Privy Council Appeal No. 62 *of* 1925.

The Pertang Rubber Estates Company, Limited - - - *Appellants*

v.

Société Financière des Caoutchoucs - - - - - *Respondents*

FROM

THE COURT OF APPEAL FOR THE FEDERATED MALAY STATES.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 26TH NOVEMBER, 1925.

Present at the Hearing :

LORD DUNEDIN.
LORD SUMNER.
LORD WRENBURY.

[*Delivered by* LORD WRENBURY.]

This is an appeal by the plaintiffs in an action for damages for negligence from a judgment of the Court of Appeal for the Federated Malay States at Kuala Lampur, dated the 31st March, 1923, affirming by a majority the judgment of the late Chief Judicial Commissioner.

The appellants, who may be called the Company, were the owners of a rubber estate at Jelebu in the State of Negri Sembilan. The respondents, who may be called the Agents, were employed by the Company as managers of the estate upon the terms stated in certain agreements presently mentioned. The Company alleged that the Agents were guilty of negligence and sued for damages. The Agents denied negligence. The learned Trial Judge, after hearing the Company's case, was of opinion that the Company had failed to prove negligence, and without calling upon the Agents to lead evidence, which they offered to do, he dismissed the action with costs. The Court of Appeal, by a majority, affirmed his order. The only question is whether the Company had made a case which called for an answer—whether there was any evidence of negligence.

The Company, which was incorporated in 1910, had by the middle of 1912 proceeded some way with the planting of the estate. They were short of money and applied to the Agents, who were a Belgian company with an agency in the Federated Malay States, for a loan to enable them further to develop the estate. An agreement, dated the 28th January, 1913, was arrived at for advances to the amount of $385,800, which was to be secured by debentures bearing interest at 8 per cent. Under this agreement debentures were created and issued to the Agents at certain defined intervals of time. It was part of the terms that the Agents should have one director on the Company's board, and a first director was appointed.

In May, 1913, the Agents, interested as they were in the estate as debenture holders, complained that the management of the estate was unsatisfactory, and proposed to take over the agency for management of the estate for ten years. The Company assented, and on the 14th July, 1913, an agreement was executed by the parties, the effect of which was that the Agents became secretaries and sole agents of the Company for the management of the property for five years (not ten years) from the 1st June, 1913, but they were to obey the reasonable orders from time to time of the directors, they were to make monthly visits to the estate, make monthly reports to the directors, make every three months a statement in full detail of all particulars relating to the Company's business, and generally give full information in relation to the affairs of the Company. The Agents were to be solely responsible to the Company for the management. No European member of the staff was to be dismissed by the Agents unless and until such dismissal was confirmed by the Company, and (Article 9) the Agents were not to be "liable for any loss which may arise except through their own negligence or default."

In 1916 the Company were again in want of money, and an agreement of the 18th November, 1916, was executed under which a further advance of $30,000 was made by the Agents, which was again secured upon the estate, and (Article 3) until the final repayment of the advance "the entire management and control of the estate" was to be vested in the Agents, and they were to have power to employ and dismiss managers and labourers, and so on.

On the 28th July, 1917, the Agents, in exercise of their rights as debenture holders, sold the estate for $475,000. The sum realized was sufficient to repay the Agents' advances of $415,800 and interest, and to leave a small sum for the shareholders.

The Company at the trial put in the monthly and other reports made by the Agents and the minutes of the meetings of the Company's directors and of its shareholders and the reports of the directors to their shareholders, and they called three witnesses. One was an accountant, Herbert Davis. Nothing turns upon his evidence. The other two witnesses were William Leonard Braddon, who was a planter and the holder of the majority of the shares in the Company, and who obtained from the Court of

Appeal in the Colony, on the 29th July, 1919, leave to use the Company's name as plaintiff in this action, he indemnifying the Company against costs, and Austin Geoffrey Robins, a planter, who was manager of another rubber estate near Seramban.

