[APPELLATE JURISDICTION.]

CHATFIELD *v.* THE QUEEN.

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Mar. 23, 24.

Appeal from Deputy Commissioner's Court at Samoa—Western Pacific Order in Council, 1877: *Art.* 54, 55, 109, 122, 139, 155.

No appeal lies to the Supreme Court of Fiji from an order made under Art. 139 of the Western Pacific Order in Council, 1877, such right of appeal being expressly limited by the provisions contained in Art. 54, 55, and 109 to 122 of the Order.

This was an appeal to the Supreme Court of Fiji under the Western Pacific Order in Council, 1877, from an order of the Deputy Commissioner of Samoa, Colonel H. de Coëtlogon, whereby the appellant, R. T. Chatfield, had been adjudged to refund the sum of 94*l.* 3*s.* 6*d.* found to have been due from him, and, on his refusing to comply with the order, seizure and sale of his goods had taken place.

Mr. Solomon, Q.C., for the appellant.

The Attorney-General (Mr. Udal) for the High Commissioner for the Western Pacific, Sir J. B. Thurston, K.C.M.G., the present Governor of Fiji, as representing the Crown.

Mr. Garrick watched the case on behalf of Messrs. McArthur & Co., parties interested in the Court below.

From the evidence it would appear that sometime in the month of May, 1889, the appellant, who was then acting as bailiff in the High Commissioner's Court in Samoa, had received payment from Messrs. McArthur & Co. (who were defendants in the case of *Cornwall and Manæma* v. *McArthur & Co.*, heard on appeal in the Supreme Court of Fiji)* of a considerable

* *Ante* p. 161.

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sum of money in respect of certain fees and expenses alleged to have been incurred in the service of subpœnas preparatory to the trial of that action in the High Commissioner's Court in Samoa. Messrs. McArthur & Co. would appear to have demurred at the time to the payment of such a large sum on the ground that it was too high, but eventually paid the amount after repeated remonstrances; and, the High Commissioner being in Samoa during the following month, complaints were made to him by the solicitors of Messrs. McArthur & Co. in Samoa, Mr. Campbell and Mr. Cooper, of the exorbitant nature of that and other charges. Inquiries were accordingly instituted by the High Commissioner, with the result that the Deputy Commissioner was instructed to have the costs complained of taxed in Samoa upon certain principles contained in his instructions. Notice of such taxation was duly served upon Chatfield and upon the representatives both of Cornwall and of McArthur & Co.; but the appellant declined to contest the matter beyond submitting a protest against the fees being taxed on the ground that they were properly incurred according to the scale in use in the High Commissioner's Court; and further, that they had been passed and vouched for as correct in the quarterly returns made by the Deputy Commissioner and sent to the High Commissioner in Fiji. The result of the taxation was that the sum of 94*l.* 3*s.* 6*d.* was ordered to be refunded to Messrs. McArthur & Co. by Chatfield; but, upon his refusing to comply with the order, proceedings were instituted against him under Art. 139 of the Order in Council with the object of compelling the repayment of the money. Chatfield, however, contented himself with again submitting the above protest; and the result of the proceedings was

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a peremptory order to refund, which, not being complied with, led to the seizure and sale of his goods to satisfy the judgment. From this judgment and order Chatfield now appealed.

Mr. Solomon, Q.C., in opening the case for the appellant, contended that the appellant by criminal proceedings having been taken against him under Art. 139 had been convicted by the Deputy Commissioner of extortion and had been ordered to refund the money. The act in respect of which the alleged extortion was charged took place in May, 1889, and proceedings were not taken in respect of it until December, a period of more than six months. By Art. 155 there was a limit imposed, by which any proceedings, criminal or civil, taken against any person for anything done under the Order in Council must be brought within three months of the act complained of; and further, that a month's notice of any such proceedings was required to be given. Neither of these conditions had been complied with in this case, and the order made was therefore invalid, and the conviction for extortion must be quashed. He cited the cases of *Brown* v. *Great Western Railway Company* (1), *Boden* v. *Smith* (2), *Rex* v. *Justices of Worcestershire* (3), *Tottenham Local Board of Health* v. *Rowell* (4), *Rex* v. *Tolley* (5), *Rex* v. *Bellamy* (6), *Adam* v. *Inhabitants of Bristol* (7), *Abley* v. *Dale* (8), *Gwynne* v. *Burnell* (9), and referred to several passages from "Maxwell's *Interpretation of Statutes*" in support of his argument.

(1) L. R. 9 Q. B. D. 753.
(2) 18 L. J. (C. P.) 121.
(3) 5 Maule & Selwyn 457.
(4) L. R. 1 Ex. D. 514.
(5) 3 East 467.
(6) 1 B. & C. 500.
(7) 2 A. & E. 389.
(8) 11 C. B. 391.
(9) 6 Bing. 561.

