

*Judgement of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Hawks-
ford and Renouf v. Giffard from the Royal
Court of Jersey; delivered December 18th, 1886.*

Present :

LORD HOBHOUSE.

LORD HERSCHELL.

SIR BARNES PEACOCK.

THIS is an appeal from the Royal Court of the island of Jersey. It arises out of the following circumstances :—

On the 22nd of October 1869, under an Act of the States of Jersey, a company was incorporated by the name of the Jersey Railway Company, to make a railway from St. Heliers to St. Aubin. In 1875 this company became bankrupt, and Louis Marie thereupon became tenant *après décret* and owner of the lands and undertaking. On the 6th February 1878 he sold all his interest to F. Nalder, who in turn, on the 5th February 1883, sold to T. H. Budd.

On the 7th June 1871 another railway company was incorporated by an Act of the States of Jersey under the name of the St. Aubin and La Moye Railway Company, to make a railway from St. Aubin to La Moye. This company also became bankrupt, and in 1876 Wm. Lister Holt became tenant *après décret*. He passed his interest to Horace Henry Holt, who became bankrupt, and under his bankruptcy T. H. Budd became on the 17th March 1879 tenant *après décret* and owner of the lands and undertaking.

In the early part of 1883 a company was formed in England to purchase and carry on these two undertakings, and on the 6th February in that

year the Jersey Railways Company, Limited, was incorporated under the English Joint Stock Companies Acts.

On the 9th of February 1883 a contract was entered into by T. H. Budd to sell both undertakings, of which he was then the owner, to this Company. The Company having in view the raising of funds by means of debentures, on the 13th February duly executed an Indenture under which Lord Ranelagh, E. B. de Fonblanque, and T. W. Lowther became trustees, and by which provision was made for the security of the debenture holders. The terms of this deed will be more particularly referred to hereafter.

On the 11th of July 1883 Nalder and Budd, who were then the registered legal owners of the property in Jersey, conveyed the same in due form according to the laws of that country to the above-named trustees, who thus became, according to the law of Jersey, the owners of the railway properties. On the 29th October 1884 Philip Thomas Blyth (whose attorney in Jersey the Respondent afterwards became) obtained a judgement in the Queen's Bench Division of the High Court of Justice against the Jersey Railways Company for 1,426*l.* 5*s.* 3*d.* debt and 8*l.* 11*s.* 6*d.* costs.

To enforce this judgement, the action which gives rise to the present appeal was brought on the 27th June 1885 in the Royal Court of Justice in Jersey. The present Respondent as attorney to P. T. Blyth the judgement creditor was the Plaintiff; and the Defendants were F. Hawksford, as attorney to Lord Ranelagh, E. B. de Fonblanque, and F. W. Lowther; and E. B. Renouf, as attorney to the Jersey Railways Company, Limited.

The plaint recited the judgement obtained in the Queen's Bench Division, that the principal and most apparent, if not the entire, property of

the Company consisted of the two lines of railway with their plant and rolling stock, which were held and possessed by Hawksford, as agent for Lord Ranelagh, E. B. de Fonblanque, and F. W. Lowther, under an instrument of the 10th July 1883, and that the Company had neglected and refused to satisfy the judgement. It then prayed that Hawksford and Renouf, as attornies for their principals respectively, should be condemned to pay to the Plaintiff the said sums of 1,426*l.* 11*s.* 3*d.* and 8*l.* 11*s.* 6*d.*, with interest thereon at the legal rate from the 29th October 1884 until payment, and in addition 50*l.* for damages and extra costs.

Both Hawksford and Renouf objected to being called upon to plead to the action. The former based his objection on the ground that, assuming the judgement to be binding as between the parties to it, it could not be invoked as against the trustees who were not parties to it, and that he ought therefore to be dismissed from the action. It is unnecessary to detail the points taken by Renouf. They were held, as their Lordships think rightly, to be without substance.

The contention of Hawksford was rejected by the casting vote of the Chief Magistrate, and the action then proceeded.

The Appellant put in evidence the conveyances of 11th July 1883. He contended that by these conveyances his principals were the owners of the railways, and that the Courts of Jersey could not look behind this ownership at any supposed trusts in favour of the Company, as such trusts could only lawfully be created in Jersey, under the law of the States of Jersey relating to trusts of the 24th September 1861. He also insisted that even if the Court could regard any agreement between the Company and the trustees, the creditors of the Company could have no greater rights against the trustees than the Company itself would have,

and that the rights of the Company only arose after payment of the sum of 60,000*l.* preferentially borrowed.

The Respondent put in evidence, in addition to a prospectus issued by the Jersey Railway Company with the object of obtaining 60,000*l.* by way of a loan on mortgage debenture stock, the Indenture of the 13th February 1883.

