

*and that the Curator had been properly served with the process of the Court.*

*Time was given to the Curator to obtain special instructions from the Company to prepare the defence.*

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EVENOR DE CHAZAL,—Plaintiff

and

THE CURATOR OF VACANT ESTATES,  
Defendants.

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Before

HIS HONOR SIR EUGÈNE JULES LECLÉZIO, Knt.,  
—Chief Judge.

and

THE HON. E. DIDIER ST. AMAND, — Acting  
Puisne Judge.

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HON. W. NEWTON, Q. C. — Counsel for  
Plaintiff.

HONBLE H. LECLÉZIO. —Attorney for same.

HON. F. T. PIGGOTT, — Procureur General  
appears for Defendant.

THE CROWN ATTORNEY, — Attorney for same.

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Record No. 26723.

24th October 1894.

This was a motion made on behalf of the Curator of Vacant Estates, acting as having been vested with the undefended rights, in this Colony of the Sangerhausen Company machine manufacturers in Germany for an order of this Court, under the proviso of Article 7 of Ordinance No. 30 of 1871, directing service on the German Company having no known agent in this Colony of the first process or declaration issued by the plaintiff on the 10th of the present month in which the plaintiff demands of the

Supreme Court judgment annulling and cancelling the lease or contract of hiring made by the German machine manufacturers to the plaintiff of the machinery composing the diffusion plant and other machinery put up on "Mon Rocher" estate and 20. condemning the German Company to pay as damages to the plaintiff the sum of Rs. 199,159.87 c. for alleged expenses incurred by him.

The reasons on which this motion was grounded were the following: 10. Because the Curator of Vacant Estates has only been vested with the undefended rights in this colony of the German machine manufacturers. 20. Because the Curator of Vacant Estates is not in possession of any estate real or personal of the German machine manufacturers. 30. Because the order sending the Curator into possession and vesting him with the undefended rights in this colony of the German Company, obtained by the plaintiff, was so obtained as a pretext for making the Curator a defendant to the suit. 40. Because that action or suit has no direct connection with the undefended rights of the German Company.

In the course of the argument some allusion was made incidentally by the learned Procureur General to the question of jurisdiction, but it is clear from the terms of art. 7 of Ord. 30 of 1871 that when the absent party has left property real or personal in the colony, the Court has jurisdiction with regard to matters affecting that property. It is also clear from the wording of the same article that in case any person residing out of the jurisdiction of the Supreme Court have left no attorney or agent to represent him and protect his interests and have left property real or personal in this colony, it shall be lawful for the Court or a Judge to send the Curator of Vacant Estates into possession of the estate of the absent person and it shall further be lawful for the plaintiff to serve both the declaration, summons, notice and first or original and subsequent process upon the Curator of Vacant Estates.

It was said that the Curator of Vacant Estates had been vested only with the undefended rights of the German Company, but there can be no doubt that among those rights are the rights of ownership of the Company in the machinery leased by them to the plaintiff de Chazal in whose material possession they are, the legal possession being vested in the Curator as representing the owners. The real point at issue here is whether the action entered by de Chazal for the annulment of the contract of hiring of the machinery and to obtain damages for the non execution of that contract has a direct connection or not with the personal Estate of which the Curator of Vacant Estates has been sent into possession. If it has not, the Curator has the right under the proviso of Art. 7 of Ord. 30 of 1871 to ask that the Court to order personal service of the first process upon the defendant.

After a careful reading of the declaration served upon the Curator in this matter and full consideration of the argument, we have come to the conclusion that it has not been shown to the Court that the fact of sending the Curator into possession was a pretext for making that officer a defendant to an action having no direct connection with the Estate of which he has been sent into possession.

That Estate is composed of the machinery put up on " Mon Rocher " and leased for a certain number of years to de Chazal. The latter complains that it is defective in many respects, could never work well and that the German Company has not executed their part of the Contract and has caused him thereby great prejudice and he asks for a decree annulling the contract and condemning the company to damages as a consequence of the defective state of the machinery. We consider that no action could have a more direct connection with the machinery composing the personal Estate of the company in this Colony than the action entered by the plaintiff for the annulment of the

contract of hiring of that very machinery and that the Curator can only be entitled, on good cause being shown, as provided in the first paragraph of Article 7 already mentioned, to ask the Judge in Chambers, if he is advised so to do, to give him reasonable time to obtain special instructions from the absent company.

Costs to be costs in the cause.

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## SUPREME COURT

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APPEAL IN REVENUE CASES—RIGHT OF APPEAL  
GIVEN BY ORD. 23 OF 1888, ART. 104—  
ORD. 28 OF 1866—ART. 81 REPEALED.

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*Art. 81 of Ord. 28 of 1866 (Distillery Law) which enacted that the judgments of a District Magistrate in all cases in which the amount of the penalty and value of the property confiscated did not together exceed £ 200 should be final—has been implicitly repealed by Ord. 23 of 1888, Art. 104, which gives a right of appeal when the fine to be paid exceeds Rs 100 or the imprisonment imposed exceeds one month.*

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LIMETIM and KINCHOR,— Appellants.

and

THE QUEEN,—Respondent.

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Before

His Honor Sir EUGÈNE JULES LECLÉZIO, Kt.,  
—Chief Judge.

and

The Honble DIDIER ST. AMAND, Acting  
Puisne Judge.

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