention*.

The law on this matter appears to me to be accurately stated in the following excerpt from a note of Professor Josserand to be found in D. P. 1927.1.108: "Les responsabilités contractuelle et délictuelle ont des champs d'application distincts; on ne conçoit pas qu'elles puissent coïncider, concourir ou se cumuler pour une même situation juridique et pour un même rapport donnés; car on ne saurait être à la fois tiers et contractant; on est l'un ou l'autre, non pas l'un et l'autre: dans les limites où elle fait sentir son action et qui ont été tracées par le libre accord des parties, la convention refoule la loi, conformément à la loi elle-même".

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No 10
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 Conte, Judge
 14th Sept.
 1937

It will be noticed that the arret commented upon by M. Josserand is in favour of the possible co-existence as between the same parties of the *responsabilité contractuelle* and of the *responsabilité délictuelle*. But I am in complete agreement with Serret J. that the better opinion is that a *faute contractuelle* under the provisions of Title III of Book III of the Code Napoleon is distinct from a *faute délictuelle* under Title IV of the same book of that code. (1929. M. R. 141). 10

For the above reasons and also for the reasons deriving from Ordinance 14 of 1929 on which my brother judges found their decision, I am of opinion that the *faute* complained of in the present case is a *faute délictuelle* under Art. 1382, C. Nap., and not one arising out of contract; and as it is well established that the Crown cannot be sued in tort, I agree with my brother judges that the demurrer should succeed and judgment go against the suppliant with costs.

This judgment does not touch upon the question 20 whether petitions of right are an available remedy in this colony. See Edouard v. Colonial Government 1915, M. R. 58 We leave that question entirely open.

(Sd) LOUIS LE CONTE

Judge.

14th September, 1937.

PART I

No. 11

JUDGMENT AS SIGNED BY THE REGISTRAR

Afterwards on the 19th day of August 1937 before His Honour E. Nairac K. C., Chief Judge, His Honour L. Le Conte Puisne Judge, and His Honour J. G. Espitalier Noel, Ag Judge, three of His Majesty's Justices of the Supreme Court come the said Suppliant and the said Defendant by their respective Attornies; and upon hearing A. Gellé K. C., who appears with

10 M. de Spéville for the Suppliant and M. de Comarmond, Substitute Procureur General, for the Defendant and after consideration;

On the 2nd September, 1937, it is considered by the Court here that the Suppliant who claimed, by way of petition of right:— A (1) that 37 debentures of the nominal value of Rs. 1,000.— each of the Sugar Industry Loan issued under the provisions of Ordinance No 14 of 1929 be delivered to her to replace the debentures which had been converted to bearer in the circumstances described in her said petition;— (2)

20 that interest on the said debentures as at and from the date of the respective conversions be paid to her;— (3) that the name of the Suppliant be restored to the register kept by the Treasurer as holder of 37 debentures of Rs. 1,000.— each. Or B.— that a sum of Rs 44,000.— being the market value of the said 37 debentures, plus interest on the said debentures, as at and from the date of their respective conversions, be paid to her as compensation for the loss and prejudice suffered by her for the reasons mentioned in her

No 11
—
Judgment as
signed by
the Registrar
—
2nd Sept.
1937

PART I

No 41 said petition, be and she is hereby non-suited, with
 Judgment as costs amounting to Rs. 357 07 c.
 signed by
 the Registrar
 2nd Sept.
 1937

(sd) G. DEVILLE

pro Master & Registrar

No 42
 Notice of
 motion for
 leave to
 appeal
 15th Sept.
 1937

No. 12

NOTICE OF MOTION FOR LEAVE TO APPEAL TO HIS MAJESTY
 IN PRIVY COUNCIL

(O M I T T E D)

No. 13

10

No 43
 MOTION
 PAPER
 for leave to
 appeal to
 H. M.
 in Privy
 Council

MOTION PAPER FOR LEAVE TO APPEAL TO HIS MAJESTY
 IN PRIVY COUNCIL

20 Sept.
1937

Counsel is instructed to move this Honourable Court
 for leave to appeal to His Majesty The King, His Heirs &
 Successors in His or Their Privy Council against the
 judgment delivered in the above matter by the above Court
 on the 2nd September 1937, the Suppliant being ready and
 willing to furnish security for costs and to fulfil all the
 other formalities which the Court may direct her to fulfil
 for the due prosecution of the said appeal.

20

Dated this 20th day of September 1937.

(sd) ANDRÉ ROBERT

Attorney for Appellant.

