

IN THE SUPREME COURT OF FIJI
Nausori Civil Action No. 427 of 1957

MATHURA	Plaintiff
AND	
VALIE	Defendant
AND	
COLONIAL SUGAR REFINING COMPANY	Garnishee

Case stated by the Senior Magistrate at Nausori—Attachment of Sugar Cane Debts Ordinance, Cap. 24. “Continuous cutting” of sugar cane—Whether “continuous cutting” means the continuous cutting of sugar cane in the district of a judgment debtor or the continuous cutting of the sugar cane of the judgment debtor only.

Held.—The expression “continuous cutting” used in the Ordinance means the continuous cutting of the sugar cane of the judgment debtor only.

Case referred to:—

Webb v. Stenton (1883) 11 Q.B.D. 518, C.A.

LOWE, C.J. [26th June, 1958]—

This is a case stated by the learned Senior Magistrate at Lautoka for the opinion of this Court on a question of law raised by the predecessor in office of the learned Magistrate. The case is stated as follows:—

“This is a dispute over a Garnishee Summons and the court has decided to state the question of law arising herein in the following case for the opinion of the Court in accordance with section 38 of the Magistrates’ Courts Ordinance Chapter 5 Laws of Fiji:—

1. The plaintiff on the seventh day of August, one thousand nine hundred and fifty-seven (1957) issued out of this court an order upon the Company (which manufactures sugar) to show cause why an order should not be made upon the Company for the payment to the plaintiff of the amount of the debts due and payable from the Company to the defendant or so much thereof as would satisfy the debt due under a judgment obtained by the plaintiff against the defendant and costs.

2. On the sixth day of August, one thousand nine hundred and fifty-seven (1957), the Nausori Sugar Mill belonging to the Company and to which the defendant sells his sugar cane began to accept sugar cane for crushing and the cutting of cane in the Nausori district began though not the cutting of cane belonging to the defendant.

3. Up to, during and after the twenty-first day of August, one thousand nine hundred and fifty-seven (1957), this first mentioned cutting was continued in the Nausori district.

4. On the seventh day of August, one thousand nine hundred and fifty-seven (1957), the Company did not owe the defendant any money at Common law nor at Common law was there any debt accruing from the Company to the defendant.

5. On the twenty-first day of August, one thousand nine hundred and fifty-seven (1957), the defendant sold sugar cane grown in this country to the Company and the Company became indebted to the defendant.

The Company contended that the expression 'continuous cutting' in the Attachment of Sugar Cane Debts Ordinance Chapter 24 of the Laws of Fiji means the continuous cutting of the defendant's cane only and as no cutting had commenced on 7th August, one thousand nine hundred and fifty-seven (1957), there was then no debt due or accruing due to the defendant from the Company.

The court raised the question as to whether or not the expression means the continuous cutting of all cane in the district served by Nausori Mill and not the cutting of the defendant's cane only and that if so whether or not a debt was due on seventh day of August, one thousand nine hundred and fifty-seven (1957).

The question for the opinion of the Court is; Does the expression 'Continuous Cutting' used in the Attachment of Sugar Cane Debts Ordinance mean the continuous cutting of the cane of the defendant only and not the continuous cutting of any cane in the district served by the Mill.

If the Court shall be of opinion in the affirmative of the said question then the order *nisi* shall be discharged with costs to the Company.

If the Court shall be of opinion in the negative of the said question then the order shall be made absolute with costs to the plaintiff."

In a commentary to Order 45 rule 1 it is stated:

"It is essential that the relation of creditor and debtor should exist between the judgment debtor and the garnishee, and two practical tests should be borne in mind:

- (1) Could the judgment debtor sue the garnishee for the amount, and recover it?
- (2) Would the debt vest in the judgment debtor's trustee in the case of bankruptcy?

Of course a garnishee order cannot accelerate the time for payment of a debt. Where the debt is not due there is nothing to attach. (*Webb v. Stenton* (1883) 11 Q.B.D. 518, C.A.) A judgment creditor cannot, by means of attachment, stand in a better position as regards the garnishee than the judgment debtor did."

If, therefore, no cutting of the sugar cane of a judgment debtor has commenced, no debt from the garnishee to the judgment debtor has arisen. Section 3 of the Attachment of Sugar Cane Debts Ordinance (Cap. 24) is as follows:

"All debts shall be deemed, for the purpose of attachment of debt and for no other purpose, to arise on the first day of a continuous cutting." As the debt can arise only between the debtor and the creditor, it follows that continuous cutting refers to the continuous cutting of the grower's sugar cane, the first day of cutting of which brings the debt into existence.

The question raised by the trial Magistrate must, in my opinion, be answered as follows:

The expression "continuous cutting" used in the Attachment of Sugar Cane Debts Ordinance means the continuous cutting of the sugar cane of the defendant only and does not mean the continuous cutting of any sugar cane in the district served by a garnishee's mill.