Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Haggard v. *Pélicier Frères, from the Supreme Court of Mauritius; delivered 5th December* 1891.

Present:

LORD WATSON.
LORD HOBHOUSE.
LORD MORRIS.
SIR RICHARD COUCH.
MR. SHAND (LORD SHAND).

[*Delivered by Lord Watson.*]

The Appellant was, in the year 1887, British Consul for Madagascar, in which capacity he was the Chief Judge of Her Majesty's Consular Courts in that island.

On the 9th May 1887, the Respondents, Pélicier Frères, took out a summons against one Louis Mairs, upon whom it was duly served on the 12th of the same month. The summons required the Defendant to attend the Court personally, or by an agent, on the 15th August, at 2 p.m., and prayed judgment for the sum of 35 dollars, being the price of ten bags of Indian rice sold and delivered to him by the Respondents, with interest and costs.

On the day and at the hour specified in the writ, both parties appeared in Court before the Appellant, at Tamatave, the Respondents being represented by their attorney, Mr. Elie, and the

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Defendant Mairs by his employer, Mr. Proctor. In presence of the parties, the Appellant stated that he had private information that the debt sued for had been paid, and a receipt granted by the Respondents. At that moment Mr. Proctor produced the receipt and handed it to the Appellant, who then went on to say that he considered the case to be a vexatious one, and that he would dismiss it on that ground. The Respondents' attorney admitted that the receipt had been signed by them, but explained that it had been obtained by fraud, whereupon the Appellant continued the case until Thursday, the 25th August.

With the view of establishing their assertion that the receipt had not been legitimately obtained by the Defendant Mairs, the Respondents, between the 15th and the 25th of August, made application to the Appellant for a summons citing the Defendant, who resided about 100 miles from Tamatave, to appear personally and give evidence, but the application was refused. The Respondents then offered to make affidavit, explaining the necessity for examining the Defendant, and that the sum necessary to cover his travelling expenses would be tendered, but the Appellant persisted in his refusal, on the ground that the case was a vexatious one, and that the citation of the Defendant would cause unnecessary injury to his employer's business.

The cause came before the Court again upon the 25th August, the day to which it stood adjourned. It is nowhere averred, nor does it appear, that, on the 25th August, the Respondents produced or tendered any evidence, oral or documentary; and the Appellant, adhering to the opinion previously expressed by him, and without further hearing, gave judgment for the Defendant, with costs.

On the 7th October 1887 the Respondents filed a declaration against the Appellant in the Supreme Court of Mauritius, praying the Court to condemn him in payment to them as damages of the sum of Rs. 1,200, with costs of suit.

The declaration sets forth the facts already stated, which are substantially corroborated by the record of the proceedings in the Consular Court, authenticated by the subscription of the Appellant, and also by the evidence of the Appellant himself, and of Joseph Pélicier *jeune*, a partner of the Respondent firm, which was taken *de bene esse* in the course of the proceedings. The order of the Consular Court of the 15th August 1887 bears that :—

"Mr. Proctor, who appeared for Mr. Mairs in the position of his employer, produced the receipt for the sum claimed, signed by Pélicier Frères, and acknowledged by Mr. Pélicier.

"Under these circumstances the Court is of opinion that the claim is a vexatious one.

"Mr. Elie alleges that the receipt was obtained by fraud, and, under the circumstances, the Court adjourned the case until Thursday, 25th August."

The order of the Consular Court, on the 25th August, giving judgment for the Defendant, with costs, bears that :—

"The Court was of the opinion that the case should be dismissed forthwith, without further hearing.

"A receipt for the sum claimed having been produced, which was acknowledged to be for the speeial sum claimed."

Besides giving a narrative of the facts, the declaration stated as follows :—

"Whereas the aforesaid acts of the said Defendant constituted a flagrant abuse of the judicial powers vested in him as Her Majesty's Consul, and a denial of justice on his part."