PART I

No 14

MINUTES OF PROCEEDINGS IN COURT

A. Gellé K. C., for the Suppliant moves in terms of the Motion Paper and files in support of his motion the Notice of Motion.

No 14
—
Minutes of
proceedings
in Court
—
20th Sept.
1937

F. Herchenroder, Additional Substitute Procureur General appears replacing M. de Comarmond, Substitute Procureur General, for the Defendant.

10 At request of Herchenroder, the Court fixes the discussion of the motion for the 11th October, 1937.— Respondent's rights being reserved.

No 15

MINUTES OF PROCEEDINGS IN COURT

A. Gellé K. C., appears for the Suppliant.

M. de Comarmond, S. P. G., appears for the Colonial Government and says that he wishes to see a document connected with this case (a power of attorney).

No 15
—
Minutes of
proceedings
in Court
—
11th Oct.
1937

20 Gellé undertaking to produce same during the course of the day, — by consent — the matter is adjourned and the motion to be renewed on the 13th October, 1937.

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No 16

No 16
—
Motion for
a suggestion
of record
—
13th Oct.
1937

MOTION PAPER FOR A SUGGESTION OF RECORD.

(Vide Minutes of proceedings of the 13th October, 1937)

—
(O M I T T E D)
—

No 17

No 17
—
Minutes of
proceedings
in Court
—
13th Oct.
1937

MINUTES OF PROCEEDINGS IN COURT, 13th October, 1937

A. Gellé K.C., for the Suppliant moves for an order to the effect that the following suggestion be entered of record:— 10

“ That Suppliant’s former agent, Miss Julie Marie
“ Guérard, has substituted Michel Bouffé in her
“ powers as agent for the Suppliant, in virtue of
“ a deed of Notary R. Maigrot, dated the 21st
“ September 1937, registered in Reg A 289 No 7809
“ and that henceforth the said Michel Bouffé shall
“ act as Suppliant’s agent in Mauritius ”.

M. de Comarmond, S. P. G., states that he is satisfied and has seen the power of attorney.

The Court orders the above suggestion to be 20
entered of record.

A. Gellé K. C., renews his motion made on the 20th September 1937.

M. de Comarmond moves for provisional execution

PART I

of the judgment as regards costs. He also asks that Suppliant should furnish security in the sum of Rs. 3,000.—

No 17
—
Minutes of
proceedings
in Court
—
13th Oct.
1937

Gellé submits that Rs. 2,500 in the present case will be sufficient security, and refers to the case of Boullé Lagane v/s Colonial Government.

He submits (i) that such security be furnished within a delay of two months and (ii) that a delay of three months be allowed for the preparation of the record for the Privy
10 Council.

The Court says that it will give a formal order at an early date.

No 18

MINUTES OF PROCEEDINGS IN COURT

His Honour Mr Justice Watts reads the judgment of the Court (E. Nairac K. C., C. J., and G. Tracey Watts, J.) granting the Applicant leave to appeal as prayed for, under clause 3 (a) of the order in Council of the 15th February 1909, *upon condition*, as required by clause 6;—

No 18
—
Minutes of
proceedings
in Court
—
15th Oct.
1937

20 (1) that the Appellant shall within two months from the date of this judgment, enter in good and sufficient security to the satisfaction of the Master & Registrar, in the sum of Rs. 3,000.— for the due prosecution of the appeal and for payment of all such costs as may become payable to the Respondent, in the event of the Appellant not obtaining an

PART I

No 18
 —
 Minutes of
 proceedings
 in Court
 —
 15th Oct.
 1937

an order granting her final leave to appeal, or of the appeal being dismissed for non-prosecution, or of His Majesty in Council ordering the Appellant to pay the Respondent's costs of the appeal (as the case may be); and

(ii) that the Appellant shall procure the preparation of the record and the despatch thereof to England within three months from the date of this judgment.

The Court further orders provisional execution of the judgment of the 2nd September 1937 in this matter as regards the costs of the action.

Costs of the present application to be costs in this cause.

