INDAR SINGH

v.

NATIVE LAND TRUST BOARD

[SUPREME COURT, 1963 (Hammett P.J.), 9th, 22nd January]

Civil Jurisdiction

Landlord and tenant—tenancy at will—unharvested sugar cane on land at termination thereof—second ratoon—no right in tenant thereto.

Landlord and tenant—emblements—nature of.

The plaintiff accepted a tenancy at will of land which he had formerly held as lessee for a term of years. At the expiry of his former term and at the date when he accepted the tenancy at will there was a second ratoon crop of sugar cane on the land, but his tenancy at will was lawfully terminated by notice before the crop was harvested.

Held.—(1) That there was no evidence that the plaintiff had any right to the ratoon crop as at the termination of the term of years.

(2) That sugar cane, being a crop which is not first harvested within a year of its being planted, and being a crop which will, after the first crop, produce two annual ratoon crops from the same roots, is not a plant in respect of which a right to emblements could arise under common law.

(3) That the plaintiff had therefore no right to the crop as emblements or otherwise and could not recover damages for being prevented from harvesting the same.

Official Receiver v. Ram Autar (1960) 7 F.L.R. 114, followed.

Cases referred to:

Bulwer v. Bulwer (1819) 2 B. & Ald. 470; 106 E.R. 437: *Caldecott v. Smythies* (1837) 7 Car. & P. 808; 173 E.R. 352.

Action for damages.

Ramrakha for the plaintiff.

McFarlane for the defendant.

The facts appear from the judgment.

HAMMETT P.J. [22nd January, 1963]—

The facts in this case were not disputed and having been agreed at the outset by counsel, the hearing at the trial consisted entirely of legal argument.

It is agreed that the plaintiff, Indar Singh, held Native Lease No. 2225 of land known as " Nawai No. 3 ", some 91 acres in area in the tikina of Vuda granted by the Native Land Trust Board. This lease expired at the end of 1960. During the subsistence of this lease the plaintiff had grown sugar cane on the land.

By letter dated 28th December, 1960, delivered to the plaintiff, the Native Land Trust Board gave notice, in the following terms, that this lease would not be extended or renewed:

" 4/10/2216.

Indar Singh, f/n Hazara Singh,
c/- Assistant Land Agent, Nadi.

Sir,

NATIVE LEASE 2225 ' NAWAI No. 3 '

I am directed to inform you that the Native Land Trust Board is not prepared to grant to you any renewal or extension of expired Native Lease 2225 known as ' Nawai No. 3 ' containing 90 acres 2 roods in the tikina of Vuda and standing in your name as the land is required for the use, maintenance and support of the Fijian owners of the land, and is included in Native Reserve.

You should vacate and hand over possession to the owners that portion lying fallow at the date of receipt hereof and you should not interfere with their use and cultivation thereof. You may remove all improvements on the land and you may harvest all crops at present on the land including the first ratoon cane. You may not however damage or destroy fruit trees and you may not after receipt hereof plant further crops.

You are hereby notified that you should vacate and give up possession of the said land absolutely as and when cane crops including first ratoon are harvested.

Dated at Suva this 28th day of December, 1960.

(Sgd.) ?
Secretary,
Native Land Trust Board."

It is agreed that at the end of 1960 there was sugar cane growing on some 10 acres of the land which had been planted by the plaintiff of which he had already completed harvesting not only the first crop and but also the first ratoon crop. The second ratoon crop had not yet come to maturity however and would not be due to be harvested until later in 1961. In the meantime however it required to be weeded and tended in the interests of good husbandry.

In compliance with the provisions of the letter dated 28th December, 1960, the plaintiff gave up possession of all the land in the lease which was lying fallow, but he continued in possession of some 18 acres, on about 10 acres of which cane was growing.

On 11th January, 1961, the Native Land Trust Board granted the plaintiff a tenancy at will of these 18 acres by a document in the following terms:

" Native Land Trust Board,
Suva.
11th January, 1961.

Reference No. 4/10/2216.
To: Indar Singh, t/n Hazara Singh,
c/- Asst. Land Agent, Nadi.

Sir,

NATIVE LAND 'NAWAI No. 3' (part of)

I am directed to inform you that the Native Land Trust Board has agreed that you may occupy, and you are hereby authorised to occupy, the described land as a tenant-at-will on the following terms and conditions—

Land ..	..	Nawai No. 3 part of		
Area ..	..	18 acres 0 roods 28 perches		
Rent ..	..	£63 per annum w.e.f. 1/1/61		
Tikina	..	Vuda		
Mataqali	..	Makabunikoro	Tokatoka Naqiui	4a. 0r. 09p.
		,,	,, Talo	4a. 0r. 09p.
		,,	,, Madabua	8a. 0r. 14p.
Purpose	..	Agricultural		

Conditions :

(1) The right to occupy and to use the land is not transferable.