After the Appellant's defence was lodged, parties were heard upon a preliminary plea taken by him, to the effect that the Supreme Court of Mauritius was not competent to take cognizance of the case, because (1) that Court, as to civil suits arising in Madagascar, only possessed an original jurisdiction concurrent with that of

the Consular Judge; (2) it had no authority to entertain a suit for acts done by the Consul in his judicial capacity; and (3) it could not, in any form of process, review his decisions in the suit between the Respondents and Louis Mairs, inasmuch as the sum sued for was below appealable value.

After hearing argument, Sir E. J. Leclezio, Chief Judge of the Supreme Court, and His Honour F. C. Williams, one of his Puisnes, delivered their judgment on the 29th May 1888. They rejected the Appellant's plea, in so far as it struck at their jurisdiction to entertain the suit. With regard to that part of the plea which related to the immunity of the Appellant for acts done by him in his judicial capacity, they came to the conclusion,—

"That the common law of privilege accorded to English Judges of Courts of Record may be held to follow them to a Consular Court of Record, where English law is administered."

And they gave leave to both parties, if they so desired, to amend their pleadings in the light of that decision.

Both parties availed themselves of the leave thus given. The Respondents struck out of their declaration the averment, already quoted, as to the "flagrant abuse" of the Appellant's judicial powers, and substituted an allegation in these terms :—

"Whereas, by refusing as he did, under the circumstances aforesaid, to allow the Plaintiffs to prove their case, and to summon the said Mairs as a witness for that purpose, the said Defendant exceeded the jurisdiction vested in him by the Order in Council of 14th (*sic*) February 1869, or, in other words, acted beyond the limits of his authority, and actually abused such authority."

The Appellant, in order to meet the Respondents' amendment, deleted one of his pleas on the merits, substituting for it these words :—

"That the Defendant acted as a Consular Judge within his jurisdiction and within the limits of his authority, and did not

abuse the authority vested in him, and that he is not liable to action in respect of the judicial acts complained of, which were within the scope of his said jurisdiction."

The Respondents did not appear at the hearing of this appeal; and in these circumstances their Lordships thought it right to hear the Appellant's Counsel in support of the judgment of the Court below, with respect to the privilege attaching to his office as Judge of the Consular Court. After hearing argument, their Lordships are satisfied that, in the year 1887, the Consular Court of Madagascar was not, in the sense of English law a Court of Record, and that it did not become so before the date of "The Africa Order in Council, 1889." But in 1887 the Court, under an Order in Council dated the 4th February 1869, exercised jurisdiction of a very important character. Established by the Queen in virtue of power derived from a treaty with the Sovereign of Madagascar, it was the only British tribunal in the island, and was vested with plenary civil jurisdiction over all British subjects within its limits. The Supreme Court of Mauritius had only a concurrent original jurisdiction, with authority to review the decisions of the Consular Court, upon an appeal duly taken, in causes exceeding Rs. 200 in value. In these circumstances, it does not appear to their Lordships to admit of doubt that the Appellant, whilst sitting and acting as Judge of the Consular Court, was entitled to the same degree of protection which is accorded by the law of England to the Judge of a Court of Record. In Kemp *v.* Neville (10 C. B., N. S., p. 549), Erle, C. J., delivering the unanimous judgment of the Court of Common Pleas, reviewed the authorities bearing on the point, and stated their result as follows:—

"The rule that a judicial officer cannot be sued for an adjudication according to the best of his judgment upon a

matter within his jurisdiction, and also the rule that a matter of fact so adjudicated by him cannot be put in issue in an action against him, have been uniformly maintained."

In Hamilton *v.* Anderson (3 Macqueen, House House of Lords Ca., 378), Lord Cranworth laid down the same doctrine, with this not unimportant addition :—

"I need hardly say that the merely adding that it was done maliciously amounts to nothing at all. That would, in the opinion of the aggrieved party, be always true, or at all events would be what he would be perfectly able to state."

Their Lordships do not think that the declaration, as originally framed, disclosed any cause of action against the Appellant. The Court below was evidently of the same opinion, and on that account allowed an opportunity of amendment. The only case presented in the declaration was, that the acts of which the Respondents complain constituted a flagrant abuse of the judicial powers vested in the Appellant, an allegation which implies that, although flagrantly wrong, they were the acts of a Judge exercising proper judicial functions.

