Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Serendat v. Saïsse, from the Supreme Court of Mauritius, delivered 26th February, 1866.

Present:

LORD JUSTICE KNIGHT BRUCE.
LORD JUSTICE TURNER.
SIR JAMES W. COLVILE.
SIR EDWARD VAUGHAN WILLIAMS.

THIS was an Appeal against a Judgment of the Supreme Court of Mauritius, and also against an Order of the said Court, whereby a motion made by the Appellant for a new trial of the cause in which the said first mentioned Judgment was pronounced, was dismissed with costs.

On the argument before us, the latter branch of the Appeal was, very properly in our opinion, abandoned by the Appellant's counsel as hopeless.

The action was brought by the Respondent against the Appellant to recover damages for injuries sustained by the Respondent by reason of his house and furniture having been destroyed through a fire kindled on the Appellant's land by labourers employed by him to clear the ground for agricultural purposes, which fire was so carelessly made that sparks and other burning particles were carried over and scattered upon the Respondent's premises, thus causing the fire which was the subject of complaint.

On the evidence adduced at the trial the Court below came to the conclusion that the fire which destroyed the Plaintiff's house and furniture was communicated to it from the fire kindled in the Appellant's field as alleged, and that this was owing to the negligence of the men employed by him to clear his ground. And we think the Court

was fully justified by the evidence in coming to this conclusion.

The only question, therefore, which remains is, whether the Appellant was responsible for the negligence of the men so employed by him.

The Respondent grounded his claim on the Article 1384 of the Code Napoléon (which is the prevailing law of Mauritius), and which is in these words: "Les maîtres et commettans [sont responsables] du dommage causé par leurs domestiques et préposés dans les fonctions auxquelles ils les ont employés."

The Respondent contended that the Appellant and the men he employed stood in the relation of *commettant* and *préposé* within the meaning of this Article. It is necessary, therefore, to ascertain what is the meaning of the word "préposé." It appears from Napoléon Landais's Dictionary that the meaning of the word "préposé" is, "qui est commis à quelque chose, qui en a la garde, le soin;" and in the same book the meaning ascribed to the verb "préposer" is "commettre, établir quelqu'un avec pouvoir de faire quelque chose ou d'en prendre soin." And accordingly we think that, subject to the qualification hereafter to be mentioned, the word "préposé" in the Article means substantially, a person who stands in the same relation to the *commettant* as "domestique" does to "maître," *i. e.* a person whom the *commettant* has entrusted to perform certain things on his behalf. This construction of the word appears to be supported by a passage in Dalloz' Répertoire, vol. xxxix. p. 440, No. 689, where he says, "Les domestiques sont une classe particulière de préposés."

The French lawyers, however, in their interpretation of the Article, have qualified the above construction by the doctrine that, in order to make the *commettant* responsible for the negligence of the *préposé*, the latter must be acting "sous les ordres, sous la direction et la surveillance du commettant." This doctrine is certainly supported by the French authorities to which we were referred by the counsel for the Appellant, viz.—Dalloz Répertoire, tit. Responsabilité, ch. iii. sect. 2, article 5, and the three cases of *Seston* v. *Salles and the Mining Company of the Grand Combe*, and *The Northern Railway of France* v. *Boisseau*, and *The*

Administration of Forests v. *Martin*, which were decided by the Cour de Cassation, and are cited in Dalloz' 'Jurisprudence Générale,' and copies of which were supplied to us by counsel.

Applying this doctrine to the present case, the Appellant's contention is, that the evidence shows he had parted with the control over the men he employed, and that they were not working under his orders, directions, and surveillance.

The evidence was, that the Appellant, in order to clear his ground of weeds and brushwood, employed two bands of Indian labourers, one of which was under an Indian named Beesapa, and the other band consisted of four men, who were under an Indian called Joondine, and included a man called Beedhoo, who appears to have been the author of the mischief, by setting fire to a heap of rubbish collected in the course of the work, so that the fire extended to some sapan trees. The object of setting fire to them was, as Beedhoo expressed it in his evidence, "to work more easily." The work was to be paid for by the piece, *i. e.* so much per acre. The evidence leaves it doubtful whether the Appellant was to pay the price to Joondine alone, or to him and the other Indians in his band; indeed, the Court below said the evidence rather led them to the conclusion that the contract was directly with all the Indians.

On this evidence, it was contended on the behalf of the Appellant that he is shown to have severed himself from the execution of the work, and parted with all superintendence and control over the persons by whom it was performed.

But we are of opinion that this is not a conclusion which is warranted by the evidence. Having regard to the nature of the work and the condition of the men employed, it appears to us unreasonable to infer that the Appellant had parted with the power of correcting, as the work went on, the mode in which it was to be performed, and of dictating what kind of brushwood and other growth was to be removed, and what was to be left standing, and how the weeds and brushwood which had been got up were to be dealt with, and where they were to be deposited; in other words, we think the evidence does not show that the general control, direction, and surveillance of the operations was

relinquished by the Appellant by reason of the agreement he had made with the Indians. It may be observed that these men do not at all answer the description given by Sirey ('Codes Annotés,' vol. i. p. 665) of "ouvriers d'une profession reconnue et déterminée;" they were ordinary labourers, characterized by the Court below as "a set of idle, careless semi-barbarians."

The view we have thus taken of the relation established by the agreement between them and their employer is corroborated by the evidence, which shows that in point of fact the Appellant did interfere and control the men in the course of the work. For example it was said by Joondine (Record, p. 16), "Mr. Serendat told me not to put fire in the place where I was working;" . . . "he told me to put fire in another place which he pointed." Again, Beesapa says (Record, p. 15), "The previous day Mr. Serendat had come and told Joondine to leave that portion of ground which is fifty dollars, and go and work in the interior of the field." And the Appellant's answer (Record, p. 5) states that he had given orders five or six days before to burn some weeds, but that he also gave orders that the fire should be carefully extinguished.

Looking, then, at the whole case, we are of opinion that the Appellant and the Indian whose negligence caused the fire stood in the relation of "commettant" and "préposé." And, as it has not been disputed that the negligent act was done by the "préposé" in the course of his employment, it follows that the responsibility of the Appellant is made out.

It remains to be observed that the declaration in this case is not framed at all with reference to the Article of the Code, but charges in the ordinary form that the servants and agents employed by the Defendant were guilty of negligence. But we think that the words "servants and agents" must be read in a sense which will support the declaration,—viz., servants and agents acting under the directions, orders, and surveillance of the Defendant.

For these reasons, their Lordships will humbly recommend to Her Majesty that the Judgment of the Court below be affirmed, with costs.