In the conduct of the case there was much discussion as to the control which was exercised by the Company and by the Agents respectively over the management of the estate. Down to the date of the execution of the agreement of the 18th November, 1916, the control was spoken of as a dual control by the Company and the Agents, and after that date as a sole control by the Agents. This is a sufficiently accurate statement of the position. From the language of the agreement of the 14th July, 1913, and from the directors' minutes and the directors' reports to their shareholders, their Lordships find that the control of the Company in the matter was not only existent, but was continually exercised. And from the same source they find that the condition of the estate (which was often referred to as unsatisfactory), and the difficulties of obtaining and keeping a supply of labour, and so on, and the question of expense and the question of retaining or changing the manager on the spot, were all brought before the directors, and directions given by them from time to time, and that no allegation of negligence on the part of the Agents was ever advanced. In September, 1913, the board were expressing their regret at the condition the estate had been allowed to get into under their then manager and their previous visiting agent. A noxious weed called "lalang" was very prevalent upon the property, and the question of "weeding" was a principal question in the matter of management. On the 6th April, 1914, at a shareholders' meeting, Dr. Braddon himself criticized the expenditure contemplated for clearing up and weeding the estate. At a directors' meeting on the 22nd April, 1914, Dr. Braddon himself proposed "that the present system of dealing with lalang shall be stopped," but an amendment was carried "that the present system be continued." At a board meeting of the 27th May, 1914, the best way of clearing the lalang is discussed, and it was decided to ask Mr. Lendrum (the then manager) to send in his resignation, and to offer Mr. Church the post of manager. At a board meeting on the 16th June, 1914, the question of weeding and the cost of doing the work is discussed. Instances of the same kind might be quoted extending over the whole time under review. From the minutes, again, their Lordships might quote instances where over and over again it appears that there were reported to the directors, and they took action upon, such difficulties as the difficulty of obtaining labour, the efficiency of the managers from time to time employed, and so on, and nowhere is there found anything to show that the board alleged that the difficulties which certainly existed were due in any way to negligence on the part of the Agents.

At a shareholders' meeting on the 23rd July, 1915, Dr. Braddon "considers that the position of the estate is not a bad one,"

and at a board meeting of the 18th November, 1916, when the Agents had agreed to advance the further $30,000, Dr. Braddon proposed a vote of thanks to the Agents for granting the extra advance.

From the Agents' monthly reports, which also the Appellants put in, their Lordships find that the board were kept fully informed from time to time of that which was going on.

In these documents their Lordships find no evidence of any negligence on the part of the Agents.

As regards the oral evidence, no specific evidence of any defined act of negligence is to be found in it and, taken as a whole, that evidence at the best does no more than show this : that Mr. Robins, who visited the estate in October, 1916, as a possible purchaser, says that the property was badly neglected, that the whole estate was in bad condition, and that there must have been bad management having regard to the amount of money that had been spent, and he adds that the visiting agent ought to have recommended the dismissal of the manager. He, no doubt, did not know that from the 14th July, 1913, until the 18th November, 1916, the Agents had no power to dismiss until the dismissal had been confirmed by the Company, and that the board were from time to time dealing with the question of whether the manager should be changed.

It is not immaterial to bear in mind that the Agents' security for their advances was the estate, whose value the Company say they were destroying by negligence. The Agents' interest was the same as that of the Company in the matter, and that interest was to keep up and, if possible, increase the value of the estate. Upon the sale the amount of their advances was, in fact, covered, but by no large amount. It might well have been that their negligence (if they had been negligent) would have been disastrous to themselves.

Upon all the materials which the Company have produced their Lordships agree with the Trial Judge and with the Court of Appeal that there was no evidence of negligence, and that the Company made no case which the Agents could be called upon to answer. It follows that in their Lordships' judgment this appeal should be dismissed.

It thus becomes unnecessary that this Board, as it was unnecessary that the Courts below, should express any opinion upon the question raised by paragraph 14 of the defence that the action is barred by the Limitation of Suits Enactment, 1896, of the Federated Malay States. Their Lordships express no opinion upon it.

They will humbly advise His Majesty that this appeal should be dismissed with costs.

In the Privy Council.

THE PERTANG RUBBER ESTATES COMPANY, LIMITED

v.

SOCIÉTÉ FINANCIÈRE DES CAOUTCHOUCS.

DELIVERED BY LORD WRENBURY.

Printed by
Harrison & Sons, Ltd., St. Martin's Lane, W.C. 2.

1925.