

[CRIMINAL JURISDICTION.]

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Oct. 25.THE QUEEN *v.* MARTELL.

Procedure for criminal offences under Western Pacific Order in Council, 1893: Art. 15, 66—Indictable Offences Ordinance 1876, s. 4—Criminal Procedure Ordinance 1875, s. 5.

The Supreme Court of Fiji has under Art. 15 of the Western Pacific Order in Council, 1893, original jurisdiction to hear and determine any civil or criminal matter arising at any place within the limits of the Order, and may do so according to the procedure usual in Fiji or according to the procedure under the Order.

A British subject, may, if found in Fiji, be committed for trial by a stipendiary magistrate there for an offence wherever committed, if such offence be one cognisable by the Supreme Court.

This was a case in which the accused, a trader in the island of Tanna, in the New Hebrides, was charged with the murder of another trader named Clark on the 10th October, 1896.

The Attorney-General (Mr. Udal) for the prosecution.

Mr. H. G. Berkeley for the defence.

At the commencement of the proceedings and before the jury was sworn, *Mr. Berkeley* raised an objection to the jurisdiction of the Supreme Court to hear the case under the circumstances in which it had now come before the Court. It appeared that the accused had originally been sent down by the Deputy Commissioner, Captain Browne, of H. M. S. *Tauranga*, who had investigated the case at the New Hebrides, for trial before the Supreme Court of Fiji under Art. 66 of the Western Pacific Order in Council 1893, upon a charge of manslaughter; but on the proceedings coming before the Attorney-General in the ordinary way, a *nolle prosequi* had been entered by him in his capacity of Grand Juror,

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and the accused, who was then in custody in Suva, was accordingly discharged. He was, however, immediately afterwards re-arrested by the police and brought before the Chief Police Magistrate at Suva on a charge of murder, upon which he was committed for trial to the Supreme Court, and a true bill having been found in this case by the Attorney-General the accused was now put upon his trial before the Chief Justice and a jury.

He contended that a case of this kind could only be removed for trial to the Supreme Court of Fiji under Art. 66 of the Western Pacific Order in Council, 1893, and that the proceedings for manslaughter upon which he was committed for trial, having been quashed by the Attorney-General, he could not now be brought up before a stipendiary magistrate of the Colony of Fiji and committed for trial to the Supreme Court as if the offence had been committed in this Colony. A stipendiary magistrate in Fiji had no jurisdiction to entertain the preliminary proceedings upon a charge of murder committed in the New Hebrides, and he cited the case of *Reg. v. Stanbury* (1) in support of this contention. The jurisdiction conferred by s. 4 of the Indictable Offences Ordinance 1876, upon a stipendiary magistrate in Fiji over crimes committed on lands beyond the limits of the Colony for which an indictment could legally be preferred within the Colony was dependent upon the fact whether the accused person resided, or was supposed to reside, within the Colony; and that Martell, therefore, being a resident in New Hebrides, could only be committed for trial in Fiji by a Deputy Commissioner in the New Hebrides under Art. 66 of the Western Pacific Order in Council, 1893, which negatived any preliminary hearing before a magistrate here.

(1) 31 L. J. M. C. 88.

The *Attorney-General, contra*, pointed out that, in addition to the powers conferred upon the Supreme Court of Fiji by Art. 66 of the Order over cases sent to it for trial by the Deputy Commissioners, by the provisions of Art. 15 it had also an *original* jurisdiction to hear any criminal matter arising at any place within the limits of the Order. In the present case the defendant, a British subject, being in Fiji, was arrested on a charge of murder committed in the New Hebrides and was brought before the nearest magistrate and by him committed for trial in the ordinary way to the Supreme Court. This jurisdiction is also expressly conferred by s. 4 of the Indictable Offences Ordinance 1876 already alluded to, which not only extends the jurisdiction of the magistrates, as therein mentioned, over persons resident, or supposed to be resident, in the district of any stipendiary magistrate, but also over those who shall happen to "be" there; and Martell, when he was arrested, happened to be within the district of the Chief Police Magistrate at Suva. By s. 5 of "The Criminal Procedure Ordinance 1895," every information coming before the Supreme Court must have been previously investigated by a magistrate, and the case therefore—being brought according to the procedure allowed by Art. 15, viz., "according to the procedure for the time being in use in Fiji"—was bound to have been brought first before the magistrate for committal for trial in the ordinary way.

SIR H. S. BERKELEY, C.J. Although a Deputy Commissioner may commit for trial before the Supreme Court of Fiji such a case as the present under Art. 66 of the Western Pacific Order in Council, 1893, yet it is clear that under Art. 15 of the said Order the Supreme Court

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of Fiji has *original* jurisdiction to hear and determine any civil or criminal cause or matter arising at any place within the limits of the Order in Council, and may do so either according to the procedure usual in Fiji, or according to the procedure under the Order. Further, that under s. 4 of the Indictable Offences Ordinance 1876, a British subject, if found in Fiji, may be properly committed for trial by a stipendiary magistrate there, wherever the offence might have been committed, if the offence be one cognisable by the Supreme Court.

Objection overruled.

[His Honour, subsequently, at the request of the counsel for the defence, reserved the point for further consideration by the Court of Crown Cases Reserved under s. 44 of "The Criminal Procedure Ordinance 1875." but in the event which happened, namely, the acquittal of the accused, such further consideration was not necessary.]

Oct. 27.

[APPELLATE JURISDICTION.]

EMOSI BASU AND OTHERS v. THE QUEEN.

*Appeal from Provincial Court—Native Regulation II. of 1877, s. 3—
 Appeals Ordinance 1876, s. 3.*

No appeal lies from a conviction by a Provincial Court, the Appeals Ordinance 1876 only applying to *European* Courts of summary jurisdiction.

This was an appeal from a decision of the Bau Provincial Court on the 9th October whereby one Emosi Basu and some forty-eight other natives of Nakelo in the Rewa district were convicted of having assaulted two other natives belonging to Natogadravu with intent to do them grievous bodily harm and were sentenced to terms of imprisonment varying from two years to one