This deed was made between the Jersey Railways Company of the one part, and Lord Ranelagh and E. B. de Fonblanque of the other part. It recited that the directors of the Company had created a debenture stock of the nominal amount of 60,000*l.*, and had determined to offer such stock in the manner thereafter provided; and that the parties of the second part had agreed to act as trustees for the purpose of these presents. It then provided that the Company should procure the transfer to the trustees of all their railways, lands, rolling stock, rights, &c., and declared that the trustees should stand possessed thereof, upon trust to permit the Company to hold and enjoy the premises, and to carry on thereon and therewith the business authorised by their memorandum of association, until default by the Company in payment of interest on the debenture stock, or other breach of their obligations. The 16th Art. was as follows:—"The stock shall be a first charge on the mortgaged premises, and shall have precedence over all monies which may hereafter be raised by the Company by any means whatsoever."

On the 4th of July the judgement of the Court was pronounced. It recited that the Jersey Railways Company had been formed for the purpose of working the lines of railway from St. Heliers to La Moye. That these two railways and their appurtenances formed the same property as that described in the Indenture of the 13th February 1883, and were also identical with

the properties conveyed by the contracts of 11th July 1883. It further recited that, by the Indenture of the 13th February 1883, it was established that Lord Ranelagh, Fonblanque, and Lowther only hold the properties granted them by the contracts of the 11th July 1883 as "fidei commissaires," or trustees for the benefit of the Company, subject to the stipulations mentioned in the indenture, and that the object of the contracts of the 11th July being simply to give effect to the stipulations of the Indenture of the 13th February, the Defendants' principals had between them, the one in law, the other in equity, entire possession of the property of the Jersey Railways Company.

The judgement proceeded, upon the facts thus found, to condemn the Appellants, as attorneys for their respective principals, jointly, to pay to the Respondent the sums of 1,426*l.* 5*s.* 3*d.* and 8*l.* 11*s.* 6*d.* claimed in the action, with interest upon the said sums at 5 per cent. per annum from the 29th October 1884 to the time of payment. It further condemned the Appellants jointly to pay to the Respondent the sum of 25*l.* damages, and also condemned them jointly in costs.

Upon appeal to the full Court the interlocutory and final judgements were both affirmed, and the appeal dismissed with costs.

It has been necessary to state thus fully the proceedings in the action and the form of the judgement pronounced, inasmuch as the first question for determination is the construction to be put upon the judgement.

Mr. Jeune, on behalf of the Respondent, has contended that its effect, as regards the trustees, is only to condemn them to pay the money out of the property of the Company now in their hands. Their Lordships are unable so to construe it. The terms used plainly import a personal and unlimited obligation. And it is

admitted that the practice of the Courts of Jersey cannot be appealed to in support of a construction of the judgement other than that which their Lordships deem the natural one. Taking the meaning of the judgement to be that which their Lordships have indicated, they entertain no doubt that it cannot be supported. But even if Mr. Jeune could have maintained the view put forward on behalf of the Respondent, their Lordships would have arrived at the same conclusion. This action is brought upon an English judgement, which, until a judgement was obtained in Jersey, was in that country no more than evidence of a debt, and their Lordships do not think it is competent in such an action to sue other persons jointly with the debtor, and to obtain a judgement against them for payment of the debt, merely on the allegation that they hold, as trustees, property of which the debtor is the beneficial owner. No authority was cited to show that this course is warranted by the law or practice prevailing in Jersey. And, indeed, it is scarcely possible that there can be any such settled practice, inasmuch as trusts have only been distinctly recognised by the law of Jersey since the Act of the States of 1861.

Much argument was addressed to their Lordships with reference to the effect of the deed of February 1883. It may be that under the judgement against the Jersey Railways Company execution could issue against the rolling stock and other moveable property of the Company in Jersey, and it may be, too, that in a suit properly constituted, the lands also might be made available for the payment of the debt notwithstanding that deed. It is, however, unnecessary for their Lordships to express any opinion upon these points, inasmuch as even if established they would not warrant the judgement appealed from. They will humbly advise Her Majesty that the judge-

ment should be reversed so far as regards the Appellant Hawksford, and that judgement should be entered for him in the action with costs, and that the Respondent should pay his costs of this appeal.

Their Lordships see no ground for disturbing in substance the judgement obtained against the other Appellant Renouf. But they think it should be varied in two respects. The judgement obtained in the Queen's Bench Division carried interest at 4 per cent., but the Court below have condemned the Appellant to payment of 5 per cent. interest from the date of that judgement, this being the legal interest upon a judgement in Jersey. It appears to their Lordships that 5 per cent. interest should run only from the date of the judgement in the Royal Court of Jersey upon the judgement there obtained. They think too, that after the words condemning the Defendant in costs, the following should be added, "except " so far as such costs have been increased by " joining the other Defendant in the action." In other respects the judgement against the Appellant Renouf must be affirmed, and they will humbly advise Her Majesty accordingly.

