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the Appeal Court, the only result of such appeal having been slightly to prejudice Henry's interest. With regard to the fees paid for the Crown grant, the trustee was not bound to take up the grant under onerous conditions, and he could have washed his hands of the matter. He should, therefore, be repaid the amount of them. It had been suggested that the Court should settle a question relating to the proofs of bankruptcy, but it could not do so at *Nisi Prius*. The Court's opinion that the contract should be carried out as far as it can be carried out might however be a guide to the trustee. Under the agreement the plaintiff is entitled to the transfer of the whole land contained in the Crown grant, the allowance having been for less than 2,000 acres. I order that on payment of the fees paid by the trustee to the Land Office for the Crown grant, the defendant do transfer the land, and as trustee pay the costs of the action.

Judgment for plaintiff with costs.

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May 21.

[CIVIL JURISDICTION.]

THE UNION BANK OF AUSTRALIA (LIMITED) *v.* SHARPE, FLETCHER AND COMPANY (LIMITED).

Interpleader Summons—Joint Stock Company in Sequestration—Rights of Execution Creditor—Bankruptcy Ordinance 1877, *ss.* 6, 7, 8, 15, 19, 42, 44, 45, 46, 47, 48—*Bankruptcy Act*, 1869, *s.* 87—*Judicature Act*, 1875, *s.* 10—*Partnership Ordinance* 1878, *ss.* 205, 206, 207, 209.

In the administration of the assets of a Joint Stock Company in sequestration under the Bankruptcy Ordinance 1877 and the Partnership Ordinance 1878, by analogy to English law, the rules obtaining in Bankruptcy proceedings under similar circumstances do not necessarily apply,—

Held, accordingly, that a creditor, who has obtained judgment and execution completed by seizure and sale before the sequestration of a defendant Company, will not be deprived of his security, although, under similar circumstances, he might have been so deprived in a case of bankruptcy.

Mr. Irvine for the claimant, the trustee in sequestration.

Mr. Scott for the execution creditor.

Mr. Solomon for other creditors.

FIELDING CLARKE, Acting C.J. The defendants are a Joint Stock Company (Limited), registered in England under the Companies Acts of 1862 and 1867, and until recently carried on business in Fiji under the powers contained in s. 207 of the Partnership Consolidation and Limited Liability Ordinance 1878, commonly known as the Partnership Ordinance.

Under a warrant of execution issued on a dishonoured promissory-note on the 4th day of June, 1884, at the plaintiffs' instance, the sheriff, on the 13th of February last, seized all the defendants' personal property upon their estates in Fiji, and the sale, on this seizure, was completed on the 15th day of April, and realised by the accounts furnished by the sheriff, the sum of 3,067*l.* 15*s.* 6*d.* net, which has been paid into Court.

On the petition of two of the defendants' creditors, filed in the Supreme Court on the 23rd day of April, immediate notice whereof was given to the sheriff, an order, dated the 28th day of April, was made by the Court for the sequestration of the defendants' estate under the provisions of the above-mentioned Partnership Ordinance and of the Bankruptcy Ordinance 1877,* and Mr. Langford, the registrar of the court, was appointed

* Repealed by the Bankruptcy Ordinance 1889.

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to act provisionally as trustee in the sequestration. Mr. Langford, as such trustee, claiming by the present summons the money brought into Court, it was contended on his behalf that by force of certain sections of the Bankruptcy Ordinance, more especially ss. 15, 19, and 42, the 87th section of the English Bankruptcy Act of 1869, which, when it was in force in England, deprived certain execution creditors in certain cases of the fruits of their execution when the sheriff had notice of a bankruptcy within fourteen days after sale, is made applicable to a bankruptcy in Fiji so as to defeat the plaintiffs' execution. Upon the supplementary affidavits filed by leave of the Court (as to the effect of which the parties were separately heard), it was further contended for the claimant, that apart from the 87th section the plaintiffs were deprived of the fruits of their execution by the general principles of the English Bankruptcy law on the ground that at the date of the seizure they had notice of such facts as would, under s. 7 of the Bankruptcy Ordinance, be available for adjudication in bankruptcy. For the execution creditor it was contended that as the Bankruptcy Ordinance makes bankruptcy commence only at the date of the petition, it could not by general terms adopt sections of the English statute which are obviously based upon the bankruptcy relating back to the act of bankruptcy upon which the petition is founded. Both these questions, however, are material only upon the assumption that a sequestration is assimilated to a bankruptcy to such an extent that an execution avoided in the one case must also be avoided in the other. In the first place it is, therefore, necessary to consider the provisions of the Ordinances relating to sequestration of a Joint Stock Company with a view of seeing whether this assumption can be supported; for,

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if the Bankruptcy law does not apply there is nothing in the term, "sequestration of an estate," to indicate more than the setting aside for the purpose of distribution such estate as may not have been parted with before the date of the order.

The subject of sequestration is introduced under a separate head into the Bankruptcy Ordinance without previous definition, in the following terms :—

S. 44. The term "sequestration" shall be deemed to apply to an estate which may or may not be in a position to meet all claims against it but which for good cause shown may be taken possession of under an order of the Court for the purpose of being more expeditiously and cheaply wound up for the benefit of all concerned.