(2) The lands described may be used solely for agricultural purposes and no buildings whatsoever may be erected thereon after the date hereof.

(3) In the event of failure on your part to pay the rental as aforesaid punctually this authority may be cancelled without further notice and you will be required immediately to vacate the land.

(4) This letter shall not operate to create a tenancy from year to year in respect of the said lands, and you may be required to vacate the land on receipt of notice to that effect.

(5) This authority excludes all land now included in Native Reserve the boundaries of which have been indicated to you by the Land Agent, Western.

Yours faithfully,

(Sgd.) ?
for Secretary.

I hereby accept this tenancy on the terms and conditions as set out above.

.....

Signed by the said in my presence and I certify that I read over and explained the contents thereof to him in the language and he appeared fully to understand the meaning and effect thereof.

.....

,,

The plaintiff continued in possession of these 18 acres and tended the second ratoon sugar cane crop that was growing on some 10 acres of this land in the interests of good husbandry. He also paid £31 10s. 0d. to the Native Land Trust Board in respect of a half year's rent with effect from 1st January, 1961.

On 16th March, 1961, the Native Land Trust Board served a notice dated 11th March, 1961, terminating the plaintiff's tenancy-at-will in the following terms:—

" 4/10/2216.

Indar Singh, f/n Hazara Singh,
c/- Assistant Land Agent, Nadi.

Whereas you occupy as a tenant-at-will portion of the land formerly comprised in Native Lease 2225 known as Nawai No. 3 in the Tikina of Vuda.

And whereas in accordance with the terms of the said tenancy-at-will you may be required to vacate the land on receipt of notice to that effect.

And whereas the land mentioned above is required for the use, maintenance and support of the owners of the land.

You should vacate and hand over possession to the Native Owners that portion lying fallow at the date of receipt hereof and you should not interfere with their use and cultivation thereof. You may remove all improvements on the land and you may harvest all crops at present on the land including first ratoon cane. You may not however damage or destroy fruit trees and you may not after receipt hereof plant further crops.

You are hereby notified that you should vacate and give up possession of the said land absolutely as and when cane crops including first ratoon are harvested.

Dated at Suva this 11th day of March, 1961.

(Sgd.) ?
Secretary,
Native Land Trust Board."

Following that notice the Fijian owners entered into possession of the land in March and have ever since excluded the plaintiff therefrom.

The second ratoon crop of sugar cane growing on the land at that time was later harvested in the 1961 sugar cane harvest which began in about June, 1961 by the Fijian owners.

The proceeds of sale of that crop are now in the hands of the South Pacific Sugar Mills Ltd., the successors in title to the Colonial Sugar Refinery Co. Ltd. It is agreed that the plaintiff in this case and the plaintiffs in two other similar cases, if successful in this action, will be entitled to share the proceeds of sale of this second ratoon crop which in all amounts to some £600.

It is the contention of the plaintiff, based on the decision of the Fiji Court of Appeal in the case of the *Official Receiver v. Ram Autar* (Civil Appeal No. 15 of 1960) that this Court is bound to hold that the plaintiff was a tenant-at-will. This contention, which is not challenged by the defendant, I accept. This tenancy-at-will was suddenly and without notice terminated by the Native Land Trust Board, within a matter of 2 or 3 months, i.e. in March, 1961, although it had accepted rent in advance for 6 months, i.e. up to 30th June, 1961. The case for the plaintiff is based on a passage in Woodfall on " Landlord and Tenant " 26th Edition at page 311 (paragraph 750) which reads—

> " The sudden determination of the will of one party will not operate to the material injury of the other: if a tenant at will sow his land, and the landlord determine the tenancy before the corn be ripe, the tenant notwithstanding has free liberty to enter upon the land to cut and carry his crop."

in support of which the case of *Bulwer v. Bulwer* (1819) 2 B. & Ald. 470 (106 English Reports 437) has been cited.

It is submitted that since the plaintiff originally planted this sugar cane and actually nurtured and tended the second ratoon crop, he was entitled to re-enter the land to harvest it or to receive the proceeds of its sale, notwithstanding the fact that his tenancy-at-will was in fact properly determined before this second ratoon crop was harvested. In this action the plaintiff claims damages for being prevented from doing so.

