

the Act, 6 and 7 Vict., Cap. 73, s. 26,<sup>1</sup> declared that an uncertificated Solicitor should not be "capable of maintaining any action for recovering any fee, etc.," there was nothing in the act which prevented the client from paying the Solicitor and the "want of a certificate could not create any impropriety on the part of the client in doing so". There the Court of Appeal held that though the client was not "bound" to pay his Solicitor yet as he had done so he was entitled to recover what he had paid from the person who "had been ordered to pay" the costs. To apply that ruling here I think that the Master should not have refused to tax the bill but should have required proof that the amount claimed for costs had been paid to the Solicitor presenting the bill for taxation. The case *re Fowler v. The Monmouthshire Railway & Canal Coy.*, 4 Q.B.D. 334, which the Master considered binding upon him is not in point for there the decision turned upon the construction of the Imperial Statute 37 and 38 Vict., c. 68, s. 12<sup>2</sup> which, not being a Statute of general application, is not in force in Fiji though passed prior to the erection of these Islands into a British Colony. The 12th section of that Statute declares that no costs in relation to any act done by an uncertified Solicitor should be "recoverable by any person whomsoever". The section it will be observed by virtue of the expression "any person whomsoever" applies to the client as well as to his Solicitor whereas s. 4 of the Ordinance of Fiji, 17 of 1895, is expressly limited in its application to the Solicitor to the exclusion of the client whose right to recover from the defendant whatever may be properly designated as "costs" is therefore in no way affected thereby.

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## GASPARD *v.* COLONIAL SUGAR REFINING COMPANY LTD.

[Civil Jurisdiction (Major, C.J.) April 18, 1904.]

*Registration Ordinance, 1879—s. 9<sup>3</sup>—registration of document as a deed—whether document ipso facto to be treated as a deed.*

This was an action for the balance of the price of sugar-cane sold and delivered from August 21, 1897, to March 16, 1898, under an agreement dated March 16, 1894, or alternatively for damages for breach of contract. The agreement was registered as a deed under the Registration Ordinance 1879<sup>3</sup> and was stamped as a deed but was not otherwise in the form of a deed. It did however purport to give a right of way over Plaintiff's land—a right which it was contended could be granted only by deed. The only defence raised was the Statute of Limitations, 1623, 21 Jac. 1, c. 16, the cause of action having arisen on January 10, 1898, and writ issued on January 13, 1904.

**HELD.**—(1) An agreement cannot be made a deed by the mere fact of registration as a deed under the Registration Ordinance.

<sup>1</sup> *Solicitors Act, 1843.*

<sup>2</sup> *Attorneys and Solicitors Act, 1874.*

<sup>3</sup> *Now Cap. 36, s. 10.*

[**EDITORIAL NOTE.**—There has to date been no substantial amendment to the Registration Ordinance, 1879 (now Cap. 36) and the relevant sections are in the same words as at the date of this judgment.] Action for moneys due under agreement for sale and purchase or alternatively damages for breach of contract.

*J. H. Garrick* for the plaintiff.

*H. Shaw* and *H. M. Scott* for the defendant.

*H. Shaw* for the defendant: An agreement cannot be made a deed by any act of the Registrar of Deeds. The Ordinance only dispenses with the formalities of sealing and delivery of a document already a deed; it is a condition precedent to the operation of s. 9<sup>1</sup> of the Ordinance that the document to be registered should first be a deed.

MAJOR, C.J.—This action raises a very simple issue. The statement of claim is practically admitted, but the defendant contends that the claim is barred by the Statute of Limitations. The cause of action arose on the 10th January, 1898, and the writ was issued on the 13th January, 1904. In answer to the defence of the Statute, plaintiff contends that the agreement sued on has become a deed by virtue of s. IX of Ordinance XI of 1879. Plaintiff further contends that defendant agreed to waive the question of the Statute. With reference to the first point, the plaintiff cannot succeed; as I agree with the contention of defendant's counsel that a condition precedent to the operation of the section of the Ordinance is that the document should be a deed, which the agreement was not. If I needed any confirmation of this view, I find it in s. VII<sup>2</sup> of the Ordinance, which provides for the registration of agreements. As to the second contention, plaintiff points out no one of the three cases that would annul the operation of the Statute, but relies upon a waiver of its operation by the conduct of the parties. This conduct has to be gathered from the correspondence. I can find nothing that either implies or expresses any agreement to waive the Statute. The contention of waiver must also fail.

## CALDWELL *v.* MONGSTON AND OTHERS.

[Civil Jurisdiction (Ehrhardt, Acting C.J.) Dec. 24, 1907.]

*Real Property Ordinance 1876<sup>3</sup>—Certificate of title issued following on a Crown Grant—claim for possession by registered proprietor—defence founded on adverse possession—whether a proper case for originating summons.*

Caldwell was registered proprietor of land at Navua under a Certificate of Title issued on 21st August, 1907, following on a Crown Grant issued in June, 1903. Defendant had been in possession of this land for over 17 years. Caldwell contended that since the Crown Grant was issued under the Land Claims Ordinance, 1879, his title was by virtue of s. 19 of that Ordinance indefeasible except as against a person in adverse possession for the prescriptive period since the issue of the

<sup>1</sup> Now Cap. 36, s. 10.

<sup>2</sup> Now Cap. 36, s. 8.

<sup>3</sup> Rep. See now Part XXII of the Land (Transfer and Registration) Ordinance, Cap. 120, Revised Edition, Vol. II, p. 1267.