

of his arrest? To the question "Why do you arrest me?" he could but reply "Because I am ordered to do so." To the further question "but for what reason, for what cause do you arrest me?" the officer could only reply "I do not know. I only know that I am to arrest you and take you away to confinement." But in such case the Ordinance has not been complied with for "the nature and effect" of the order has not been explained to the native. It is not that the Ordinance either expressly or impliedly relieves from the obligation to state the cause but those acting under the authority of the ordinance have not done so.

The view which I take of the invalidity of the confining order and warrant makes it unnecessary for me to determine the other objection under the ground of objection 3; and it also renders unnecessary any decision on the point raised on the second ground namely that "Ordinance XX of 1887 is void and inoperative because it was not enacted as by law required." My decision on grounds 1 and 3 have gone on what may be considered objections of a technical nature; but as Lord Denman said in *Howard v. Gossett* "they would be found on consideration to involve principles of vital importance to the liberty of the subject."

The rule for habeas corpus to bring up before this Court the body of Ratu Savanaca Radomodomo is therefore made absolute; and the writ returned into Court by my order may be reissued; and it is now further ordered that the said Ratu Savanaca be forthwith discharged from confinement without waiting for a return to the said writ of habeas corpus.

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IN *re* BARKER (IN CONTEMPT) *ex parte* SAVANACA.

[Civil Jurisdiction (Berkeley, C.J.) In Chambers, April 4, 1902.]

*Solicitors Certificate unstamped—costs awarded to client—whether client can recover from opposite party.*

Mr. Edlin had acted as solicitor for Ratu Savanaca Radomodomo in the matter of a motion to commit Thomas William Allport Barker for contempt; Barker was ordered to pay to Ratu Savanaca the costs of the motion on the higher scale to be taxed as between solicitor and client. The taxing master refused to tax the bill of costs on the ground that Mr. Edlin did not have in force at the time a duly stamped certificate.

**HELD.**—(1) A client is entitled to pay his solicitor and is thereupon entitled to recover from a party ordered to pay costs.

(2) The taxing master should not refuse to tax the bill but should require proof that the amount claimed for costs has been paid to the solicitor presenting the bill for taxation.

(3) The Attorneys and Solicitors Act, 1874 (37 and 38 Vict., c. 68) is not in force in Fiji.

[**EDITORIAL NOTE.**—As to Solicitor's Certificates see now s. 4 Solicitors Licensing Ordinance, Cap. 34 (Revised Edition, Vol. I, p. 531.)]

Cases referred to :—

(1) *re Hope* [1872] 7 Ch. App. 766 ; 41 L.J.Ch. 793 ; 27 L.T. 670 ; 42 Dig. 39.

(2) *re Fowler v. Monmouthshire Railway & Canal Coy.* [1879] 4 Q.B.D. 334 ; 48 L.J.Q.B. 457 ; 41 L.T. 159 ; 42 Dig. 39.

SUMMONS to review refusal of taxing master to tax bill of costs. The facts are set out in the judgment.

*F. O. Edlin*, for Ratu Savanaca Radomodomo.

*H. Shaw* and *H. M. Scott*, for Barker.

BERKELEY, C.J.—The question which arises on this summons is whether admitting that at the time proceedings were taken against the defendant Barker the certificate of the solicitor for Ratu Savanaca was not duly stamped, the costs awarded against the defendant can be recovered either by the solicitor or his client.