The other provisions of local Ordinances which are material to the scope and extent of the sequestration in question, are the 205th, 206th, and 209th sections* of the Partnership Ordinance, and the 45th, 6th, 7th, 8th sections of the Bankruptcy Ordinance. The 205th section of the Partnership Ordinance provides for sequestration of a Joint Stock Company (Limited), upon the application of the directors. The 206th section provides for a similar sequestration on the application of "seven members, or shareholders or of creditors," and directs that "the trustee appointed by the Court shall be guided in the winding up by the principles set forth in the Bankruptcy Ordinance." The 209th section provides that the English Joint Stock Companies Act shall have no application in Fiji. The 45th and 46th and 47th sections of the Bankruptcy Ordinance provide for the sequestration of the estates of deceased persons, absent persons, and terminated partnerships under circumstances not necessarily similar to bankruptcy. The 48th section of the same Ordinance provides for the

* These sections were repealed by s. 2 of the Bankruptcy Ordinance 1889.

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appointment of a trustee in the sequestration, "on whom the whole estate shall vest as fully and completely as the estate of a bankrupt vests in the trustee under the bankruptcy." In considering these provisions and more particulary the one last mentioned and s. 206 of the Partnership Ordinance, although the English statute law regarding Joint Stock Companies has no application in the Colony, I find assistance in the judicial interpretation which has been put upon the 10th section of the English Judicature Act of 1875, which provides, *inter alia*, that "in the winding up of any company under the Com· nies Acts of 1862 and 1867, whose assets may prove to i insufficient for the payment of its debts and liabilities and the costs of winding up, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors and as to debts and liabilities provable as may be in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt." In the case of *In re Withernsea Brickworks* (1), approving *In re Richards & Co.* (2) and overruling *In re Printing and Numerical Registering Co.* (3), it was held that this section did not have the effect of rendering the 87th section of the Bankruptcy Act 1869 applicable to a winding up in England. In giving judgment Lord Justice James says, "The Master of the Rolls" (referring to the decision of that judge in the Printing and Numerical Registering Co.'s case) "thinks that this enactment involves the proposition that, whereas under certain circumstances a security is avoided in bankruptcy, therefore, in the administration of the assets of a deceased person and in the winding up of a company,

(1) L. R. 16 Ch. D. 337. (2) L. R. 11 Ch. D. 676.
(3) L. R. 8 Ch. D. 535.

a security is to be avoided under similar circumstances. There are to my mind no words in the section which expressly or by implication lead to that result. The question is not as to the administration of a fund, but what is the fund to be administered. I see no reason why a person relying on his security in the administration of the assets of a deceased person or in the winding up of a company should be deprived of it because, under similar circumstances, he would be deprived of it in bankruptcy"; and Cotton, L.J., in his judgment points out the same distinction when he says, "What is proposed to be done in the present case is not to apply a particular rule in the administration of the assets of the company, but to bring into the assets something which apart from this section would not be assets because it has been seized by a creditor under such circumstances that he can hold it as a security for his debt." Without saying that the above case is directly in point, the question arises whether similar arguments cannot be used in connection with the sections of the local Ordinance. Do ss. 48 of the Bankruptcy Ordinance and 206 of the Partnership Ordinance do more than provide that the administration of the fund available for distribution shall as far as possible be conducted in the same way in the sequestration of a company's estate as it is in a bankruptcy. Is there any provision either expressed or by implication to the effect that an execution creditor shall be deprived of his security in all cases when he would be deprived in the case of bankruptcy. I think not; in fact, to my mind, the words in the two last-mentioned sections do not even tend so much that way as the words in the section of Judicature Act, and in the absence of any such provision I can give no force to suggestions as to what would be fair to the general

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creditors or to guesses as to what the Legislature may have intended.

On the last head, I may, however, point out that there is no distinction made by the Ordinance between different sorts of sequestration: that according to ss. 44, 45, 46, and 47 of the Bankruptcy Ordinance, and ss. 205 and 206 of the Partnership Ordinance, sequestration may apply to solvent as well as to insolvent estates, and that in the former class of cases the application of peculiar rules relating to a bankrupt's estate might be both inconvenient and unreasonable.

These considerations make me rather inclined to the opinion that the Legislature did not intend the full assimilation of bankruptcy and sequestration with respect to the fund to be administered; but it is sufficient for me to say that in my opinion no such intention is expressed. In this view, it is not necessary to consider whether the effect of certain sections in the Bankruptcy Ordinance has been to adopt, with respect to bankruptcy in this Colony, the 87th section of the Bankruptcy Act and other sections restrictive of the rights of an execution creditor, or the bearing of the affidavit filed with a view of applying such adoption. Even if the sections referred to do apply to a bankruptcy they do not in my opinion apply to the sequestration in this case, and there is, therefore, nothing which defeats the execution or deprives the plaintiffs of the money thereby realised.

The order must be that the claimant is barred and must pay the costs of the summons.

Summons dismissed with costs.