

# CASES

DETERMINED BY THE

## SUPREME COURT OF FIJI.

[CIVIL JURISDICTION.]

ROBERTSON *v.* HENNINGS.

1876  
Jan. 31.

*Res Judicata*—Old Supreme Court of Fiji—Preamble to Deed of Cession and to Charter of Colony.

In an action to recover various sums of money and for damages, it was pleaded (*inter alia*) that the same causes of action had been already adjudicated upon by the Supreme Court of Fiji established at Levuka before the Deed of Cession.

*Held*, firstly, that upon the true construction of the "Preamble to the Instrument of Cession" and of the "Preamble of Charter for the erection of the Fiji Islands into a British Colony," the present Supreme Court of Fiji was not the successor to, nor a continuing Court of, the Supreme Court of Fiji established at Levuka before the Deed of Cession. Secondly, that the defendant's plea, not really amounting to one of *res judicata*, was no bar to the present action.

*Mr. Solomon* for the plaintiff.

*Mr. Forwood* for the defendants.

The facts and arguments sufficiently appear from the judgment.

SIR WILLIAM HACKETT, C.J. This action is brought to recover various sums of money alleged to be due by defendants to plaintiff for matters of various kinds, and for damages to the large amount of 1,500*l.*, alleged to

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have been sustained: the whole amounting in the aggregate to upwards of 2,100*l.* Up to this stage of the case—I have only heard it so far as two of the defences be concerned—the defendants came before me upon these, which are as follows:—

That the plaintiff heretofore in the Supreme Court of Fiji at Levuka, being then and there a Court of competent jurisdiction in that behalf, impleaded the now defendants for the same causes of action as are in the particulars of the plaintiff's claims herein alleged, and such proceedings were thereupon had upon such impleading that the plaintiffs afterwards by the judgment of that Court recovered against the defendants for damages and costs the sum of 235*l.* 2*s.* 6*d.* or thereabouts, and issued execution upon the judgment against the defendants to recover the same according to the cause and practice of the said Court.

The question is whether this is a good defence or not, and the defendant relied, through Mr. Forwood his counsel, upon the former judgment as if it had been obtained in this Court. He urged that this Court was a successor to the old Supreme Court of Fiji, and was therefore bound to take cognisance of all its judgments. The law with respect to judgments is clearly laid down in the English courts, and is thus described in Addison's *Law of Contracts*.

If there be a breach of contract by one against another, and judgment be recovered in a Court of Record, the judgment is a bar to the original cause of action, which is changed into the matter of record, and the inferior remedy is merged into the superior, provided the cause of action in the two suits are identical. If judgment is given for the defendant, that judgment operates as an estoppel against the plaintiff, and precludes him from maintaining a second action in the same cause. A judgment therefore in the county court is a bar to an action on the same subject matter in any other court.

It is therefore unnecessary to refer to cases cited, as they are indisputable that a judgment obtained is a bar, in the same country, to any other action on the same

cause. I have therefore to consider Mr. Forwood's argument that the Court is a continuing one, and in order to do this it is necessary to refer to the history of the Cession, and as to how it was made.

Upon referring to Parliamentary papers I find that several telegrams passed between the time that the offer of the Cession was made and the departure of Sir Hercules Robinson for Fiji. I do not find any evidence that Her Majesty's Government was treating with Fiji as with a Government, but that, on the contrary, they were treating simply as with various chiefs. Sir Hercules Robinson was thus instructed on the 9th March, that the rights of the chiefs should be respected, &c. And then Sir Hercules Robinson inquires, what is to follow in case of the chiefs declining to make an unconditional offer. Not the Government but the chiefs. It must therefore be inferred that Her Majesty's Government was treating not with a Government, but with independent chiefs; and it is expressly stated that they thought it necessary that the consent of Maafu and Tui Cakau should be obtained, so that it is evident that although Cakobau was a great chief he was not considered as King. Looking at the Articles of Cession, I do not see that it was made as if from the King, but from the chief Cakobau and other great chiefs of the said islands. Now what does the Preamble set out?

Preamble to instrument of Cession :—

Whereas divers of the subjects of Her Majesty the Queen of Great Britain and Ireland have from time to time settled in the Fijian group of islands and have acquired property or certain pecuniary interests therein: And whereas the Fijian chief Cakobau, styled Tui Viti and Vunivalu, and other high chiefs of the said islands are desirous of securing the promotion of civilisation and Christianity and of increasing trade and industry within the said islands: And whereas it is obviously desirable in the interests as well

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of the native as of the white population that order and good government should be established therein: And whereas the said Tui Viti and other high chiefs, &c., &c.

