

R. v. MORTLEMANS.

(HIGH COMMISSIONER'S COURT FOR THE WESTERN
PACIFIC.)

[Criminal Jurisdiction (Major, C.J.) April 4, 1909.]

Prisoner committed for trial under Pacific Order in Council, 1893, Art. 66—application for order for trial made to High Commissioner's Court for the Western Pacific—Foreign Jurisdiction Act, 1890, 53 and 54 Vict., c. 37, 6—whether High Commissioner's Court has jurisdiction.

Mortlemans was a seaman on board the schooner *Nuevo Tigre* which sailed from Callao on November 18, 1907. On the following day when the *Nuevo Tigre* was on the high seas (about 14 miles off the coast of Peru) Mortlemans disposed of the captain and the mate by forcing them to jump overboard after seriously injuring both of them with a chopper. He then assumed command of the schooner and persuaded the only remaining member of the crew, a seaman named Skerrit, to sail with him. On January 24, 1908 a schooner with Mortlemans and Skerrit aboard was wrecked on the reef at Apamma in the Gilbert Group (she had been re-painted while at sea but was eventually identified as the *Neuvo Tigre* from the name *Puelcho, Valparaiso* engraved on her steering wheel—the wheel of the *Nuevo Tigre* having been originally on a ship of that name) Mortlemans persuaded the supercargo of the Sydney trading schooner *Louise J. Kenney* that the wrecked schooner was his own and eventually the supercargo agreed to take Mortlemans and Skerrit as passengers to Tarawa. It was discovered en route for Tarawa that Mortlemans and Skerrit were planning to murder the Europeans aboard the *Louise J. Kenney* with the aid of the native crew and Mortlemans was placed in confinement. In this state he arrived at Tarawa where he was arrested and, as a result of subsequent enquiries establishing the identity of the wrecked schooner, was committed for trial under Art. 66 of the Pacific Order in Council, 1893 on a charge of piracy.

[**EDITORIAL NOTE.**—*Vide* Law Times of September 15, 1945, for an article on this case by Mr. Gilchrist Alexander. Also the same author's book "From the Middle Temple to the South Seas" for a graphic account of the trial.]

HELD.—The Supreme Court of Fiji is the only Court which can exercise jurisdiction over a prisoner committed for trial under Article 66 of the Pacific Order in Council, 1893.

Cases referred to :—

(1) *R. v. Nau Taunebo* [1895] 1 Fiji L.R.

(2) *Reg. v. Martell* [1897] 1 Fiji L.R.

The Acting Attorney-General, *Dr. Brough* and *G. G. Alexander*, for the Crown applied to the High Commissioner's Court for an order for trial and to fix a date of hearing.

H. M. Scott for the prisoner : The Court as at present constituted has no jurisdiction to hear the application. The only Court that has such jurisdiction is the Supreme Court of Fiji. Your Honour is indeed Chief

Justice of Fiji but in this Court your Honour is Chief Judicial Commissioner. The prisoner having been committed under Art. 66 of the Pacific Order in Council, s. 6 of the Foreign Jurisdiction Act, 1890, applies. This is made clear by Art. 15 of the Order in Council and was the subject of the judgment in *R. v. Nau Taunebo*.

The Acting Attorney-General, *Dr. Brough*, for the Crown contending that the application was properly made, quoted Arts. 12, 13 and 14 of the Pacific Order in Council, 1893. *G. G. Alexander*, also for the Crown, referred to *Reg. v. Martell*.

MAJOR, C.J.—The objection taken by counsel for the prisoner must prevail. The procedure appears to be quite clear: the Supreme Court of Fiji is the only Court that can exercise jurisdiction over the prisoner, as he has been committed under Art. 66 of the Pacific Order in Council. The application is refused.

(Mortlemans was later tried by the Supreme Court of Fiji, convicted, and sentenced to penal servitude for life).

TWITCHELL v. FLOYD AND OTHERS.

[Civil Jurisdiction (Major, C.J.) August 19, 1909.]

Construction of will endowing a Bishopric of Fiji—Bishop in Polynesia appointed—whether fund to be applied in building residence for Bishop in Polynesia—doctrine of cy près applicable—whether Charitable Uses Act, 1735, 9 Geo. 2, c. 36 applies to Fiji—whether Mortmain and Charitable Uses Act, 1891, 54 and 55 Vict., c. 37 applies.

John Campbell, who died in 1886, bequeathed a fund of £10,000 in trust to be applied "in and towards the founding and establishment and endowment of a Bishopric of Fiji, or otherwise for the support and advancement of the same when established". In 1908 a Bishop of the Church of England was consecrated and commissioned to exercise episcopal jurisdiction in an area which included Fiji. There was no Bishop of Fiji as such. It was sought to apply the accumulated income of the trust fund, towards the cost of erecting a residence within the Colony of Fiji for the Bishop of Polynesia.

HELD.—(1) The Bishop in Polynesia is not the Bishop of Fiji.

(2) The doctrine of *cy près* cannot be invoked in favour of applying a trust fund for "the founding and establishment and endowment of a Bishopric of Fiji" in erecting a house on unspecified land for the Bishop in Polynesia (otherwise if on land in Mortmain).

Obiter.—Mortmain and Charitable Uses Act, 1891, 54 and 55 Vict., c. 73 is not in force in Fiji: Charitable Uses Act, 1735, 9 Geo. 2, c. 36 is in force.

[**EDITORIAL NOTE.**—As to the application of the Mortmain Statutes *vide Jex v. McKinney* [1889] 14 App. Cas. 77. In the present judgment it is apparently assumed that both statutes are of general application and that their application in Fiji depends solely on date of enactment.]