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decision is likely to be misleading, and should therefore be repealed without delay. There will be a declaration that under the agreement of 21st November the plaintiff became entitled with the defendant to a half-share of the profits of the plantation, and a declaration that such partnership be dissolved; that the sum of 170*l.* be taken as capital brought into the partnership by the plaintiff without interest, and that the sum of 105*l.* be considered as a loan advanced for wages and labour by the plaintiff to the partnership. A sale of the plantation will be directed and a division of the assets in the usual manner, with liberty to apply for directions. The defendant must pay the costs up to and including the hearing.

Judgment for plaintiff with costs.

NOV. 3.

[CRIMINAL JURISDICTION.]

NAMOSI *v.* THE QUEEN.

Certiorari—Native Regulation II. of 1877, *s.* 9—*Warrant or Summons—Costs.*

A stipendiary magistrate, sitting in a Provincial Court, had sentenced a native Fijian to a month's imprisonment for disobedience to a "summons." On proceedings by *certiorari* being taken to quash the conviction on the ground that no imprisonment could be inflicted for disobedience to a summons in the first instance—the word "warrant" only appearing in the English version of the Native Regulation, though in the native version the words were "summons or warrant"—

Held, that, inasmuch as by Native Regulation punishment is awarded for disobedience to a "summons," the stipendiary magistrate had jurisdiction and, therefore, the *certiorari* must be superseded, but, under the circumstances, without costs.

Semble, that the Fijian copy of the Native Regulations should be deemed to be the original.

This was a case in which Mr. Garrick had obtained a rule absolute in the first instance for a *certiorari*, directing Mr. Booth, the stipendiary magistrate for the Bau district, to return the information and all proceedings in the above case into the Supreme Court for the purpose of being quashed.

The Attorney-General (Mr. Udal) appeared on the part of the stipendiary magistrate and asked that the *certiorari* issued should be superseded on the ground that the statutory requisites necessary on the granting of a writ of *certiorari* had not been complied with in this case. No notice had been given to the stipendiary magistrate of the intended proceedings, no security for costs had been given by the defendant and no recognisance with two sureties had been entered into by him, all of which acts were required by statute before a writ of *certiorari* could issue. The writ should therefore now be superseded.

[His Honour intimated that before deciding these points he would like to hear the case on its merits.]

The Attorney-General then stated that upon the evidence it appeared that Namosi (who had been concerned in the case of one Nacanieli in respect of whom no *certiorari* had been taken out), had been sent to prison for a month by the stipendiary magistrate sitting in a Provincial Court, for refusing to obey a summons issued by one of the magistrates of that court calling upon the defendant to appear before it. This had been done under s. 9 of Native Regulation No. II. of 1877, in which any person who disobeyed any order conveyed in a magistrate's "warrant" was subject to the above imprisonment. The point was whether the word "warrant"

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covered the word "summons." Ordinarily, he admitted, it might not; but in the Fijian version of the regulations the words were: "summons or warrant," which he contended was the correct reading as no order could be conveyed to a person in a warrant, which was merely a mandate to a constable to arrest some individual. He referred to the *Royal Gazette*, 1877, wherein a copy of the above regulations were published, in which they are styled a "translation," and argued that in this case, therefore, the Fijian version under which the stipendiary acted was the original one, whatever might be the later practice in this respect. He also quoted Wharton's *Law Lexicon* as an authority that the word "warrant," in a secondary sense, covered the word "summons." He, therefore, contended that the conviction was a good one, and on the merits also that the *certiorari* should be superseded, and with costs.

Mr. Garrick, in support of the *certiorari*, admitted that perhaps the facts had been wrongly stated in the case of Namosi, as he had referred more to the facts applicable to Nacanieli in obtaining the writ of *certiorari* in the first instance; but he contended that in a criminal regulation the strictest interpretation must be given to it,—and in the English and governing version the word "warrant" was used and no other—the stipendiary magistrate could not therefore under that regulation convict for an offence punishable under a summons. In English criminal procedure the only punishment for a neglect of summons was the issuing of a warrant under which the person who disobeyed the summons was arrested and brought before the Court. That was intended to be the practice here, and Namosi could not now be sent to prison for disobeying the summons as well as being arrested on a warrant.

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H. S. BERKELEY, C.J. I think the rule must be discharged. I was inclined to agree with Mr. Garrick at first, but on looking at the Native Regulations, which must be read *in pari materiâ*, a punishment does appear for the disobedience of a summons. The stipendiary magistrate therefore had jurisdiction, which is the only point for consideration here,—and the *certiorari* must be discharged.

Mr. Garrick, in objecting to the payment of costs, argued that as costs were not given against magistrates, neither should they be given for them.

The Attorney-General submitted that the occasions wherein magistrates were condemned in costs were well defined; but where parties on appealing from the decision of a magistrate failed to show that that decision was wrong and the conviction was upheld, the prosecution was entitled to costs; otherwise appeals would be endless.

His Honour: I order the *certiorari* to be quashed, but without costs, on the ground that the mistranslation might have led parties to mistake the magistrate's power under it.

Certiorari quashed without costs.