We here see that cession was not made of a Kingdom, but of a group of islands called the Fijian Islands or Fiji. I find therefore here, instead of this being a continuance of a Kingdom, that in the Deed of Cession which was drawn up, read, and assented to by all the high chiefs of Fiji, the laws and institutions of the Kingdom were carefully ignored and Fiji treated as a group of islands only. Mr. Solomon, in his argument, read a document which supports my views. — It was the Preamble of the Charter for the erection of the Fiji Islands into a certain Colony, and states:—

Whereas the chiefs and people of certain islands in the South Pacific Ocean commonly known as the Fiji Islands, and hereinafter more particularly described, have ceded to Us the said islands and the sovereignty thereof which We have been graciously pleased to accept: And whereas it is expedient to make provision for the better government of the said islands, &c., &c.

Now we find this document carefully drawn up by Her Majesty's advisers, which treats this not as a cession of a Kingdom but of various islands. I have therefore come to the conclusion, from all these documents, that this Court has nothing whatever to do with the late Court, that it is not, as was sought to be argued, its heir, nor a merely continuing Court. So much for the 7th plea. The 8th is different,—“And that the said plaintiff heretofore in the last-mentioned Court, being then and there a court of competent jurisdiction as aforesaid, impleaded the defendants as aforesaid, and such judgment was thereupon afterwards satisfied by the said defendants by payment save and except the sum of 4*l.* 5*s.* 6*d.* parcel thereof, which sum the said defendants now bring into Court.” In support of this, the counsel

for the defendants relied principally upon the case of *Barber v. Lamb*. (1) The contention therein was to the effect that judgment recovered in an action by the plaintiff against the defendant in a Consular court, and the payment of the sum so recovered, should be held as a good plea in bar to a subsequent action in England for same cause of action; and it was argued for the plaintiff that this was not a good plea, as there was no merger of the action. Counsel also referred to the case of *The Bank of Australasia v. Harding* (2); and in the judgment given by Erle, C.J., Byles, J., and Keating, J., it was held that the plea was a good one, as in payment and satisfaction of judgment.

If the plea of the defendants in this case had been precisely similar to the case of *Barber v. Lamb* I should have been reluctant to have dissented from the judgment of such learned judges, but I confess this does not seem to me to rest on the same grounds. In that case the defendant says, "I have paid all that is asked of me already, and you have no right to prosecute me by bringing this action again." But I confess I do not think the defendants in this case have done this. - In *Barber v. Lamb* the defendant says, "I have satisfied the first action perfectly, and therefore you have no right to bring action again." But here the defendants do not say so. They say, in effect, "we have paid part of the claim, here is the balance."

Again, reading from Addison on Contracts, his Lordship went on, "Judgments in foreign courts are not upon the same footing as judgments in our own Courts of Record. They do not bar or stay an action *ex*

(1) 29 L. J. (C. P.) 234.

(2) 19 L. J. (C. P.) 345.

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*contractu.*" On these grounds therefore I do not think that the plaintiff's action is barred by the pleas referred to.

*Demurrer overruled.*

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 Aug. 17.

[IN THE VICE-ADMIRALTY COURT.]  
 THE DUKE OF EDINBURGH.

*Action "in rem."*—*Jurisdiction*—*Order in Council, 28th November, 1876*—*Statute 26 Vict. c. 24, ss. 2, 10, 11*—*Statute 24 Vict. c. 10, s. 6*—*Supreme Court Ordinance 1875*—*Damage done by ship*—*Breach of duty by master of ship*—*Costs.*

In an action *in rem.* brought in the Vice-Admiralty Court of Fiji for damages for breach of contract or duty on the part of master and owners of ship, involving injury to cargo.

*Held,* that the Court had no jurisdiction to entertain the petition, the case not coming within s. 10 of the Vice-Admiralty Court Act, 1863, and the present proceedings could not now be transferred to the Supreme Court of Fiji as it had no Admiralty jurisdiction conferred upon it by the Supreme Court Ordinance 1875.\*

As no objection to jurisdiction had been taken on the pleadings, the question of costs was especially dealt with.

*The Attorney-General* (Mr. Garrick) and *Mr. Truscott* for the petitioner.

*Mr. Solomon* for the respondents.

At the conclusion of the arguments of counsel, which, together with the facts, sufficiently appear from the judgment, the Chief Justice took time to consider his decision, and on 25th August gave judgment as follows:—

J. GORRIE, C.J. In this case William Hoskins Drew of Kumi, in the island of Vitilevu, owner of cargo (live stock) laden on *The Duke of Edinburgh*, under charter

\* See now the *Colonial Courts of Admiralty Act, 1890.*