

1877  
Oct. 30.

## [CIVIL JURISDICTION.]

MARTIN *v.* LIARDET.\*

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

In an action in the Supreme Court of Fiji brought against the British consul at Samoa for damages for the wrongful arrest and imprisonment of a British subject in that country.

*Held*, that the consul was answerable in such action, and that he had no power by virtue of his office to deport a British subject from Samoa.

*Held*, further, that he was not entitled, independently of legislative enactment, to a month's notice of action.

This was an action, arising out of the same proceedings as the last, brought against the British consul at Samoa for damages for assault and wrongful arrest and imprisonment of the plaintiff, also a British subject resident in Samoa, and for deporting him thence to Fiji.

The defendant pleaded, firstly, That the act was done in his capacity of British consul, as the plaintiff was of a violent character and had been guilty of serious breaches of the peace in Samoa; secondly, That no notice of action had been given; and, thirdly, That the Supreme Court of Fiji had no jurisdiction in the matter.

The same counsel appeared as in the last case.

The facts appear sufficiently from the judgment.

J. GORRIE, C.J. The only point of law which the defendant's counsel raised in this case which was not

\* See last case.

raised in *Harding v. Liardet*\* was that he was entitled to notice before action brought. He cited a case which showed that notice was required under the Malicious Trespass Act where the defendant acted *boná fide*, although erroneously, in ordering the plaintiff to leave his ship. The action which is brought against the defendant is one of a different description to that to which the provisions of that statute apply; and other statutes requiring notice to constables and others are not applicable so far as I can see from any of the authorities cited to me. The learned counsel mentioned incidentally, although it is not pleaded, a point as to the effect of the subsequent ratification by the Crown of the defendant's acts, founded upon the case of *Borron v. Denman* in 1848, where the Spanish owner of a slave barracoon on the coast of Africa brought an action against Commander Denman for destroying it. The fundamental difference between such a case and this is that the naval officer was at the time carrying out the instructions of his superiors in a warlike expedition, and the fact that a foreigner injured in the course of such operations appealed for damages to an English court shows how far the right to such actions was supposed to go.

This, however, is a case in which one British subject appeals to the law against another, and it is hard to understand how any despatch by the Secretary of State could alter the legal position of these parties. It could not alter the question of what was law, and it ought not to weigh with the judge as to what was either just or right. If the approval of the Crown could by any possibility under the authority of that case make the Crown the proper defendant in a suit of this nature,

\* *Ante* p. 15.

1877

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MARTIN  
v.  
LIARDET.

1877  
MARTIN  
v.  
LIARDET.

which I cannot admit, there is nothing before such approval is received to take away the right of the plaintiff to sue his adversary in this Court. If in the one view the defendant would get the benefit and the plaintiff have to face a much more formidable opponent, in the other the plaintiff is enabled to get justice without meeting with such obstacles, and that does not appear to me to be a circumstance much to be regretted.

As to the merits of the cause, the substantial variance from the case of *Harding v. Liardet* is that the plaintiff was deported by the defendant as well as imprisoned and handcuffed. This sentence of deportation, or rather the resolve in the defendant's mind to deport the plaintiff, was arrived at in June, immediately following a most wanton attack and assault by the plaintiff upon a Mr. Stewart then residing in Samoa. The plaintiff admitted the assault before this Court, just as he did before the consul, and he justified it by saying that, there being no law in Samoa, he was entitled to take the law into his own hand. His mode of taking the law into his own hand was that, in consequence of some statement being made by Stewart about plaintiff taking away a book from the store to give to Mr. Woods, he went to the store and hit Stewart across the face with a stick. The blow, as has been proved to us, was a severe one, which cut the person assaulted and covered him with blood. It is plain therefore that the defendant had very good reason for looking upon the plaintiff as a violent person, and that the British community of Samoa might have been much better without his presence. But the sentence or order of deportation from any country is a severe one, and *primâ facie* it can only be given by authorities of that state. If the Samoan chiefs by their native judges had

tried this person for his assault and ordered him to be deported it might have only given him his deserts.

The power of the consul to deport is a very different matter, and no authority has been brought forward to show that a consul has such power, or at all events that the defendant had such power. The defendant mentioned that he himself when a lieutenant in the navy had seen it done from Fiji, and there can be no doubt that such a mode of dealing with British subjects has not been unknown. Unfortunately a person in the position of a lieutenant in the navy sees the fact without knowing the result or being acquainted with the bounds of the power which has been thus exercised, or, it may be, abused. The custom prevailing to a greater or less extent in the Pacific may be a good defence by the defendant if the prudence of his acts are questioned elsewhere, and it may well be taken into account in judging of his motives whether they were malicious or not; but I have seen or heard nothing from the defendant's counsel to show me that the defendant had any legal authority whatever to pronounce such a sentence, or indeed to judge the plaintiff at all for this case of assault.

His Lordship then proceeded further to review the circumstances connected with the alleged wrongful arrest and concluded by saying that he could not but regard the proceedings as an aggravated assault upon the plaintiff. The defendant had no authority, and what he alleged in explanation or justification was wholly insufficient to cover those acts, however honestly he may have been acting in the supposed discharge of his duty. But, his Lordship thought, looking at the fact that the plaintiff did not come into Court in the best

1877

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MARTIN  
v.  
LIARDET.

1877  
 MARTIN  
 v.  
 LARDET.

possible position to complain of violence, that if he gave him double the amount he had given Harding in the last case—viz., 50*l.*—the ends of justice would be met. The finding his Lordship added, would carry costs, but he would look at the bill before allowing the amount.

*Judgment for plaintiff.*

1878  
 May 15.

[APPELLATE JURISDICTION.]

HUNT v. THE QUEEN. (No. 1.)

*High Commissioner's Court for the Western Pacific at Samoa—Western Pacific Order in Council, 1877, ss. 17, 22, 23, 40, 54, 55, 219, 225, 229—Merchant Shipping Act, 1854, s. 267—Merchant Shipping Amendment Act, 1855, s. 21—Foreign Jurisdiction Act, 1813-49 Geo. IV. c. 83—Pacific Islanders Protection Acts, 1872 and 1875—14 & 15 Vict. c. 100, s. 12.*

The appellant, a British subject residing at Samoa who had, with others, determined at a public meeting to lynch a certain person then lying under a charge of murder and committed for trial to the United States—which purpose was subsequently carried out—was tried, with two others, in the High Commissioner's Court at Samoa, for murder and also, on a separate count in the same indictment, for conspiracy to murder. On the preliminary inquiry the two others were discharged; and the appellant was subsequently convicted of the conspiracy and sentenced to one year's imprisonment, but acquitted on the charge of murder.

On appeal to the Supreme Court of Fiji:—

*Held*, (i) That the High Commissioner's Court at Samoa had jurisdiction under the Western Pacific Order in Council, 1877, notwithstanding such Order had not been proclaimed until after the commission of the offence.

(ii) That conspiracy to murder, being an offence known to English law, could be tried under the Order in Council in the British Court