

HOOKAM SINGH *v.* DIRECTOR OF LANDS.

[Appellate Jurisdiction (Corrie, C.J.) March 26, 1943.]

Defence (Compensation) Regulations 1940—claim to compensation by lienee of sugar cane crop—Compensation paid to lessee of land—Crop Liens Ordinance,¹ s. 5—whether lienee as such has any right to claim compensation from the Director of Lands for damage to cane crops—lienee becoming assignee of the lease at a date subsequent to the damage—whether as assignee of the lease there is any claim to compensation.

On 21st March, 1942 the Military Authorities entered on a piece of land at Nasovoi and in the course of their work cut down an area of growing cane. At this date one Husain was lessee of the land and Hookam Singh held a crop lien on the cane. On 23rd March, 1942 Husain assigned the lease to Hookam Singh. The diminution in the annual value of the land was £36 15s. od., which amount was duly paid to Husain as compensation but was not paid quarterly in arrear as required by the Regulations.

HELD.—(1) A lienee of crops cannot claim compensation from the Competent Authority for damage to crops.

(2) The Regulations do contemplate the possibility of changes in the right to receive compensation; instalments of compensation are to be paid at the end of each quarter to the person who was entitled to occupy the land during that quarter with apportionment in a proper case between persons successively entitled to occupation.

CASE STATED under Regulation 11 of the Defence (Compensation) Regulations 1940. The facts are fully set out in the judgment.

W. L. Davidson for the Plaintiff.

R. E. Diederich for the Respondent.

CORRIE, C. J.—This is a case stated under Regulation 11 of the Defence (Compensation) Regulations 1940 by the Tribunal constituted under Regulation 12 of those Regulations.

Under a Crop Lien granted by one Husain the son of Ramjani, registered on the 7th January 1941, the claimant, Hookam Singh, became lienee of certain sugar cane then growing on land at Nasovoi in the occupation of Husain as registered lessee.

On the 21st March, 1942, the Military Authorities entered and did work upon a portion of this land. The work done upon the land involved the cutting down of an area of the cane included in the claimant's Crop Lien.

On the 23rd March, 1942, Husain assigned the lease to the claimant.

The present claim, however, is made as lienee and not as assignee of the lease; and the fact that the lease has been assigned to the claimant is material only as limiting the period in respect of which the claim as lienee is made, namely the period from the 22nd March, 1942, the day after the work was done on the land, to the day when the assignment of the lease took effect.

¹ *Cap. 13 (Revised Edition Vol. I p. 382).*

According to paragraph 5 (c) of the case stated:—

“The diminution in the annual value of the land was £36 15s. od.,
“and this amount was in due course paid to Husain as compensa-
“tion under Regulation 5 of the Defence (Compensation) Regula-
“tions 1940.”

It is to be observed that this payment was not in fact made in the manner prescribed by sub-regulation (2) of Regulation 5, which directs that the compensation “shall be paid in instalments, quarterly in arrear, to the person who for the time being is entitled to occupy the land”; and as the sum paid is stated to be the diminution in the annual value, it clearly was not a payment of a lump sum under sub-regulation 3 (b) of that Regulation. The statement, therefore, that this payment was made under Regulation 5 must be taken to mean that it was of “a sum calculated by reference to the diminution of the annual value of the land”, and that it was made to the person indicated by that Regulation.

The majority of the Tribunal have taken the view that “the person who for the time being is entitled to occupy the land” means the person who was so entitled at the date when the work was done, and hence that no regard is to be paid to any subsequent changes in the title to occupy the land.

This view I am unable to accept. Having regard to the fact that payments of compensation are to be made quarterly in arrear, and to the final sentence of sub-regulation (2)—

“Any compensation under this sub-regulation shall be considered
“as accruing due from day to day and shall be apportionable in
“respect of time accordingly;”

I hold that the Regulation does envisage the possibility of changes in the right to receive compensation, consequent upon changes in the right to occupy the land: and that until liability is fully discharged by the payment of a lump sum under sub-regulation 3(b), an instalment of compensation is to be paid at the end of any quarter to the person or persons who during that quarter was or were entitled to occupy the land: and further, that where two or more persons have successively been so entitled during the quarter, the instalment is to be apportioned between them.

