

[CIVIL JURISDICTION.]

HARMAN v. CUDLIP.

1877
Aug. 23.

*Crown Grant—Lands Commission—Old Supreme Court of Fiji—
Judgment and Costs.*

The jurisdiction formerly existing in the old Supreme Court of Fiji to entertain actions in which claims to land were involved having been done away with by the appointment since the date of Cession of a Commission to investigate claims to land, and the present Supreme Court not being a continuation of the old one,

Held, that the present Supreme Court of Fiji has no jurisdiction to entertain an action for the recovery of costs awarded under a judgment of the former Supreme Court in respect of such claims, either as costs, debt, or damages.

Semble, that the Lands Commission has no power to award costs in any proceeding before it.

*Robertson v. Hennings** approved.

The Attorney-General (Mr. Garrick) for the plaintiff.

Mr. Hobday for the defendant.

At the conclusion of the case, the facts and arguments in which sufficiently appear from the judgment, his Lordship reserved his decision, and on the 23rd August gave judgment as follows:—

J. GORRIE, C.J. In this case, which arises out of a contention about land in Levuka, the Crown grants had not been signed when the case was heard, and I thought it better to delay judgment until I could inspect the actual grants as issued.

The plaintiff has now produced his Crown grant, but that for the defendant, though ready, has not been

* *Ante* p. 1.

1877
HARMAN
v.
CUDLIP.

taken up. The diagram, however, on the Crown grant of the plaintiff shows the portion which has been allowed to the defendant.

It appears from the evidence that the parties had unfortunately been at variance concerning the proprietorship of the block both before and during the existence of what was called the Kingdom of Fiji, and the defendant sued the plaintiff before a Court which was called the Supreme Court of Fiji to obtain possession of the block from the plaintiff. The result of these proceedings was that, after two trials and heavy costs on both sides, Cudlip lost his suit and Harman remained in possession of the land. After the cession of these islands to Her Majesty the right of the proprietorship was again inquired into by the Commissioners appointed for that purpose, and a Crown grant has issued to the plaintiff, Harman, of the land which the defendant also claimed. The plaintiff, Harman, having thus being fortified in his proprietorship and possession, has sued the defendant, Cudlip, for the expense, loss of time, and inconvenience which he alleges he has been put to in resisting the attempts of Cudlip to obtain possession of the block.

The expenses which he enumerated are the costs of the trials before the so-called Supreme Court of Fiji, the costs incurred during the inquiry before the Lands Commission and for his own personal expenses on various occasions, amounting altogether to 500*l*. I stated during the hearing that I could not in any view allow the costs said to be incurred before the Commissioners to inquire into the titles to land. They neither had power to award costs and had not done so; and, if they had no power, still less should this Court award costs, or give damages to cover costs in an inquiry not

taken before this Court. This, however, was but a small part of the plaintiff's claim, the amount of the costs of the former trial claimed or damages to cover these amounting to 422*l.* 9*s.* 4*d.* The evidence showed that, after the defendant had lost his suit against Harman he had applied to such Bankruptcy Court as then existed, and entered at least a portion of the amount due to Harman for costs among his liabilities, but before any further proceedings could be taken in the Bankruptcy Court the cession of the islands took place.

I cannot first of all treat the claim of the plaintiff as one of taxed costs granted in a suit before this Court. If they had been so granted there would have been no need to apply for them by separate action as the costs follow the judgment in the case in which they are granted. They are applied for now because the Court which granted them no longer exists, and the authority which it represented has passed away, so that the judgment has fallen and cannot any longer be put in force by that Court. But if this be so, if the judgment itself has fallen, is it competent for me by any judgment of this Court to give practical effect to that judgment as regards the costs, the lesser and subsidiary part of the whole, while I could not, from the special laws enacted in regard to land claims entertain any application to put in force the judgment itself? The defendant very properly quoted the case of *Robertson v. Hennings*,* decided by my learned predecessor, as being strongly in favour of his contention that the Supreme Court was not in any sense a continuation of the former so-called Supreme Court of Fiji, and would not enforce its judgments.

* *Ante* p 1.

1877

 HARMAN
 v.
 CUDDIP.

1877
HARMAN
v.
CUDLIP.

On the other hand, the argument of the plaintiff was not without much force. He says that the former Court, whatever it might be, was at least the tribunal chosen by Cudlip to decide the issue, because he was the plaintiff and Harman met him there, and they both submitted their pleas to the judgment of that tribunal; and while the judgment regarding the land is not that under which he now hold his lands in consequence of the change of Government, yet it is different with the costs which were incurred before a tribunal to which Cudlip dragged him, and were awarded by it in his favour as it held the pleas of the then complainant could not be sustained. If they cannot be awarded to him now as costs, he contended that they are a debt justly due by Cudlip, and that he himself acknowledged as much by entering a sum of 243*l.* as due to Harman among his liabilities when he applied to the former Bankruptcy Court; and, at all events, that as debt or damage which he has sustained by non-payment of the amount, he is entitled to judgment against the present defendant.

I have given this matter a very careful consideration, because I feel that although Harman might have no legal claim for the amount as costs, Cudlip could scarcely *in foro conscientiæ* deny the amount which he entered in his statement of liabilities in what was then called the Bankruptcy Court. But I have come to the conclusion that that was but an incident in the proceedings, the whole of which depend upon the judgment of what was formerly called the Supreme Court of Fiji, and, as to the position of that Court in regard to that now existing, I am neither disposed to question my predecessor's ruling in regard thereto, nor could I under the existing law inquire into

the subject-matter from which those costs arose. The subject-matter has again been inquired into by a competent authority and decided as if no such judgment of the so-called Supreme Court of the Kingdom of Fiji had existed; and if that be so with regard to the principal matter at issue between these parties I find myself unable to regard as a sufficient ground of action a claim for unpaid costs under such a judgment, either as costs, as debt, or as damages.

But, on the whole circumstances, although for the reasons stated Harman has failed in his suit, I cannot allow Cudlip his costs in this action.

Judgment for defendant without costs.

1877

HARMAN
v.
CUDLIP.

[CIVIL JURISDICTION.]

October 25.

HARDING v. LIARDET.*

*Action for assault and wrongful arrest and imprisonment in Samoa—
Jurisdiction—Privilege of Consul.*

The Supreme Court of Fiji has jurisdiction to entertain an action between two British subjects for a tort committed in a foreign country such as Samoa; and the fact that the defendant was the British consul for Samoa and that the act charged against him was done in such capacity as consul, affords no defence to the action, there being no suggestion that such act had been sanctioned by the Government or chiefs of Samoa.

Mr. Solomon for the plaintiff.

Mr. Forwood and *Mr. Truscott* for the defendant.

On the conclusion of the case, the facts and arguments in which sufficiently appear from the judgment, His

* See next case.