

of the 19th. September, 1969.

JOINT COURT OF THE NEW HEBRIDES.

PUBLIC HEARING on the 19th. September, 1969.

THE JOINT COURT OF THE NEW HEBRIDES sitting at the Courthouse, VILA and composed of :

Georges GUESDON, French Judge, President,  
James P. TRALNOR, British Judge,

assisted by Mr. E. BUTERI, Registrar

delivered the following Judgment :-

J U D G M E N T.B E T W E E N :

Mr. Jacques NATUREL, Planter, at present residing at NOUMEA, New Caledonia and the Society NATUREL FRERES, represented by their Manager residing at his Offices.

## APPLICANTS,

for the rectification of Land Title No. 458 relating to L'ILE AISSE by the substitution of them to the SOCIETE FRANCAISE DES NOUVELLES-HEBRIDES declared to be the owner by an order of registration of the said property and to the Consorts PETERSON-STUART inscribed on the Title as Assignees of the SOCIETE FRANCAISE DES NOUVELLES-HEBRIDES,

## PLAINTIFFS

represented by Mr. LEDER, Counsel  
of the Court of Appeal at NOUMEA.

OF THE ONE PART,

A N D :

1. Mrs. Gabrielle NICOLAS, widow of Paul PETERSON-STUART, Plantation Manageress, residing at SANTO,
2. Mr. Raymond COULON, residing at SANTO,
3. Mrs. Rose-Marie PETERSON-STUART, wife of Emile PONTET, residing at LAVERGHE (Lot & Garonne) having as her Attorney Mrs. Paul PETERSON-STUART, widow, residing at SANTO,
4. Mr. Maxime Robert Elie COULON, residing at ORSONVILLE (Seine & Oise) having as his Attorney Mrs. Paul PETERSON-STUART, widow, residing at SANTO,
5. Mr. Robert Denis COULON, residing at SANTO,
6. Mrs. Noëlle Marie Odette PETERSON-STUART, Typist, wife of Georges CRON-STEADT, residing at SANTO,
7. Mr. Robert Paul Roger PETERSON-STUART, Culture Employee, residing at SANTO.

Summoned by Verdon Germain, Bailiff at SANTO on the 9th. October, 1968.

8. Miss Simone PETERSON-STUART, Business Employee, residing at NOUMEA,
9. Miss France PETERSON-STUART, Business Employee, residing at NOUMEA.

Summoned by PENE Marcel, Bailiff of the Courts at NOUMEA on the 10th. October, 1968.

10. Mr. Camille Raymond COULON, employed at the Messageries Automobiles, residing at NOUMEA.

Summoned by PENE Marcel, Bailiff at the Courts of NOUMEA on the 6th. November, 1968.

11. The Director of the SOCIETE FRANCAISE DES NOUVELLES-HEBRIDES, residing at his Offices at VILA,

Summoned by MAURAIT René, Bailiff at VILA on the 22nd. October, 1968.

## DEFENDANTS,

represented by Mr. Armand de PREVILLE,  
Counsel at the JOINT COURT OF THE NEW HEBRIDES.

OF THE OTHER PART.

Having heard what was offered at the hearing of the 3rd. December, 1968, and having considered the pleadings of Counsels Mr. LEDER and Mr. Armand de PREVILLE :

PURSUANT to a decision of the Court of Appeal of NOUMEA dated the 30th.

July 1968 Jacques NATUREL and the SOCIETE NATUREL FRERES have cited the Director of the SOCIETE FRANCAISE DES NOUVELLES-HEBRIDES (hereinafter called S.F.N.H.) of the one part, and the Consorts PETERSON-STUART hereabove more fully described, of the other part, to have the register of land titles in the New Hebrides amended in so far as it concerns the property ILE AISSE situated at SANTO and the object of a registered title No. 458, established in the name of the S.F.N.H. by an order of registration of the ILE AISSE in favour of the S.F.N.H., made, it is alleged, in ignorance of the rights in the property of the SOCIETE NATUREL FRERES who had acquired the ILE AISSE before the order for registration by a transfer on sale dated the 23rd. March, 1929. The plaintiffs claim to be entitled as owners to request the substitution of the SOCIETE NATUREL FRERES to the S.F.N.H. and those who claim to be their successors in title by reason of an instrument of sale dated the 3rd. August, 1966, and who are entered on the title as the Consorts PETERSON-STUART. They say that by reason of the difficulties of communication at the particular time the SOCIETE NATUREL FRERES could not bring to the attention of the Joint Court the instrument of purchase of the 23rd. March, 1929 before it ordered registration, and the SOCIETE NATUREL FRERES finds that it must now fulfill the conditions imposed, both by the decision of the Joint Court of the 27th. September, 1927 and Article 27 (1) of the Anglo-French Protocol of the 6th. August, 1914, to have established its rights in the property which were unrecognised for the reason referred to. They state their claim to the property L'ILE AISSE to be well founded on the basis of French law, applicable in this case, and unanswerable on two grounds : on the one hand, that the property was validly sold on the 23rd. March, 1929 to the SOCIETE NATUREL FRERES by the SOCIETE ROBERT STUART & CIE. which, according to its constitution of the 24th. March, 1927, had received it as capital from ROBERT PETERSON-STUART. Robert PETERSON-STUART had acquired the property himself on the 31st. January, 1926 from the COMPAGNIE FRANCAISE IMMOBILIERE DES NOUVELLES-HEBRIDES, at the time the exclusive Agent for land matters of the S.F.N.H. On the other hand, that the sale of the 23rd. March, 1929 having been confirmed by a judgment of the Cour d'Appel of NOUMEA of the 19th. July, 1966 in a matter between the parties is now final on the principle that the matter being res judicata, all further discussion as to its validity is barred.