No. 19
 —
 Notice of
 motion
 (Extension
 of delay for
 preparation
 of Record)
 —
 6.1.38

No. 19
 —

NOTICE OF MOTION FOR EXTENSION OF DELAY FOR
 PREPARATION OF RECORD OF APPEAL

—
 (O M I T T E D)
 —

No. 20
 —
 Affidavit of
 Appellant's
 attorney
 —
 6th January
 1938

No. 20
 —

AFFIDAVIT OF APPELLANT'S ATTORNEY IN SUPPORT OF
 ABOVE MOTION

—
 (O M I T T E D)
 —

PART I

No. 21

MOTION PAPER FOR EXTENSION OF DELAY FOR
PREPARATION OF RECORD OF APPEAL

(O M I T T E D)

No. 21
Motion paper
10th January
1938

No. 22

MINUTES OF PROCEEDINGS IN COURT

No. 22
Minutes of
proceedings
10th January
1938

Motion heard COURT extends to one month ending on the
15th February, 1938 as prayed for the delay for the preparation
of the record of appeal.

(O M I T T E D)

No. 23

NOTICE OF MOTION FOR FURTHER EXTENSION OF DELAY
FOR PREPARATION OF RECORD

(O M I T T E D)

No. 23
Notice of
motion
9th February
1938

No. 24

AFFIDAVIT OF APPELLANT'S ATTORNEY IN SUPPORT OF
ABOVE MOTION

(O M I T T E D)

No. 24
Affidavit of
Appellant's
Attorney
9th February
1938

No. 25

MOTION PAPER FOR FURTHER EXTENSION OF DELAY FOR
PREPARATION OF RECORD

(O M I T T E D)

No. 25
Motion
paper
14th February
1938

PART I

No. 26
—
Minutes of
proceedings
—
14th February
1938

No. 26

—
MINUTES OF PROCEEDINGS IN COURT
—

Motion heard. COURT further extends to the 15th March 1938 the delay granted to Appellant for the preparation of the record of appeal.

—
(O M I T T E D)
—

No. 27
—
Notice of
motion
for final
leave to
appeal
—
23rd
February
1938

No. 27

—
NOTICE OF MOTION FOR FINAL LEAVE TO APPEAL
—

(O M I T T E D)
—

No. 28
—
Affidavit of
Appellant's
Attorney
—
23rd
February
1938

No. 28

—
AFFIDAVIT OF APPELLANT'S ATTORNEY IN SUPPORT OF
ABOVE MOTION
—

(O M I T T E D)
—

No. 29
—
Motion
paper for
final leave
to appeal
—
28th February
1938

No. 29

—
MOTION PAPER FOR FINAL LEAVE TO APPEAL
—

(O M I T T E D)
—

No. 30
—
Minutes of
proceedings
—
28th
February
1938

No. 30

—
MINUTES OF PROCEEDINGS IN COURT
—

Motion made. FINAL LEAVE TO APPEAL GRANTED.
—

PART I

No. 31

—
RULE ON ABOVE ORDER
—

No. 31
—
Rule on
Above Order
—
28th February
1938

On Monday the 28th day of February, 1938, in the 2nd year of the reign of King George VI.

In the matter of :—

WIDOW PAUL J. J. GUÉRARD (Suppliant)

APPELLANT

v/s

THE COLONIAL GOVERNMENT OF MAURITIUS (Defendant)

RESPONDENT

(Leave to appeal to the Privy Council)

—
Upon hearing M. de Spéville replacing A. Gellé K.C., of Counsel for Appellant -- M. de Comarmond, Substitute Procureur General, of Counsel for Respondent, having no objection to the application :—

IT IS ORDERED that FINAL LEAVE to appeal to His Majesty in Council BE and IT IS hereby granted to WIDOW PAUL J. J. GUÉRARD in this matter.

BY THE COURT

(sd) G. DEVILLE

For Master & Registrar.

IN THE PRIVY COUNCIL

ON APPEAL FROM THE SUPREME COURT OF MAURITIUS

Between

Mrs. Ww. PAUL J. J. GUÉRARD

SUPLIANT

and

THE COLONIAL GOVERNMENT OF MAURITIUS

DEFENDANT

PART II

RECORD

Part II

10

EXHIBITS

SUPLIANT'S EXHIBITS

Suppliant's
Exhibits

EXHIBITS " A " & " B " MENTIONED AT PAGE 10

' A '

40.11.33

&

' B '

3.2.37

OMITTED

" C "

EXTRACT FROM GOVERNMENT GAZETTE OF 10th AUG. 1929

Suppliant's
Exhibits

MAURITIUS GOVERNMENT

' C '

31.7.29

THE SUGAR INDUSTRY LOAN 1929

Issue of

Rs. 3,400,000 — 5% Debentures

20

1. The loan, which shall be for an amount not exceeding three millions, four hundred thousand rupees, shall be

PART II

Suppliant's
Exhibits
—
'C'
31.7.29

reimbursed in thirty years provided that it shall be lawful for the Governor, after twenty years, to order that all or such of the debentures as shall be drawn by lot, in such manner as the Governor in Executive Council shall determine, be reimbursed on such day as the Governor shall fix and cause to be notified in the Gazette.

