

1886
June 15.

[APPELLATE JURISDICTION.]

AGENT-GENERAL OF IMMIGRATION v. CHAMBERLAIN BROTHERS.

Immigration Debt—Penalty by way of Interest—Polynesian Immigration Ordinance 1877, s. 97.

As the penalty imposed by s. 97 of the Polynesian Immigration Ordinance 1877 does not accrue until after the defendant has failed to pay an immigration debt for three months, such penalty or interest cannot be calculated on the amount of such indebtedness during the first three months.

This was a case stated by the Chief Police Magistrate for the Supreme Court in which the point of law raised was whether the penalty imposed by s. 97 of the Polynesian Immigration Ordinance 1877 at the rate of ten per cent. per annum on the amount of all moneys due to the Immigration Department by employers of immigrants was to be computed from the time when the moneys were due and payable or after the expiration of three months from that day.

The following was the case stated :—

In the matter of an appeal from the determination of the undersigned, Her Majesty's Chief Police Magistrate for Fiji, in a proceeding before me at the Suva Police Court between the Agent-General of Immigration, complainant, and Chamberlain Brothers, of Naitoba, defendants.

The information alleged that Messrs. Chamberlain Brothers did, on the 9th day of April, 1886, at Suva, make default and neglect to pay the sum of 258*l.* due on account of return-passage money and depot fees of certain Polynesian immigrants indentured to them, and interest 10*l.* 8*s.* to the said date, as per account attached.

The defendants pleaded not indebted for 32*l.* 10*s.* of the passage-money, alleging that that amount had been charged them in excess of the amount actually expended by complainants on defendants' account, and all interest for the first three months and three weeks.

After hearing the parties and the evidence adduced by them, I did, on the 2nd day of June, 1886, order the defendants to pay to the complainant the sum of 255*l.* for return-passage money and depot fees, and I further ordered the defendants to pay to the complainant a penalty at the rate of 10 per cent. per annum on 7*l.* 10*s.* from October 31, 1885, to June 2nd, 1886, amounting to 8*s.* 9*d.*, and on 247*l.* 10*s.*, from February 17th, 1886, to June 2nd, 1886, amounting to 7*l.* 3*s.* 9*d.*, and also to pay to the complainant the sum of 2*l.* 2*s.* as solicitor's costs.

The complainant, alleging that he was aggrieved by the said determination as being erroneous in point of law, did within seven days apply to me for a case stated under the provisions of Ordinance XVI. of 1876, and the said complainant having complied with the provisions of such Ordinance, I state and sign the following case.

It was proved on the hearing, that on July 31st, 1885, one Polynesian who had been-indentured to the defendants was sent home per *Glencairn*, and that on November 17, 1885, thirty-three Polynesians who had also been indentured to the defendants were sent home, per *Meg Merrilies*, to the New Hebrides, making in all thirty-four men. Passage-moneys on these men were charged at the rate of 7*l.* per head, and the depot fees at the rate of 10*s.* per head. To this claim was added an amount of 10*l.* 6*s.* 9*d.* charged as interest at the rate of 10 per cent. per annum on the passage-moneys per *Glencairn* and *Meg Merrilies*, and depot fees calculated from the date of the embarkation of the immigrants in question.

I determined that the defendant was liable to the amount of 7*l.* per head passage-money, that being the sum estimated by the Agent-General of Immigration in accordance with s. 38 of Ordinance XI. of 1877, and which was duly published in the *Royal Gazette*, No. 2, of January, 1885, and that he was also liable for depot fees at the rate of 10*s.* per head.

With regard to the interest (which is actually a statutory penalty inflicted on all sums due the department after the expiry of three months) allowed by s. 97 of Ordinance XI. of 1877, which has never been altered or repealed by any subsequent Ordinances, I held

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that the penalty could not be enforced until the expiry of the three months, and only commenced to be chargeable at the end of the three months, as non-payment within the three months' grace allowed by the Ordinance is not a breach of the Ordinance, and if there is no breach there can be no penalty.

I ordered the penalty to be enforced at the rate of 10 per cent. per annum on all moneys due over the three months.

The question for the opinion of the Court is whether my decision was erroneous in point of law.

HAMILTON HUNTER, C.P.M.

Mr. Winter, for the appellant, contended that the non-payment of the moneys on the day when they were payable was a breach of the Ordinance; that the penalty was a punishment for persisting in breaking the Ordinance for three months; that the Ordinance did not expressly state when the penalty was to be computed from, and that consequently it should be computed from the day when the moneys became payable; that the three months could not be looked upon as a period of grace, because twenty-one days' grace was already given by a later Ordinance.*

FIELDING CLARKE, Acting C.J. I have no doubt as to my decision in this matter. I consider that as no penalty could attach to a defendant until after he had failed to pay for three months, that the penalty must be computed from the expiration of the three months. As the penalty did not accrue till the end of the three months I consider that nothing more than the principal was due at such date, and that as the penalty was to be on the amount due, and only the principal was due at such date, the penalty could only be charged on such amount, which was the principal sum only. No man can be reasoned into a penalty. I admit that the words

* VII. of 1885, s. 1.

of the Ordinance* are not so clear as they might be, but as they do not clearly show that the penalty was to be computed from the time that the money was payable, I must hold that it was not. A penalty to be enforceable must be clearly expressed on the face of the Ordinance. I therefore hold that the Chief Police Magistrate was right in computing the penalty after the expiration of the three months.

Appeal dismissed.

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Sept. 25.

MANAMA AND OTHERS v. MCARTHUR AND COMPANY.

Western Pacific Order in Council, 1877: Art. 4 (6), 5, 6, 57, 58, 65, 121 (3), 145: Schedule, §§ 276, 280: Form 44—Treaty of Samoa of 28th August, 1879, §§ 4, 5—Pacific Islanders Protection Act, 1875, s. 6—"Foreigner"—Stats. 13 Eliz. c. 5; 27 Eliz. c. 1.

In an action for damages for trespass upon and for the recovery of possession of lands brought in the Deputy Commissioner's Court at Samoa by a native together with three others who were British subjects,

Held, on appeal to the Supreme Court of Fiji, firstly, that such an action would lie, and that although the Order in Council might not confer the actual power to enforce a decree for possession of land, even as between British subjects, the Court could nevertheless decide the right to its possession, leaving it to the successful party to enforce the order, if necessary, by any means open to him under the Order in Council or otherwise.

Secondly, that the defendants, having a permanent business establishment in Samoa, although not personally resident there, were "within the Pacific Islands," and, as such, were properly before the Court.

* The words of s. 97 of XI. of 1877, so far as they apply, are as follows: "Where any such moneys shall have been due by any person for any time exceeding three months after the day on which such moneys became due and payable such person shall be subject to a penalty at the rate of ten per centum per annum on the amount of all such moneys due by him to be paid and recovered."