S.F.N.H. appeared in the case, but left to the matter to the decision of the Court, pointing out that the sale by it to the Consorts PETERSON - STUART-COULON of the 3rd. August, 1966 was nothing more than the fulfilment of an obligation to which it considered itself bound as the Vendor in 1926 of L'ILE AISSE to Robert STUART, to enable his heirs, the Consorts PETERSON-STUART-COULON to exercise the rights conferred in 1926 on their predecessor in title or fulfill the obligations which he had previously contracted with regard to L'ILE AISSE.

The Consorts PETERSON-STUART-COULON have pleaded and argued, that if they did not intend to discuss the appropriateness of a possible application of Article 27 (C) of the Protocol of the 6th. August, 1914, they did nevertheless ask the Court to say that the Plaintiffs never complied with the conditions necessary to obtain their substitution to S.F.N.H. in the proceedings for registration of L'ILE AISSE and contested, straightaway, the existence and, as a result, the regularity of the alleged sale of L'ILE AISSE on the 23rd. March, 1929 by the SOCIETE ROBERT STUART & CIE. to the SOCIETE NATUREL FRERES which is fundamental to the claim for rectification. According to the Consorts PETERSON-STUART-COULON the proof of the existence and the regularity of the said sale ought to be established by the Plaintiffs other than by the production of the decisions of the Cour d'Appel of NOUMEA of the 19th. July, 1966 and 30th. July, 1968 which would not have the authority of a res judicaalso far as the validity of the alleged sale is concerned, the grounds of the decisions in this respect being no more than a recapitulation of the outline of the facts as they seemed to appear from the documents on the file, being in no way connected with the operative portion of the Judgments.

They further set out that if on the 23rd. March, 1929, after the death of Robert PETERSON-STUART, the principal partner with the SOCIETE ROBERT STUART & CIE. which he had formed with Messrs. BONNEAU, DEBECHADE, CHAFUIS and WRIGHT on the 24th. March, 1927 to exploit L'ILE AISSE brought into the Société by him, the four surviving partners sold L'ILE AISSE to the SOCIETE NATUREL FRERES, they made the sale the subject to an undertaking whereby the said four vendors undertook to obtain the ratification

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of the sale by the fifth partner, that is to say, the heirs of Robert PETERSON-STUART - of the ten recognised NATUREL children, only one was adult - who received as inheritance from the latter the 96% of the capital created at the formation of the Société which belonged to him; but this sale would be ineffective without being ratified by the heirs of ROBERT PETERSON-STUART, at least without being lawfully ratified.

The Consorts PETERSON-STUART-COULON have contested the validity of the documents produced at the hearing by the Plaintiffs to establish this ratification, contending that they are simply photostats and that no signature appears on the photostats of the Minutes of the General Meetings of the SOCIÉTÉ ROBERT STUART & CIE. (containing, according to the Plaintiffs, the proof of the disputed ratification) in particular on the Minutes of the General Meeting of the 14th. February, 1930 (according to which a Monsieur Jean NOELLAT, purporting to represent all the Stuart heirs, both major and minor, gave his approval to the sale of the 23rd. March, 1929) or on the Minutes of the 2nd. May, 1930 (at which the same Jean NOELLAT approved the presentation of the reports and, thus the grant to the successors of Robert PETERSON-STUART of the nett capital belonging to him, and voted with the other surviving shareholders for the dissolution of the Société).