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He further contended that before Chatfield could be convicted of extortion there must be shown to have been an absence of *bona fides* in what he did. He had only charged fees according to the scale in use in the court, as provided for by Art. 153. These were the fees the appellant had been accused of extorting, the reasonableness and correctness of which had been certified to by the Deputy Commissioner having himself passed them in his accounts. He cited Stephen's *Digest of Criminal Law* p. 71, Russell on *Crimes* vol. i., p. 304, and *Reg.* v. *Borron* (1) in support of his contention, submitting that under these circumstances, the *bona fides* of Chatfield having been shown, the charge of extortion should not have been brought, but that if any error in the fees charged had been discovered the proceedings should have been of a civil nature; and concluded by asking the Court to quash the order and conviction.

The Attorney-General, in support of the judgment and order of the Deputy Commissioner, submitted that before it was necessary for him to follow the arguments of Mr. Solomon on the grounds of appeal and enter into the merits of the case, it must be decided whether this appeal could be heard by the Supreme Court of Fiji at all; and contended, first, that no appeal lay to the Supreme Court of Fiji from any proceedings instituted under Art. 139; and secondly, that if it did it must be either in the nature of a civil or criminal appeal. If the former, McArthur & Co., represented by Mr. Garrick, would be the proper respondents, and the provisions of Art. 109 to 122 with reference to civil appeals not having been observed by the appellant, the appeal could not now be heard. If the appeal were of a criminal

(1) 3 B. & Ald. 134.

nature, the appellant had not complied with the requirements of Art. 54 which regulated such appeals; on either ground, therefore, the present appeal must fail. He referred to Art. 139 and proceeded to show from the Article itself, that it was clear no appeal was intended to be allowed. The proceedings which led up to the trial in December, 1899, he contended were merely an inquiry of a disciplinary character which under the provisions of Art. 139 the Court was justified in holding over one of its officers charged with misconduct. The limitations imposed by Art. 155 could not apply to proceedings taken under Art. 139, which empowered the Court to inquire into the matter summarily when no prosecutor or plaintiff appeared. In this case no conviction for extortion really took place—no penalty was imposed—the Court being satisfied that the money had been obtained illegally merely ordered its refund—and there was in consequence nothing upon which an appeal of a criminal nature could be founded. He asked that before entering upon the grounds of appeal or arguing the case at all upon its merits,—which he was quite prepared to meet,—the question should be decided whether there was any appeal before the Supreme Court or not.

His Honour, after consideration, thought that that would be a more convenient course, and called upon Mr. Solomon to reply at once upon this point.

Mr. Solomon, in reply, cited *In re Feston* (1) and *In re Hardwick* (2) as authorities to show that an appeal might exist although the proceedings were of a disciplinary character exercised over an officer of the Court. He contended that an order to pay over the sum of 94*l.* 3*s.* 6*d.* and costs was equivalent to a conviction

(1) L. R. 11 Q. B. D. 545. (2) L. R. 12 Q. B. D. 148.

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and a penalty to that amount, and argued that the Court below, on whom the responsibility to do so lay, should have carried out the formalities relating to appeals, and the appellant should not now be prejudiced by any omission on part of the Court to do this.

H. S. BERKELEY, C.J. In my opinion I have no jurisdiction to hear appeals under Art. 139. In other cases, criminal and civil, the course of procedure was distinctly laid down by Art. 54, 55, and 109 to 122, and it might be that in this instance it was a case of omission and that an appeal lay only to the Queen in Council. As Chief Justice of Fiji I have no jurisdiction to hear appeals from the Western Pacific unless the power is expressly given to me under the Order in Council. I do not think that Art. 155 applies to the proceedings taken in this case. They were taken by the Deputy Commissioner *ex mero motu* under Art. 139, and perhaps under the circumstances a certain looseness of language in the documents might not be altogether unexpected.

[His Honour then reviewed the circumstances which led to the proceedings being taken against Chatfield, and said:—]

The appellant ought either to have taken steps to have had the order made on taxation reviewed or else have obeyed it. On his refusing to obey it, only one course was open; and without going further into the merits of the case, it appears to me that if the appellant has suffered any hardship from the execution that had been made upon his goods, he has in a great measure brought it on himself by the high-handed course he took in disobeying the order of the Court. The Deputy Commissioner had found that the appellant was guilty of

extortion under Art. 139, and the appellant's own conduct may have led to this conclusion as he was aware of the complaints made against him and took no steps either to clear himself or ask for a review of the order of taxation. The only question for me to consider is, is the order made under Art. 139 one that can be appealed from?

[His Honour referred in detail to Art. 54 and 109 *et seq.*, and said:—]

The power of appeal is limited by these provisions. The Order confers no general power of appealing, and in my opinion this case does not come within either of these Articles; and the proceedings under Art. 139 are intended to be of an altogether distinct character. If an appeal had been intended under that Article, it would have been so stated in the Order. In the absence of any such intention expressed in the Order granting an appeal in such cases, I can only decide that I have no jurisdiction to hear the present appeal, and it must therefore be dismissed; but there having been an important point as to practice raised in the case I will make no order as to costs.

Appeal dismissed without costs.