

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Chambers
v. Davidson, re Leith's Estate, from the West
India Encumbered Estates Court; delivered 8th
November, 1866.*

Present :

LORD WESTBURY.

SIR JAMES WILLIAM COLVILLE.

SIR EDWARD VAUGHAN WILLIAMS.

THEIR Lordships are of opinion that in this case there are special circumstances in the relation existing between Mr. Chambers the Appellant and the proprietors of the West India plantations, upon which they propose to rest their judgment, and which relieve them from the necessity of considering the important propositions of law which have been adverted to in the able argument at the bar.

The ordinary mercantile character and position of a consignee of a West Indian plantation are well known. The custom of the mercantile world is to select as consignee a merchant residing in this country, to whom the whole produce of the plantations is consigned, and who, in return for that produce, accepts bills drawn upon him by the proprietor or manager in the West Indies for island contingencies; and who, according to the orders of the manager or proprietor, purchases the supplies needed for the estate, and sends them over to the island.

There is no necessity in a case of this kind that there should be any contract for the purpose of determining the right of the consignee. The right of the consignee, as it is supposed to be established by decision, giving him a lien on the Plantation in respect of the balance due to him, is an exception to the general rule which applies to principal and agent.

But lien is not the result of an express contract;

it is given by implication of law. If, therefore, a mercantile relation, which might involve a lien, is created by a written contract, and security given for the result of the dealings in that relation, the express stipulation and agreement of the parties for security exclude lien, and limit their rights by the extent of the express contract that they have made. *Expressum facit cessare tacitum.* If a consignee takes an express security, it excludes general lien.

In the present case, the question is whether Mr. Chambers can be regarded as the consignee of these plantations in the ordinary sense, or whether he is a mortgagee with the appointment of receiver as part of his security. He refers his appointment as consignee to a particular indenture, and we have to consider, therefore, whether that indenture does not define the rights and interests that he shall have in respect of his dealings with this estate.

The deed is dated the 15th of March, 1860. It is made between Messrs. Leith, the proprietors of the plantations, or of the equity of redemption of those plantations, on the one hand, and Mr. Chambers on the other. The state of circumstances existing at that time between Mr. Chambers and the Leiths, which are set forth in the recitals of the Deed, may be shortly stated. In the first place, Messrs. Leith, in the month of January, 1860, had mortgaged three plantations to Mr. Chambers,—plantations which are none of them included in the mortgage of the present Respondents. This mortgage was to secure the existing debt, and all future advances to be made by Chambers not exceeding the sum of £2500. It also appears that there was another mortgage-deed made by the Leiths to Chambers, dated on a later day of the same month of January, 1860, by which a certain other property, not included in the mortgage of the Respondents, is mortgaged by the Leiths to Chambers for the purpose of securing a further debt and advance, not exceeding in the whole £800.

The deed of the 15th of March, 1860, which is relied on as the appointment of consignee, goes on to recite that the Leiths were entitled to other plantations subject to certain mortgages or charges affecting the same. And then it recites that, in con-

sideration of Chambers having forborne his debt then due to him from the Leiths, and having postponed for a long time the period of payment, the Leiths had agreed, so long only as possession should not be adversely taken by the parties holding the mortgages or charges previously referred to, to consign to Chambers not less than two-thirds of the produce of these additional plantations.

The state of things, therefore, is shortly this:—Chambers, the mortgagee of certain estates, dissatisfied with the security, stipulates with the Leiths that he shall have a further security in the shape of an engagement to consign a certain portion of the produce of other plantations; but inasmuch as those other plantations were themselves included in other mortgages, this stipulation that Chambers should have the benefit of the consignment of a certain portion of their profits is made expressly subject to the rights and interests of those other mortgagees.

The Deed then proceeds to contain covenants on the part of the Leiths, by which they engage to consign to Chambers certain portions of the proceeds of these other plantations, in order that the amount of the proceeds so consigned may be applied by Chambers in aid of his already existing securities, and in part payment of the interest that from time to time should become due to him, and in part payment also of the interest of the existing debt.

With respect to the supplies, Chambers covenants in a remarkable manner. His engagement is that he will make shipments, that he will send out all things necessary for the plantations, and pay the sums of money for which bills might be drawn upon him, but so long only as the shipments of each year shall respectively exceed the amount of the expenses of the same year.

The course of dealing, therefore, is here clearly defined. The Leiths had no right to expect from the alleged consignee any supplies or any payment of bills for Island contingencies, unless they shipped to him every year a sufficient amount to cover that expenditure. -

It has been urged strongly that it must be considered that the mortgagees assented to what was going on between Chambers and the Leiths.

Their assent of course would be of no avail unless they had information of the true state of the dealings. Suppose the mortgagees, the present Respondents, to have been aware of this deed, the nature of which we have been stating, they would be warranted in treating it as a supplemental and additional security taken by Chambers in aid of his existing mortgage. They would be warranted in assuming that Chambers intended to abide by the stipulations of the deed, and not to make advances unless he had in hand, or was about to have in hand, produce of the estate sufficient to cover those advances.

This, therefore, is an instrument that shows clearly the nature of the engagement between Chambers and the proprietor of the plantations. As we have already observed, he was dissatisfied with his security, and he bargained for the receivership of a considerable portion of other and additional produce, subject, however, to the rights of the persons entitled to mortgages on that property;—he stipulates for this addition by way of aid to his existing security, and the rights that he has are the rights given to him by this contract. The claim that he now makes is a claim which, departing from the limited nature of this security, he desires to substitute for it,—the lien of a general consignee who has dealt with the entire proceeds of the estate according to mercantile usage, and has a balance due to him.

Our conclusion may be expressed in two results; one, that this is not a case of lien, but an express and definite contract, and that the limits and nature of that contract would be exceeded and put an end to, if we allowed this claim for a general lien.

The second is, that Mr. Chambers was not in the ordinary relation of consignee. He was here dealing with the proprietors of the plantation in the character of mortgagee, with the stipulations of a mortgage, and it was not the object or effect of the deed to create between him and the proprietors of the plantation the ordinary relation of consignee and planter.

On these grounds, therefore, without adverting further to the argument upon the law applicable to consignees, and without committing this tribunal

to any opinion whatever upon the general questions that have been argued, we decide that there was no relation that warrants the claim of lien by Mr. Chambers as consignee. We decide that his claim is limited to his express security and contract, and that the claim he now advances is inconsistent with the nature of that security.

Their Lordships will, therefore, humbly report to Her Majesty, as their opinion, that the decision of the Commissioner of the West India Encumbered Estates Court ought to be affirmed, and this Appeal dismissed with Costs.

