

1879
Feb. 1.

[APPELLATE JURISDICTION.]

SHUTE *v.* AGENT-GENERAL OF IMMIGRATION.

*Native Labour Ordinance 1877, ss. 3, 8, 10, 15, 30.**

The appellant, who had employed certain native labourers on his plantation for a longer period than one month without such contract of service having been indorsed by a stipendiary magistrate as required by s. 3 of the Native Labour Ordinance 1877, was convicted and sentenced to pay a fine of 10*l.* or in default of payment to fourteen days' imprisonment.

Held, on appeal, that the general penalty clause imposed by s. 30 did not apply to s. 3, there being no offence created by that section for any breach of its provisions, but only a civil right to avoid any contract made contrary thereto.

This was an appeal from a conviction of the Chief Police Magistrate (Mr. Hamilton Hunter), whereby one, Thomas Robinson Shute, was fined 10*l.* or in default fourteen days' imprisonment, for that he did, on or about the 30th November, 1878, engage certain Fijians at Namena for a period of more than one month without the contract having been entered into before a stipendiary magistrate, contrary to the provisions of s. 3 of Ordinance X. of 1877.

The facts were as follows :—

In June, 1878, the appellant having obtained a permit to recruit labour, waited upon Mr. Eastgate, the stipendiary magistrate of the Tailevu district, who was then in Levuka, and asked him if he would take a credit-note of H. Cave & Co. for the native taxes. To this Mr. Eastgate consented. Mr. Shute proceeded to the Ra coast, and made arrangements for twelve men; but, not being ready to go just then, the natives told Mr. Shute to return home and they would write to

* See now Ordinances IV. of 1883 and XI. of 1895.

him when ready. In September following he received a letter requesting him to go and fetch them. In accordance therewith he proceeded to their town, near Tova Peak, where they all embarked; and, on or about November 30th, were brought to Namena to be engaged for twelve months before Mr. Eastgate. Mr. Eastgate, however, refused to accept the credit-note on H. Cave & Co., and insisted upon having cash; whereupon Mr. Shute told the natives they must go home again while he went to Levuka. Next day they told him it was impossible to return home, that they were anxious to go to Naidi (Mr. Shute's plantation) and earn money. Mr. Shute then consented to their embarking in his boat and they went to Naidi. The evidence was somewhat conflicting as to whether a verbal agreement with the men to work for 6s. per month was made at Namena or at Naidi, but it appeared clear that the men commenced to work for Mr. Shute on his Naidi plantation at the rate of 6s. per month, and that their intention was to work for four months.

After the men had been working contentedly for about ten days, Mr. Wood, Sub-inspector of Immigrants, arrived (about the 16th December), and called the men together; who, upon being questioned, informed him that they had come to work at Naidi for four months. The Sub-inspector thereupon served a summons upon Mr. Shute, dated December 13th, and signed by the Chief Police Magistrate of Levuka, to appear on January 6th, 1879, to answer the above charge. After several days had been occupied in the hearing, Mr. Shute was convicted of a breach of the Ordinance, and a fine of 10*l.* inflicted, or in default of payment fourteen days' imprisonment.

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The only material ground of appeal was as follows:—

That the conviction was defective, and bad on the face thereof, in that clause 3 of Ordinance No. X., 1877, does not by positive enactment declare that the engagement of native Fijians to work for more than one month, save before a Stipendiary Magistrate, is an offence punishable with fine and imprisonment.

Mr. Scott for the appellant.

The Attorney-General (Mr. Garrick) for the respondent, contended that s. 30, imposing a general penalty, would uphold the conviction.

J. GORRIE, C.J. Before I can hold that s. 30 will apply, I must see that in s. 3, under which the appellant has been convicted, there is an offence or violation of its provisions defined, which is to be visited with a penalty the amount or nature of which is not stated, and which the general penalty will cover. But the penalty or sanction under s. 3 is a civil one—that a contract for more than a month shall not be valid unless entered into according to its provisions; and, beyond that, I see nothing specifically provided or from which I would be justified in inferring from the words of the Ordinance that the person hiring the labourers would in addition be subject to be proceeded against criminally and condemned to imprisonment or fine. Where the Ordinance intends penalties it indicates so in the respective sections, such as in s. 7 as to a recruiter's license; or in s. 8 for recruiting without a license; or in s. 10 for embarking natives in vessels of insufficient tonnage. In s. 15 again we have the penalty for inducing labourers to enter into a contract by fraud. But where there has been no fraud, and the labourers have been legally recruited and desire to go to work, the only penalty provided by the Ordinance

for any one entering into a contract for longer than one month, without the indorsement of the magistrate, is that the contract may be put an end to at any time as void.

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I have looked at the evidence here, and I quite agree with the magistrate in the Court below, that the men—the native Fijians here—left Vitilevu with the intention of remaining with Shute for longer than one month; but it is not unlawful to do so, so far as I can see, if the only contract between them is to work for a month at a time; and the labourer has the option of quitting his engagement at the end of any month. That is the protection to the labourer that he is not engaged for a longer period. The planter has the disadvantage of not being able to enforce discipline as he would be able to do under a yearly contract. There is nothing to prevent a Fijian engaging to work by the month with any person in the Colony, with the intention of remaining more months than one if well treated, and no illegality in a planter or householder taking him upon such terms, always on the distinct understanding that there is no binding contract for more than a month. While the law is intended to protect Fijians it does not intend to make employers criminally responsible if they do a benefit to the native by supplying him with work for a month, and paying him his wages; and it is good to encourage men to remain with masters who treat them well, and not to encourage them in restless wandering tendencies by compelling them to change masters every month by penalties on the master.

I therefore do not see that the defendant could be properly convicted under this section, and I must quash the conviction.

Conviction quashed.