This lack of signature gives rise to the conjecture, in the absence of the production of the originals, that nothing was established but simple drafts for consideration. They plead, in addition, that the production of the originals (promised at the hearing by Counsel for the Plaintiffs) would show their error in that :

1. Jean NOELLAT had not the right to represent the heirs of Robert PETERSON-STUART at the General Meeting of the SOCIÉTÉ ROBERT PETERSON-STUART & CIE. not being an heir of Robert PETERSON-STUART, because Article 16 of the Articles of Association provided that the heirs of each deceased partner should be represented by one of the heirs appointed by all ;
2. No proof was produced that he had properly the power of guardian of the minor STUART heirs or of those other heirs of STUART who had then attained majority ;
3. None of the formalities required by French Law for the sale of immovables of which minors are the owners or co-owners had been fulfilled.

After the lodgement of original documents by the Plaintiffs in the Registry of the Joint Court when the matter was en délibéré (particularly of the signed Minutes of the General Meeting of the 14th. February and the 2nd. May, 1930) the Consorts PETERSON-STUART-COULON have by a note "en délibéré" of the 14th. April, 1969 submitted that it results from the documents produced :

- 1) that the partner CHAPUIS had been represented at the said General Meetings by a so-called Attorney the authority of whom was not established, although the Articles of Association do not provide for the possibility of a partner being represented at General Meetings by a third party, a stranger to the Société ;
- 2) that the power given by the guardian of the STUART minors to Jean NOELLAT was a general power, whereas a special power would have been necessary to decide the sale of L'ILE AISSE and the guardian could not by this authorisation have completely shifted from herself to a third party the duties of guardian to which she had been appointed in tuitue personae ;
- 3) that the approval of accounts by Messrs. Paul and Roger PETERSON-STUART and Madame Rose PETERSON-STUART, heirs of Robert PETERSON-STUART, in an account book which made no reference to the sale of L'ILE AISSE, could not ratify this sale ;
- 4) that the ratification in 1932 of the sale by a Mr. SCHMIDT in the name of Mrs. Annette PETERSON-STUART, wife of COULON, one of the heirs of Robert PETERSON-STUART, was ineffective because, on the one hand, the power given by this lady was inadequate as it was general, whereas it should have been special by reason of the importance of the transaction that constituted the sale of L'ILE AISSE and for the reason, on the other hand, that this power given in 1932 would certainly not effect the ratification of an irregular sale made before it was given ;
- 5) that none of the alleged ratifications or authorisations set out the conditions of the sale that was ratified and were therefore inadequate ;
- 6) that apart from the absence of the formalities prescribed for the sale

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of the property of minors, no authorisation to deal with the estate had been sought, contrary to the provisions of Article 461 of the Code Civil.

By the "conclusions en réplique" of the 19th. April, 1969 the Plaintiffs have maintained that the decision of the Cour d'Appel of NOUMEA of the 19th. July, 1966 had ~~the~~ authority of res judicata since it was given in a matter between the same parties ; and that the sale of L'ILE ALASSE was not a sale of property of minors since L'ILE ALASSE, which had been acquired by the SOCIETE NATUREL, was the property of the SOCIETE STUART and not of Mr. Robert PETERSON-STUART.

The parties have formally opposed the re-opening of the hearing after the filing of the original documents "au cours de délibéré" and Counsel for the PLAINTIFFS has asked by a letter of the 19th. June, 1969 that the Court decide on the documents the points made in the notes "en délibéré" of 14th. April, 1969 and the "conclusion en réplique" of 19th. April, 1969.

It is not necessary for the Court to pronounce on the conformity of this procedure with the rules which govern it unless there is a necessity to examine the new points raised in the said notes "en délibéré" and "conclusions en réplique" ;

ON THE ADMISSIBILITY OF PLAINTIFF'S CLAIM :

Jacques NATUREL and the SOCIETE NATUREL FRERES ask the Court to hold :

1. that the validity of the sale of the 23rd. March, 1929 has been finally decided by the Cour d'Appel de NOUMEA ;
2. that the sale was concluded, being perfect and final, the contract of sale of the 23rd. March, 1929 should be validated ; and
3. that the Register of Land Titles in the New Hebrides be rectified so that the transfer on sale of the 23rd. March, 1929 be entered in the record books of the Land Registry ;  
the two first heads of claim in fact constituting only a support for the third, the real purpose of the proceedings.

