

RAM GOVIND *v.* HARI SINGH.

[Civil Jurisdiction (Corrie, C.J.) December 22, 1937.]

*Distress for rent—distress in respect of two alleged tenancies—existence one tenancy not proved—excessive quantity of goods distrained—whether excess deemed to be levied in respect of unproved tenancy—Distress Act, 1689, 2 Will. & M. c. 5 s. 4—claim for double amount of excess.*

Ram Govind was tenant to Hari Singh of a piece of land comprising six acres more or less known as "Nakaulevu" at a yearly rental of £3. On April 17, 1937 a bailiff acting with Hari Singh's authority distrained goods belonging to Ram Govind, purporting to be in distress for two years rent up to June 30, 1937 for Nakaulevu (£6) and also four and a half year's rent amounting to £22 10s. od. in respect of another property comprising 18 acres and known as "Deuba No. 2". The distrained goods were sold at auction for £39 18s. 6d. and after the deduction of various expenses amounting in all to £11 16 od. the sum of 7s. 6d. was returned to Ram Govind from the proceeds of the sale. Ram Govind admitted the right to distrain for rent in respect of Nakaulevu but denied that he was tenant of "Deuba No. 2". He brought an action claiming to recover double the amount of the excessive distress under s. 4 of the Distress Act, 1689. The main issue of fact was the question as to the tenancy of "Deuba No. 2"; it was found that Hari Singh had failed to establish the existence of this tenancy.

**HELD.**—The value of the chattels sold in excess of the rent owing plus charges properly incurred must be held to have been made in respect of the claim for rent which was not established and double the amount of such excess is recoverable under the Distress Act, 1689, 2 Will & M. c. 5 s. 4.

*R. L. Munro*, for the plaintiff, cited the Statute of Marlborough, 1267, 52 Hen. 3, the Distress Act, 1689, 2 Will & M. c. 5 s. 4 and the Distress (Costs) Act, 1817, 57 Geo. 3, c. 93.

*R. A. Crompton*, for the defendant, submitted that the defendant had shewn that rent for "Deuba No. 2" was properly included in the distress and that the charges were not excessive.

**CORRIE, C.J.**—The Court holds that the burden of proof as to the existence of a tenancy of the 18 acre plot is upon the defendant, and that he has not discharged that burden.

With regard to the 6 acre plot, the Court finds that the sum of £6 was due for rent in arrear.

Hence the plaintiff was entitled to distrain and sell for that amount, and is entitled to the proper charges in respect of such distress and sale.

The Court is not satisfied that the employment of an assistant bailiff was necessary and therefore disallows that charge. As the amount to be raised by sale was £6 only, the auctioneer's fee is allowed at £1 1s. od. The charges properly incurred in respect of the seizure and sale are thus £6 7s. od. Hence the total amount for which the defendant was entitled to distrain and sell was £12 7s. od.

The Court holds that the sum of £39 18s. 6d. realized at the sale represents the fair value of the chattels sold.

It follows that the value of the chattels sold in excess was £27 11s. 6d., and such sale must be held to have been made in respect of the claim for rent of the 18 acre plot.

Hence under s. 4 of the Distress Act 1689, the plaintiff is entitled to recover double the amount of such excess, that is £55 3s. od. with costs.

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## NEVILLE v. NEVILLE.

[Appellate Jurisdiction (Corrie, C.J.) January 27, 1938.]

*Maintenance Orders (Facilities for Enforcement) Act, 1921 (N.Z.)—Destitute Persons Act, 1910 (N.Z.)—provisional orders for maintenance of wife and child made in N.Z.—orders confirmed by Magistrate in Fiji—conduct of wife equivalent to admission of adultery—whether admissible as against her—whether admissible as regards order for maintenance of child.*

John and Gladys Neville were married in 1925 and had one child born in 1927. In 1931 a deed of separation was drawn up but was never signed. At that time John Neville was an officer of H.M.C.S. *Pioneer* and lived aboard; Gladys Neville lived in Suva until September 17, 1935 when she went to New Zealand with the child. On March 23, 1936 a second child was born (in New Zealand). Gladys Neville did not inform her husband that she was pregnant when she left Fiji nor did she inform him later. He heard rumours however and eventually obtained a birth certificate for the second child from New Zealand. He had been making monthly payments of maintenance up to September 1937, when he discontinued them. On July 7, 1938 Gladys Neville obtained a provisional order for maintenance of herself and the first child under the Destitute Persons Act, 1910 (N.Z.) and the Maintenance Orders (Facilities for Enforcement) Act 1921 (N.Z.). In these proceedings she did not mention the birth of the second child. On August 26, 1938 John Neville appeared before the Chief Magistrate at Suva to show cause why the provisional order should not be confirmed. His evidence disclosed for the first time the birth of the second child and the Chief Magistrate ordered the remission of the case to New Zealand for further evidence. On September 26, 1938 the Magistrate's Court in New Zealand, after hearing further evidence made an additional provisional order for maintenance of the second child. On November 4, 1938 John Neville appeared in Suva to show cause why the two provisional orders should not be confirmed, opposing them on the grounds of his wife's misconduct (as to her maintenance) and that he was not the father of the second child (as to the maintenance of the child). The Orders were confirmed, and he appealed on the same grounds.

**HELD.**—(i) (Following *Roast v. Roast* [1937] 4 A.E.R. 423) a wife's conduct tending to show that she has been guilty of such misconduct as would be reasonable cause for her husband to fail to provide for her is admissible against her in proceedings for her maintenance.