The amendment discloses an entirely new ground of action, namely, that the acts complained of were done by the Appellant in excess of the jurisdiction vested in him by the Order in Council of 1869; or, in other words, that he was acting beyond the limits of his judicial authority. Now, a Judge may commit an excess of his jurisdiction in many ways; but the kind of excess which the Respondents impute to the Appellant is, in their Lordships' opinion, obvious. He was admittedly sitting in Court, as Judge in an action which he was competent to try; both parties to the suit were before him, and the acts complained of related to the cause before him, and were embodied in formal orders of the Court, authenticated by his signature. In that admitted state of the facts, their Lordships are

unable to attribute to the Respondents' averments any other meaning than this, that the Appellant, although he was sitting to try the case in presence of the parties, and was competent to try and decide it, had nevertheless no jurisdiction at that stage of his proceedings to dismiss the suit as a vexatious one.

After amendment of the pleadings, the present case was argued on its merits before a Court composed of the same learned Judges who had disposed of the Appellant's preliminary pleas. Their Honours delivered their judgment on the 11th December 1888, from the tenor of which it plainly appears that they, as well as the Respondents themselves, put the same construction upon the amended declaration which their Lordships have done. Their Honours said,—

"That this decision to reject a plaint without having evidence or argument in support of it was the assumption of a power to decide a case without hearing it, which power the Defendant did not possess, was the argument submitted to us by Counsel for the Plaintiffs; and we have come to the conclusion that the Plaintiffs are entitled to a verdict."

They accordingly gave decree against the Appellant for Rs. 200, with costs of suit. They plainly meant to affirm the legal proposition maintained by the Respondents' Counsel, because they expressly say:—

"It must be understood that we do not find the Defendant liable for any act or thing done within the scope and limits of his judicial discretion."

If, according to law, it was, as the learned Judges have held, beyond the scope and limits of the judicial discretion of a Judge in the position of the Appellant to refuse the Plaintiff a proof, and to dismiss his action as vexatious, their decree or verdict might be unassailable. But the proposition which they have affirmed, and which lies at the very foundation of their judgment, appears to be founded upon a misapprehension of the law.

Their Lordships hold it to be settled that a Court of competent jurisdiction has inherent power to prevent abuse of its process, by staying or dismissing, without proof, actions which it holds to be vexatious. In Metropolitan Bank *v.* Pooley (10 Ap. Ca., 214) the Lord Chancellor (the Earl of Selborne), speaking with reference to the dismissal of an action on that ground, said that—

"The power seemed to be inherent in the jurisdiction of every court of justice to protect itself from the abuse of its own procedure."

The same principle was again laid down by the House of Lords in Lawrance *v.* Norreys (15 Ap. Ca., 210). In that case the Appeal Court had refused to allow proof, and dismissed the action; and Lord Herschell observed (p. 219) :—

"It cannot be doubted that the Court has an inherent jurisdiction to dismiss an action which is an abuse of the process of the Court. It is a jurisdiction which ought to be very sparingly exercised, and only in very exceptional cases."

In the remarks made by Lord Herschell, as to the caution with which the power of summary dismissal on such grounds ought to be exercised, their Lordships unhesitatingly concur. It is, in their opinion, matter of regret that the Appellant should have acted so hastily, instead of permitting the Respondents to adduce proof of their assertion that their receipt had been fraudently obtained by the Defendant Mairs. But the insufficiency, or even the utter inadequacy, of his reasons for dismissing the suit cannot affect his jurisdiction to dismiss it. He was competent to entertain the question whether the suit ought to be dismissed as vexatious, and equally competent to decide that question one way or another. It is due to the Appellant to state that the Respondents, in their pleadings, make no imputation of dishonesty; although their Lordships do not mean to suggest that such an

imputation, if it had been made and proved, would have deprived him of the immunity which the law accords to a Judge in his position. The remedy, when such a case does occur, does not lie in an action of damages against the offending Judge, but by making a representation to the authorities whose duty it is to see that justice is administered with due care and attention.

For these reasons, their Lordships will humbly advise Her Majesty to reverse the judgment appealed from, and to dismiss the suit with costs. The Respondents must pay to the Appellant his costs of this appeal.