The answer to be given to this question depends upon the 1895 construction to be placed upon the 4th section of Ordinance 17 of "an Ordinance to amend the law relating to Solicitors". By that section it is declared, *inter alia*, that any person practising as a solicitor without having in force at the time a duly stamped certificate "shall be incapable of recovering any fee or reward or disbursement on account of or in relation to any act or proceeding done or taken by him in such capacity". It is clear therefore that on the facts admitted here no costs can be recovered by Ratu Savanaca's Solicitor—in the sense of being enforced by him. It is to be observed however that the claim of the solicitor in respect of his work and the debt due to him by his client on that account is not extinguished by the fact that his certificate was not duly stamped at the time when the work was performed, but that the Solicitor is only declared "incapable of recovering" any such debt, that is to say "incapable" of enforcing payment from his client or any one else. It is to be observed also that the Ordinance relates only to "Solicitors of the Supreme Court" and does not apply to the client of any such Solicitor. It follows therefore that the debt not being extinguished, but the remedy only barred, the client may if he elects to do so, pay the Solicitor. The question then is, if the client so elects, can he recover from the defendant the amount he so pays. For the following reasons it seems to me that he can. He holds the judgment of the Court ordering the defendant to pay him his costs. The monies he has paid to the Solicitor are his costs and his right to recover them under the judgment cannot, as between himself and the defendant, be affected by the Solicitor's statutory inability to compel him (the client) to pay such monies supposing him to be unwilling to do so. Though the Solicitor cannot compel his client in the circumstances to pay his fees and disbursements nevertheless the amount claimed by the Solicitor is a debt of honour which the client may properly discharge, and if he does so he may under the judgment for costs recover from the defendant the amount so paid. That is, as it seems to me, what *In re Hope*, 7 Chancery Appeals 766 decides. There it was held that though

the Act, 6 and 7 Vict., Cap. 73, s. 26,<sup>1</sup> declared that an uncertificated Solicitor should not be "capable of maintaining any action for recovering any fee, etc.," there was nothing in the act which prevented the client from paying the Solicitor and the "want of a certificate could not create any impropriety on the part of the client in doing so". There the Court of Appeal held that though the client was not "bound" to pay his Solicitor yet as he had done so he was entitled to recover what he had paid from the person who "had been ordered to pay" the costs. To apply that ruling here I think that the Master should not have refused to tax the bill but should have required proof that the amount claimed for costs had been paid to the Solicitor presenting the bill for taxation. The case *re Fowler v. The Monmouthshire Railway & Canal Coy.*, 4 Q.B.D. 334, which the Master considered binding upon him is not in point for there the decision turned upon the construction of the Imperial Statute 37 and 38 Vict., c. 68, s. 12<sup>2</sup> which, not being a Statute of general application, is not in force in Fiji though passed prior to the erection of these Islands into a British Colony. The 12th section of that Statute declares that no costs in relation to any act done by an uncertified Solicitor should be "recoverable by any person whomsoever". The section it will be observed by virtue of the expression "any person whomsoever" applies to the client as well as to his Solicitor whereas s. 4 of the Ordinance of Fiji, 17 of 1895, is expressly limited in its application to the Solicitor to the exclusion of the client whose right to recover from the defendant whatever may be properly designated as "costs" is therefore in no way affected thereby.

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## GASPARD v. COLONIAL SUGAR REFINING COMPANY LTD.

[Civil Jurisdiction (Major, C.J.) April 18, 1904.]

*Registration Ordinance, 1879—s. 9<sup>3</sup>—registration of document as a deed—whether document ipso facto to be treated as a deed.*

This was an action for the balance of the price of sugar-cane sold and delivered from August 21, 1897, to March 16, 1898, under an agreement dated March 16, 1894, or alternatively for damages for breach of contract. The agreement was registered as a deed under the Registration Ordinance 1879<sup>3</sup> and was stamped as a deed but was not otherwise in the form of a deed. It did however purport to give a right of way over Plaintiff's land—a right which it was contended could be granted only by deed. The only defence raised was the Statute of Limitations, 1623, 21 Jac. 1, c. 16, the cause of action having arisen on January 10, 1898, and writ issued on January 13, 1904.

**HELD.**—(1) An agreement cannot be made a deed by the mere fact of registration as a deed under the Registration Ordinance.

<sup>1</sup> *Solicitors Act, 1843.*

<sup>2</sup> *Attorneys and Solicitors Act, 1874.*

<sup>3</sup> *Now Cap. 36, s. 10.*