2. The loan is secured upon the general revenues and assets of the Colony.

3. The loan shall bear interest at the rate of five per 10 cent per annum, and such interest shall be paid half-yearly from the date of issue of the debentures by the Receiver General.

4. Forms of application for debentures may be obtained from the Receiver General to whom all applications for debentures must be addressed. The Governor is not bound to accept any application.

5. Applications for debentures will be received until Friday 30th August inclusive.

6. These debentures will not be liable to any stamp duty. 20
The sums lent thereon by applicants will not be subject to the provisions of article 61 of the Licences (Consolidating) Ordinance 1915, as repealed and replaced by Article 9 of the Licences (Amendment) Ordinance 1918. Debentures will be issued in sums of one hundred, five hundred, one thousand, five thousand and ten thousand rupees, and will be payable to bearer or to any person in whose name the debenture is

PART II

issued. Debentures may be transferred or pledged.

7. Debentures will be issued on the 10th of September on production, to the Receiver General, of a receipt from one of the three local banks showing that the total value of the debentures allotted has been paid to the credit of the Receiver General's account.

8. Treasury Bills, issued under Ordinance No 6 of 1929, will be accepted in payment of an equal amount of debentures **10** of the Sugar Industry Loan 1929.

9. Any further information may be obtained from the Receiver General or the Head Accountant, Treasury.

(sd) H. PICKWOOD

Receiver General.

Treasury, Mauritius

31st July, 1929.

Suppliant's
Exhibits

'C'
31.7.29

PART II
FORM OF DEBENTURE SUBMITTED TO THE COURT

MAURITIUS
« THE SUGAR INDUSTRY LOAN »

1949-59

AUTHORISED BY
ORDINANCE No. 14 OF 1929.

The Governor of Mauritius is authorised by " The Sugar Industry Loan Ordinance No. 14 of 1929 " to cause this debenture to be issued, and the General Revenues and Assets of the Colony secure, in accordance with the provisions of the above Ordinance, the payment of the capital sum of this debenture with the interest accruing thereon, and due provision for the redemption of the debenture is prescribed by the said Ordinance.

Series..... No..... Rs.

The undersigned, the Receiver General of Mauritius, for and on behalf of the said Colony, does hereby acknowledge that the Colony of Mauritius is indebted unto

or the bearer of the present debenture in the sum of RUPEES
..... repayable in thirty years, provided that it shall be lawful for the Governor, after twenty years, to order that such debenture, as shall be drawn by lot in such manner as the Governor in Executive Council shall determine, be reimbursed on such day as the Governor shall fix and cause to be notified in the Gazette. From and after the day appointed for the repayment of any so drawn debenture, all interest on principal moneys secured by the said Debenture shall cease; and upon payment of the prin-

PART II

cipal moneys secured by any Debenture, such debenture with all the coupons thereto attached shall be delivered to the Receiver General.

The General Revenues and Assets of the Colony are pledged as security under the provisions of The Sugar Industry Loan Ordinance No. 14 of 1929,

The said sum shall bear interest at the rate of five per cent, per annum payable on the 10th of March and 10th of September, the first payment to be made on the 10th March 1930.

Given under my hand, at the Treasury, Port Louis, this 10th day of September, 1929.

Receiver General

Sixty coupons are attached to the above *form of debenture* of which the following is a specimen :

<i>The Sugar Industry Loan</i>	Rs.
Ord. 14 of 1929	_____
Six months interest due	Series
10th March 1930	No.
On Deb. for Rs. payable at TREASURY	_____
Receiver General	10 MR. 1930
The holder of this coupon is requested to deposit it three clear days before payment for purpose of examination.	

PART II

CERTIFICATE OF THE MASTER AND REGISTRAR

IN THE SUPREME COURT OF MAURITIUS

I hereby certify that the foregoing is a true and correct copy of all proceedings, judgments, decrees and orders had and made, of all exhibits received or given in the above matter (except the merely formal documents stated as omitted in the hereunto annexed index.)

Given under my hand and the Seal of the Supreme Court of the Island of Mauritius this third day of March, one thousand nine hundred and thirty eight.

(sd.) J. G. ESPITALIER-NOEL

Master and Registrar