For the Native Land Trust Board it is submitted that this tenancy-at-will was granted subject to the express provisions of the Board's letter dated 28th December, 1960, which specifically gave the plaintiff the right to harvest the first ratoon crop but which expressly refrained from giving him any right to harvest the second ratoon crop of the cane growing on the land at the date of expiry of his original lease.

It is further submitted that the plaintiff has not suggested or proved that at the expiry of his original lease he had any right by either custom or agreement to the benefit of crops growing on the land at that time. It is contended that he did, therefore, lose all right to the benefit of any " Away-going crop " on the expiry of his lease on the authority of *Caldecott v. Smythies* (1837) 7 Car. & P. 808 (173 English Reports 352).

It appears to me to be essential to consider the plaintiff's rights under his tenancy-at-will quite separately and independently of any under his expired lease. I say this because his tenancy-at-will did not arise by implication as a result of him holding over, after the expiry of his original lease, but was created expressly by the terms of the tenancy-at-will dated 11th January, 1961. There is no evidence that upon the expiry of his original lease at the end of 1960 the plaintiff had any right to the benefit of any growing crops save possibly those expressly granted by the terms of the letter of the Native Land Trust Board dated 28th December, 1960, for which rights, however, no consideration passed from the plaintiff. These rights certainly did not include the right to the second ratoon cane crop.

The rights of the plaintiff under the tenancy-at-will dated 11th January, 1961, were no greater and no less than those to which any other person would have been entitled had the tenancy-at-will been granted to a third party instead of to the plaintiff.

Such a person would, I consider, have been entitled to emblements by common law upon the termination of the tenancy-at-will otherwise than by or in consequence of his own act, as happened in this case.

Emblements are defined in Halsbury 3rd Ed. Vol. 1 at page 298 as:

> " the benefit of growing crops of such species as ordinarily repay the labour by which they are produced within the year in which that labour is bestowed, though the crop may, in extraordinary seasons, be delayed beyond that period. Such crops are grain crops, roots, clover, and potatoes, and hops,"

Woodfall on " Landlord and Tenant " 26th Ed. at page 1324 reads:

> " The word ' emblements ' means a right given by law in certain cases to the tenant of an estate of uncertain duration which has unexpectedly determined, without any fault of such tenant, to take the crops growing upon the land when his estate determines, although the estate itself has ceased. It is derived from the French *emblavence de bled* (corn sprung or put above ground), and strictly signifies the growing crops of sown land; but the doctrine of emblements extends not only to corn sown, but to roots planted and potatoes, and other annual artificial products. The

> growing crops of those vegetable productions of the soil which are annually produced by the labour of the cultivator are emblements. Thus vegetable productions, e.g., clover, which remain productive beyond the year in which they are sown and cultivated, cannot be taken as emblements, neither can a second crop be taken in a succeeding year even though the first crop taken did not suffice fully to repay the cost of sowing and costs of cultivation performed in that year."

In this case the crop concerned is sugar cane. Sugar cane is a grass or reed. From the admitted facts it is clear that it is a crop that is not first harvested within a year of it first being planted. After its first crop has been taken, however, its roots produce a second crop, within about one year of the first crop, which second crop is called the first ratoon crop, and then within about another year its roots produce a third crop which is called the second ratoon crop.

It is clear, therefore, that even if a tenant-at-will actually planted sugar cane, it is not a plant in respect of which a right to emblements could arise under common law owing to the very nature of the plant. Where however the tenant-at-will did not himself plant the cane at all, but it was planted by a previous holder of a lease of the land, which lease had expired by effluxion of time, it seems clear that the tenant-at-will himself has no right to emblements or to claim the benefit of the crop, even though during his lawful tenure of the land he did do the work necessary in the interests of good husbandry.

Whilst one cannot but have some sympathy for a farmer, who having some years previously planted sugar cane, finds that some of the fruits of his labours, as represented by the proceeds of sale of the second ratoon crop, are enjoyed by persons who apparently did little or no work in nurturing the crop as it grew, it would appear that he has no legal or equitable right to such proceeds of sale. I am afraid it is of no consolation to him to be told that this was a matter which he should have considered before he expended any time and labour in growing this crop, at a time when his only title was a tenancy-at-will, but that appears to me to be the position.

For these reasons the plaintiff's claim must fail and there must be judgment for the defendant with costs.

The Native Land Trust Board has already repaid into the local Sub-Accountant's office, the £31 10s. 0d. paid by the plaintiff by way of rent in advance and he is, of course, entitled to collect that money as soon as he pleases.

Judgment for defendant.

Solicitor for the plaintiff: *K. C. Ramrakha.*

Solicitors for the defendant: *Grahame and Co.*