Having set out in Article 26 (5) the inalienability of a title to property established as a result of an order for registration, and declared irreceivable, any action tending to establish a right in the property not raised in the course of the proceedings for registration, the Anglo-French Protocol of 6th. August, 1914 relative to the New Hebrides makes, nevertheless, to this imperative rule the exception, also an imperative rule, set out in paragraph C of Article 27 (1) which Article reads :

"From the date when the present Convention comes into operation, no sale or grant of an unregistered immovable shall be valid except under the following conditions :

(A) if the vendor or grantor has not made an application for registration to the Joint Court, the purchaser or grantee shall, within six months from the date of the sale or transfer, make an application to the Court for this purpose. The Court shall decide on this application in the manner and according to the principles laid down in Article 28, and the Registrar of Land Titles shall in all proper cases, after the transcription into the register of the decision of the Court, deliver to the purchaser or grantee an extract from the register constituting a certificate of title.

(B) if the vendor or grantor has at the time of the sale or grant already made application for registration to the Joint Court, the Court shall, on the application of the purchaser or grantee, and if the sale or grant in his favour justifies such a course, substitute him for the vendor or grantor in the procedure, and the Court shall, in all proper cases, order the registration in the name of the purchaser or grantee.

(C) if the Court shall have directed registration before receipt of the application of the purchaser or grantee it shall, on the fulfilment of the necessary conditions and on the application of the purchaser or grantee, direct the necessary rectification of the register. These rectifications shall be inscribed by the Registrar of Land Titles on the register in the margin of the decision of the Court in virtue of which the registration has been made.

An extract of the register thus rectified shall, be delivered to the purchaser or grantee".

These provisions were explicitly interpreted by a ruling of the Court on the 27th. September, 1927 and published in the Official Gazette of the Condominium as follows:

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"Whereas the validity of all sales and grants made subsequent to the coming into operation of the Convention of 1914, are subject to the conditions laid down in Article 27, paragraph 1, of the said Convention, and the interpretation thereof appears to present difficulties to the parties interested, and the then co-sovereign powers have formally entrusted the Court with the interpretation of the Convention . . . . .

"And whereas Article 27 paragraph 1 (C) giving the Court the power to direct rectification in the Land Register, when it shall have already made a ruling in regard to such registration, before having cognisance of the purchaser's or grantee's application, appears to concern the case where a sale or grant has taken place outside VILA or at a place or time making it impossible for the interested party to inform the Court thereof, before judgment has been pronounced in regard to it, and in order to acquit the party from a charge of negligence and spare him the costs of the fees attendant on the endorsement of the title lodged by the original owner :

O R D E R S :

ARTICLE 1. . . . . .

ARTICLE 2. . . . . .

ARTICLE 3 : The rectification provided for in Article 27, paragraph 1 (C) of the Convention, shall not be directed by the Court at the request of the purchaser or grantee of the property in question except where it can be shown that the sale or grant took place at the date prior to that on which judgment was pronounced and at a time and place which, in the opinion of the Court, rendered it impossible for the deed of sale or cession to be brought to the notice of the Court prior to such pronouncement".

The Plaintiffs concluded in support of their claim in the following terms

"That in the circumstances and at the time under consideration travelling was extremely difficult in the New Hebrides and it was then perfectly normal for the Court to be unaware in a reasonable time of dealings transacted, although COMPTOIRS FRANCAIS DES NOUVELLES-HEBRIDES ON THE 24th. September, 1951 debited the SOCIETE DES PLANTATIONS AISSE at Santo with the costs of registration of the property AISSE, 152.385 francs".

But the Plaintiffs have not, neither in submission or pleadings established any precise facts which neither have prevented the SOCIETE NATUREL FRES from establishing their ownership before the judgment of registration was pronounced ; they limited themselves in this respect to alleging, in the most general terms, the difficulties that existed "in the circumstances and at the time" without furnishing any proof of these difficulties, although the ruling referred to imposes on them the obligation of establishing the impossibility to act in a reasonable time. Judgments of the Joint Court are also to this effect. A judgment of the 28th. June, 1929 has decided that: "The conditions of Article 27 (1) (C) are only applicable where the transfer has been made in conditions of place, time or communications which make it impossible for the interested parties to bring it to the notice of the Court before it gives judgment, and this to save the applicant who has not been negligent the costs and trouble of a transfer made necessary by matters outside his control. (GUBBAY - S.F.N.H. a case dismissed, where an application for registration lodged the 17th. February, 1913 was published and the time for filing caveats was to run from the 16th. September, 1914 (subsequently fixed to run from the 15th. August, 1927 to 3rd. May, 1928) and where judgment was pronounced on the 31st. August, 1928 although the transfer took place in the month of October, 1926 and was made, as in the present case, in New Caledonia).

