[CIVIL JURISDICTION.]

1885
Oct. 28.

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

Statutory charge for Immigration Debts—Interest—Indenture—Absent Defendants Ordinance 1877—*Polynesian Immigration Ordinance* 1877, *s.* 42—*Indian Immigration Ordinance* 1878, *s.* 7—*Indian Immigration Ordinance* 1882, *s.* 9.†

In an action brought by the Agent-General of Immigration for wages due to immigrants introduced under the Polynesian and Indian Immigration Ordinances 1877 and 1878, respectively, and in which the statutory or preferable charge given by these Ordinances was claimed to extend over all the lands of the employer,

Held, that such charge attached to such lands as the immigrant may have been indentured to in priority to all other encumbrances; but that as regards other lands it only attached to the interest of the employer in such lands at the time the debt was incurred.

Held, also, that the word "indentured" refers only to the land or plantation comprised in the certificate of indenture.

Held, further, that the interest accruing on such debts is by the Ordinances made a part of the debt and is recoverable as such.

The Acting Attorney-General (Mr. Le Hunte) for the plaintiff.

Mr. Solomon for the defendant Bank.

Sharpe, Fletcher & Co. (Limited) were not represented.

* See last case.

† See now the *Polynesian Immigration Ordinance* 1888, *s.* 138, and the *Indian Immigration Ordinance* 1891, *s.* 182.

1885

AGENT-GENERAL OF IMMIGRATION v. SHARPE, FLETCHER AND COMPANY AND THE UNION BANK OF AUSTRALIA.

On the conclusion of the case, the facts and arguments in which sufficiently appear from the judgment, his Lordship took time to consider his decision, and on the 28th October gave the following judgment.

FIELDING CLARKE, Acting C.J. The plaintiff in this case claims upwards of 2,500*l.* for wages and payments due in respect of Polynesian and Indian Immigrants indentured to serve the defendants, Sharpe, Fletcher & Co. These defendants, referred to below as the company, are a joint stock company, registered in England, for the purpose of carrying on the business of sugar planters and manufacturers, Fiji. Previous to May, 1883, the business had been carried on by a partnership under the style of Sharpe, Fletcher & Co., and on the formation of the joint stock company all the rights and liabilities of the partnership were transferred to it. The mills and plantations thus acquired by the company were abandoned in the early part of the present year, and the immigrants in question were then left with their wages unpaid and otherwise unprovided for.

Since 1881 the partnership, and afterwards the company, had been under advances from the other defendants—the Union Bank—referred to below as the Bank, and the title deeds of the plantations and building had been held by the Bank on equitable mortgage as a security for these advances.

On the 28th April of this year an application in the Supreme Court for the sequestration of the company's estate, as provided for by Ordinance III. of 1877, was acceded to; but it was subsequently held that this order did not prejudice the rights of the Bank under an execution previously issued by them and completed by seizure and sale. This execution was on a dishonoured promissory-note for 25,000*l.* given by the company as a

collateral security for the overdrawn account, and under it nearly, if not quite, all the personal assets of the company in the Colony were disposed of.

On proceedings taken by the Bank for the realisation of their equitable mortgage they established a claim, after giving credit for the proceeds of the execution and for all other receipts, of 28,542*l.* 11*s.* 3*d.*, in respect of which sum they obtained, on the 18th day of June last, an order for the sale of the lands by public auction. On the commencement of this action, which was brought to obtain a judgment against the company for the purpose of enforcing a statutory charge against the lands, the Bank claimed to intervene for the protection of their equitable mortgage, and, by order of the 12th day of August, they were added as co-defendants for the purpose of having the question of priority settled as between them and the plaintiff.

The lands so far as they concern this cause are as follows:—Vuninokonoko, fee simple; Vunimako, fee simple; Raiwaga, fee simple; Calia, partly fee simple and partly leasehold; Vakabalea, leasehold. All the above were within the district known as Navua, and formed the company's business property. The leases of Vakabalea and Calia were cancelled before the commencement of this action. The title deeds for the fee simple estates were in the hands of the Bank some time before any of the immigrants in question were supplied, and on the 21st day of January, 1884, the date when the first part of the unpaid wages claimed accrued due the overdraft exceeded 35,000*l.* Since that it was reduced by payment, but was never under 16,000*l.*, and since August, 1884, it has exceeded 25,000*l.*

1885

AGENT-GENERAL OF IMMIGRATION v. SHARPE, FLETCHER AND COMPANY AND THE UNION BANK OF AUSTRALIA.

