

APPEAL by the plaintiff against judgment for the defendant in an action for moneys due under a promissory note. The facts appear from the judgment.

*R. L. Munro* for the appellant.

(No appearance of the respondent.)

CORRIE, C.J.—The appellant is suing upon a promissory note for £20 made in his favour by the respondent.

The appellant has stated in evidence that the note was given in part payment of a debt amounting to £22 18s. 10d.

Upon this evidence, the Commissioner has held that no action lies in view of the provisions of s. 5 of the Native Dealings Ordinance, 1904.<sup>1</sup>

Under that section:—

“ No action shall lie against a native party at the suit of a non-native party for a debt exceeding twenty pounds unless the obligation to pay shall have been incurred in pursuance of a contract registered under the provisions of s. 3 hereof.”

The promissory note, however, constitutes and creates a fresh debt due from the respondent to the appellant for an amount not exceeding £20 ; and hence, notwithstanding the provisions of the section, action will lie upon the note.

The appeal is allowed ; the judgment of the Commissioner is set aside and the case remitted for completion. The costs of this appeal will be costs in the case.

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*ex parte* REGISTRAR OF TITLES.  
*re* FILIMONE AND JAIMAL.

[Civil Jurisdiction (Corrie, C.J.) July 23, 1937.]

*Crown Lands Ordinance 1888<sup>1</sup> protected lease—Land (Transfer and Registration) Ordinance—s. 113<sup>2</sup>—application by judgment creditors to notice of judgment against a protected lease—consent by Commissioner of Lands to registration not obtained.*

Filimone was lessee of a Crown Lease which was a “ protected lease ” under the Crown Lands Ordinance 1888. Two judgment creditors of Filimone applied for entry of notice of eight judgments on the lease without first obtaining the consent of the lessor to such entry.

**HELD.**—Judgment creditors cannot have notice of judgment entered on leases protected under the Crown Lands Ordinance 1888<sup>3</sup> without the consent of the Commissioner of Lands.

<sup>1</sup> Cap. 88.

<sup>2</sup> Repealed. Vide now Crown Lands Ordinance, 1945, s. 15.

<sup>3</sup> Cap. 120, s. 113.

PETITION by Registrar of Titles under s. 178 of the Land (Transfer and Registration Ordinance) 1933. The facts are fully set out in the judgment.

*G. F. Grahame* for the lessee.

*R. L. Munro* for the judgment creditors.

CORRIE, C.J.—This is a petition by the Registrar of Titles under s. 178 of the Land (Transfer and Registration) Ordinance 1933. The facts which give rise to it are as follows :—

- (1) The defendant Filimone Vatusere is the lessee of Crown Lease No. 174 granted by the Commissioner of Lands.
- (2) That lease contains a declaration that it is a protected lease under the provisions of the Crown Lands Ordinance 1888.
- (3) The defendants Thakur Singh and Jaimal have each obtained four judgments against the defendant Filimone and a notice of each judgment has been entered in the register by a memorial indorsed upon the lease under s. 113 of the Land (Transfer and Registration) Ordinance 1933.<sup>2</sup>
- (4) The defendant Filimone relying upon s. 9 of the Crown Lands Ordinance 1888<sup>1</sup> has applied to the Registrar for such entries to be cancelled.

As it appeared to the Court that the question at issue might affect the lessor, the Commissioner of Lands, he has been made a party to these proceedings.

Section 9 of the Crown Lands Ordinance 1888<sup>1</sup> reads :—

“ Whenever in any lease or sub-lease from the Crown or from any person on behalf of the Crown there shall have been inserted the following clause namely :—‘ this lease is a protected lease under the provisions of the Crown Lands Ordinance 1888 ’ such lease or sub-lease except with the written consent of the lessor cannot be lawfully transferred or sold or mortgaged or hypothecated or pledged nor except at the suit or with the written consent of the lessor can any such lease or sub-lease be dealt with by any court of law or under the process of any court of law.”

S. 113 of the Land (Transfer and Registration) Ordinance 1933<sup>2</sup> provides that when notice of a judgment has been entered in the register by a memorial on the instrument of title to the land sought to be affected, such entry “ shall operate as a caveat subject to any prior mortgage against any alienation other than in pursuance of any judgment decree or order or in pursuance of any execution ”.

S. 129 of the same Ordinance<sup>2</sup> provides that :—

“ So long as any caveat remains in force prohibiting the transfer or other dealing with land the registrar shall not enter in the register any instrument purporting to transfer or otherwise deal with or affect the land in respect to which such caveat has been lodged unless such transfer or other dealing is endorsed as subject to the claim of the caveator or unless the caveator consents to such transfer or other dealing ”.

<sup>1</sup> Repealed. *Vide now Crown Lands Ordinance, 1945, s. 15.*

<sup>2</sup> *Cap. 120.*

On behalf of the defendant Filimone it is argued that as the lease is a protected lease under the Crown Lands Ordinance and the Commissioner of Lands has not consented to the proceedings in which the judgment in favour of Thakur Singh and Jaimal were given nor to the entry in the register of notice of those judgments against the land comprised in the lease ; and hence that they are not entitled to have entries made which have the effect of caveats against alienation of the land. Against this it is argued that under s. 113 notice of a judgment is entered by the Registrar of Titles in virtue of that section alone and without the necessity for an order of the Court ; that in consequence such entry is not " the process of any Court of Law " ; and hence is not affected by s. 9 of the Crown Lands Ordinance.

This argument is undoubtedly well founded, but it does not, in my view, provide an answer to the case put forward by the defendant Filimone. If Thakur Singh and Jaimal are not entitled without the consent of the lessor to execution of their judgments against the land included in the lease—and under s. 9 of the Crowns Lands Ordinance such consent is required—they clearly are not entitled to have entered in the register, without such consent, a notice which operates as a caveat against alienation of the land. It follows that the defendant Filimone is entitled to have the entries removed by cancellation of the memorials indorsed upon the lease.

Accordingly it is ordered that the Registrar of Titles do cancel the indorsements relating to the eight judgments in favour of Thakur Singh and Jaimal.

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### R. v. SARJUDEI.

[Criminal Jurisdiction (Corrie, C.J.) July 19, 1937.]

*Bigamy—Marriage Ordinance 1928—Validity of marriages solemnised according to Indian custom.*

Sarjudei was married according to Indian custom on 4th February 1915. On 25th June, 1935 during the life of her husband by the marriage of 1915, she went through a form of marriage in accordance with the law of Fiji with another person. On 2nd January 1935 the husband by the marriage of 1915 obtained a rule *nisi* for dissolution of the marriage, citing as co-respondent the second " husband ".

**HELD.**—(1) (Following *R. v. Surajpal* [1934] 3 Fiji L.R.—) that a marriage according to Indian custom before 1st April, 1929 (the date of coming into effect of the Marriage (Amendment) Ordinance 1928) is a valid marriage.

**NOTE.**—It was pointed out in this judgment that s. 3 of Marriage Amendment Ordinance 1928 applied to persons married by Indian custom before the 1st day of September, 1929, (and not the 1st day of April, 1929 as was apparently thought in *R. v. Surajpal*).

(2) A marriage according to Indian custom is valid notwithstanding that it took place before and not after the enactment of the Marriage Ordinance, 1918.