The bare, unsupported allegations of the Plaintiffs that travelling at the time was extremely difficult in the New Hebrides without being more precise, is insufficient to establish the impossibility of the SOCIETE NATUREL informing the Joint Court of its position as owner of the property, ILE AISSE between the time of its alleged acquisition, the 23rd. March, 1929 and the date of the judgment of registration, the 2nd. March, 1951 i.e. 22 years, as the island of EPI, the seat of the SOCIETE NATUREL FRERES, according to the transfer of the 23rd. March, 1929, is one of the nearest islands to EFATE, the seat of the Joint Court. Moreover, it is within the Court's knowledge that normal shipping and postal services have always been available since 1929 (except for the time of the American occupation during the war) between the various islands of the Archipelago and between

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EFATE and NEW CALEDONIA, where the contract was made on the 23rd. March, 1929. In addition, the requirements for registration of title for the island of EPI throughout the years 1934 to 1939 necessitated many journeys by the surveyors of the Joint Court between Efate and Epi of which the SOCIETE NATUREL FRERES (which was, indeed, at the time, engaged in the procedure for registration of title of different properties belonging to it on the island of Epi) might have availed, does not permit one to suppose that this Société did not have means of liaison with Efate during those 22 years.

But, moreover, the provisions of Article 27 (1) (C) of the Protocol of the 6th. August, 1914, must be strictly interpreted as they are exceptions to the mandatory character of the inviolability of a registered title to and the identity of the owner of the property at the date of registration. These provisions, and those of Article 27 (1) (B) only contemplate the case of a transfer of a property made by its then owner after the lodgment by that owner of an application for an order of registration of that property. This is not the case here as the SOCIETE NATUREL FRERES were not the assignees of S.F.N.H. and S.F.N.H. lodged its application for registration in its own name of L'ILE AISSE on the 2nd. May, 1927, that is after the sale by it on the 31st. January, 1926 to R. PETERSON-STUART, the alleged mediate predecessor in title of the SOCIETE NATUREL FRERES. SOCIETE NATUREL could not have had at the time greater rights with regard to S.F.N.H. than R. PETERSON-STUART would have had; he would not be able, so far as S.F.N.H. was concerned, to plead the provisions of the Article since his acquisition of L'ILE AISSE was prior to the application for registration of the isle. He would not have been able to establish his ownership, supposing he were still owner, except by complying with the Land Registration Rules of Procedure, that is to say by filing a caveat to S.F.N.H.'s application within the year of the publication of the application for registration, the time fixed for such caveats by Article 26 (2) (3) of the Protocol of the 6th. August, 1914 with the loss of right to be heard in default. The publication in question operated from 1st. November, 1932 according to a decision of the Joint Court of the 18th. October, 1932 published in the Condominium Gazette of the month of October, 1932, page 3. Neither R. PETERSON-STUART nor any of his successors in title ever filed a caveat.

The provisions of Article 27 (1) are not intended to relieve from the restriction thus incurred negligent owners whose root of title lies, as in the present case, in a sale by the original applicant for registration made prior to the filing of an application. But, in addition, since not even S.F.N.H. itself had applied for registration of L'ILE AISSE, the inaction of its successors in title must have resulted in rendering void the right of ownership put forward to-day by the SOCIETE NATUREL FRERES by reason of the provisions, held to be mandatory by judgments of the Joint Court of Article 27 (1) (A) of the Protocol, as no one who was entitled to do so had filed an application for registration within six months from the date of transfer or within the six months from the date fixed by the decision referred to of the Joint Court the 15th. August, 1927, as the date from which time, as prescribed by Article 27 of the Protocol, had recommenced to run after the suspension of the running of time from 1914 to 1927.

As one of the legal requirements essential to found an application for rectification of title is missing, there is no necessity to deal with the arguments raised in support of the interest alleged to have been acquired by the SOCIETE NATUREL FRERES before the order of registration.

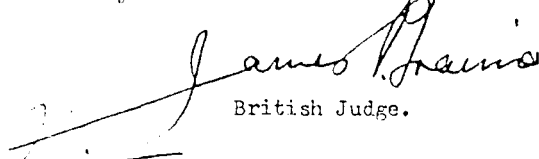
FOR THESE REASONS :

THE COURT :

Dismisses the claim of Jacques NATUREL and the SOCIETE NATUREL FRERES for the rectification of the registered title No.458 concerning L'ILE AISSE, with costs.

GIVEN at VILA, the day, month and year hereinbefore written.

  
French Judge.

  
British Judge.

Registrar.