Before considering the liability of the land to the Immigration charges, I notice two objections on the Bank's part, both of which I consider untenable. First it was said that the present action having been brought against the company under the Absent Defendants' Ordinance 1877 the plaintiff was precluded by the terms of that Ordinance from proceeding against the land to an extent beyond the company's interest therein. The plaintiff's rights as an execution creditor would of course not exceed beyond this interest, but I cannot see how that affects the question of a statutory charge, which is something quite distinct and different. The other point was that as the managing director of the company appeared to have had power to draw upon London in January last for at least 5,000*l*., the plaintiff, by bringing pressure to bear at that time, might have obtained payment, and that he was precluded from recovering now, although there was nothing to show that he knew anything about the managing director's power, and indeed had shortly before been informed by that gentleman that the company could not pay. Time ought really not to be wasted by such contentions.

In connection with the amount due to the plaintiff a question has arisen with respect to interest. It was suggested that the interest provided by the Immigration Ordinances was in the nature of a punishment which the Chief Police Magistrate had power to inflict for non-payment, and not part of the debt so as to be recoverable in the Supreme Court in a civil action. As, however, the magistrate has, under the provisions in question, no option but to enforce the payment of interest I think it is by the Ordinances made part of the debt, and is therefore recoverable. It is however

only claimed up to the 6th of June of the present year.

The statutory charge upon land is, as regards Polynesians, conferred by s. 42 of the principal Polynesian Immigration Ordinance* which provides that all moneys due under provisions of the Ordinance in respect of Polynesian immigrants "shall be a first charge upon the real estate of the employer, and shall be a preferable charge on the lands in respect of which the services of any such immigrants shall be indentured over and above all encumbrances, charges and mortgages." A distinction is here obviously intended between a first charge and a preferable charge, and the only conclusion I can come to is that while the preferable charge upon the lands to which the immigrants are indentured has priority over everything, the first charge affects only the interest of the employer at the time the charge accrues, *i.e.*, it is subject to any *bonâ fide* prior encumbrances which may have been created.

The language of the Ordinance respecting Indian immigrants is somewhat different. By s. 7 of Ordinance No. VI. of 1878, re-enacted in this particular by s. 9 of Ordinance No. XIII. of 1882, the debt in respect of an Indian immigrant is made "a first charge upon the real and personal estate of the employer of such immigrant, and upon the plantation to which he may have been indentured in preference to all other liens, claims, charges, encumbrances and mortgages." Here no distinction is made between the two charges, but still I think that the expression, "real estate of the employer" must be limited to mean, the beneficial interest of the employer in the land at the time; in

* No. XI. of 1877.

1885

AGENT-GENERAL OF IMMIGRATION v. SHARPE, FLETCHER AND COMPANY AND THE UNION BANK OF AUSTRALIA.

which case the charge cannot interfere with prior encumbrances.

With respect therefore to sums due for an immigrant of either class the statutory charge, in my opinion, attaches to any land or plantation to which he can be said to have been indentured, in priority to all other encumbrances; but as regards other lands it will only attach to the interest of the employer at the time the debt was incurred.

This leads to the consideration of the meaning of the word "indenture," used as a verb. In its established sense in England it means a deed with two or more parties. In a secondary sense it has got to be applied specially to the deed executed on binding an apprentice to serve his period of pupilage, and as a verb it has been used to express the act of binding by deed of apprenticeship. In connection with the Immigration Ordinances, "Indenture," as a noun, means the contract of service executed in the forms contained in the schedules, and as a verb I must take it to express the act of binding by such a contract. Applying it in this sense, I think that the land to which a labourer is indentured must be determined by the certificate of indenture, and not by the place to which he may have been sent to work, although, therefore, I cannot suppose that in confining the indenture to any particular part of the estate the Immigration Department meant to limit their security. I must hold that a man is indentured to a plantation if such plantation is either mentioned on the certificate or comprised in the land mentioned therein and not otherwise.

[His Lordship then proceeded to deal with the allotment of immigrants in respect of the different plantations

to which they had been indentured, and apportioned the indebtedness of each property,* and continued :—]

A sum of 40*l.* claimed against the company but having no reference to the land has been duly proved.

The result is :—(1) The 737*l.* 12*s.* 9*d.* will be paid out of court to the plaintiff forthwith.

There will be a judgment against the company for 1,837*l.* 4*s.* 2*d.*, being the balance of the labour debts proved, including the 40*l.*

This judgment will of course not affect any debts first accruing due after the date of the writ herein (8th July).

There will be a declaration that, of the above sum 1,514*l.* 6*s.* 1*d.* is a first charge upon the freeholds previously mentioned in preference to the Bank's claim, and 282*l.* 18*s.* 1*d.* a charge upon the freeholds subject to the Bank's claim.

Should the Government and the Bank not settle matters between themselves directions as to the realisation of the charge hereby declared may be applied for in connection with the approaching sale.

As against the company the plaintiff may have his costs, but not as a further charge upon the land. As between the Bank and the Government I shall make no order.

Judgment for plaintiff against the Company with costs.

* These appear in detail in the *Suva Times* for 14th November, 1885.