I have therefore to determine whether in virtue of his lien the claimant, in the events which happened, became a person who for the time being was entitled to occupy the land.

The claim is based upon s. 5 of the Crop Lien Ordinance 1904 (Ordinance 2 of 1904)¹, which provides that—

“If the lienor his executors administrators or assigns shall neglect
“or refuse either to pay the whole of the advance or to liquidate the
“debt with interest (if any) according to the terms of the agreement
“or to give up the crop or crops to the lienee or otherwise to conform
“to the terms of the agreement the lienee his executors adminis-
“trators or assigns may enter into possession thereof and cultivate
“until maturity and reap and carry away and sell the same”

By paragraph 4 of the stipulations and conditions contained in the Crop Lien,

“The Lienor agrees that he will keep the whole of the said land
“or so much thereof as is suitable therefor under the above crops
“and will use and cultivate the same in a proper and husbandlike
“manner.”

¹ Vide *Crop Liens Ordinance Cap. 13 (Revised Edition Vol. I p. 382)*.

The claimant contends that the Lienor, by suffering, however involuntarily, the Military Authorities to cut down the cane, and by failing forthwith to replant the land with cane, has neglected or refused to conform to the terms of the agreement: that in consequence, the Lienee thereupon became entitled under s. 5 of the Crop Lien Ordinance 1904 to "enter into possession thereof and cultivate until maturity and reap and carry away and sell the same." The word "thereof" in this section clearly relates to the crop and not to the land: but the claimant argues that the right to possess the crop and to cultivate and reap it, necessarily entitled the Lienee to occupy the land: and hence that the Lienee is, by virtue of this provision, a person who for the time being is entitled to occupy the land within the meaning of Regulation 5 (2).

I am unable, however, to accept the argument that the Lienor, whose crop has been destroyed and whose land has been left bare by the Military Authorities acting in due exercise of the powers conferred upon them by the Defence Regulations, has neglected or refused to keep the land under crops as required by the clause of the Crop Lien which has been cited: and if, as I hold, there has been no such neglect or refusal on the part of the Lienor, the whole of the Claimant's contention must fail.

I find therefore that, as Lienee, the claimant has no right to compensation under the Defence (Compensation) Regulations 1940.

As this is the first application under the Defence (Compensation) Regulations which has come before this Court, and as the conclusion at which I have arrived is one which may affect many persons who have lent money upon the security of crops destroyed in the exercise of emergency powers, it may be desirable to state what is the position of the Proper Authority in relation to such persons under these Regulations.

Under Regulation 18, the sum paid as compensation to the owner of any property is deemed to be comprised in any mortgage, pledge, lien or other similar obligation to which the property is subject at the time when the compensation accrues due.

The Regulations, however, do not place upon the Proper Authority any duty to ascertain whether any mortgage, pledge, lien or other obligation exists, or to give notice of any claim or any payment of compensation, except in the case of restoration of the land or payment of a lump sum under Regulation 5 (3) (a) or (b), in which case notice must be published under sub-regulation (5).

POLICE *ats.* SAHADAT ALI.

[Appellate Jurisdiction (Corrie, C.J.) March 27, 1943.]

Army Act (Imperial) 44 and 45 Vict. c. 58—s. 153 (3)—assisting a soldier absent without leave to conceal himself—Military Forces Ordinance, 1923¹—s. 23—Army Act applied in Fiji "with respect to the discipline of members" of the force raised under the Ordinance—whether s. 153 (3) of the Army Act applies in Fiji—whether a member of a force raised in Fiji under the Fiji Military Forces Ordinance, 1923 is a "soldier" for the purposes of s. 153 of the Army Act.

¹ Cap. 63.