

## ANDERSON v. WINDRUM.

[Civil Jurisdiction (Corrie, C.J.) May 9, 1938.]

*Action to recover possession of chattels dismissed—Appeal to His Majesty in Council—R.S.C Order 50 Rule 3—whether Court will grant an injunction restraining the Defendant from dealing with the chattels pending appeal.*

Judgment having been given for the defendant in an action to recover possession of certain chattels the plaintiff obtained conditional leave to appeal to His Majesty in Council. The applicant then sought an injunction to restrain the defendant from dealing with the chattels until the hearing of the appeal.

**HELD.**—The Court has a discretion to grant the injunction restraining either party from dealing with the subject matter of an action pending determination of an appeal to the Privy Council.

Cases referred to :—

*Polini v. Gray* [1879] 12 Ch. D. 438 ; 41 L.T. 173 ; 28 Dig. 389.

APPLICATION by a plaintiff with conditional leave to appeal for an injunction against the defendant.

*G. F. Grahame* and *D. M. N. McFarlane* for the plaintiff.

*R. Crompton, K.C.*, with *R. A. Crompton* for the defendant.

**CORRIE, C.J.**—The applicant Colin Woollam Anderson, who has been granted conditional leave to appeal to His Majesty in Council against the judgment dated the 8th April, 1938, of this Court in an action brought by the applicant against Gladys Neville Windrum, is seeking an injunction to restrain the defendant from parting with or dealing with the jewellery held by her and the life policy No. 68471 in the Alliance Insurance Company Limited until the hearing of the appeal.

The applicant, in his action is claiming delivery and transfer of the jewellery and policy in question or payment of their value.

The application is based upon order 50 rule 3 of the Rules of the Supreme Court.

The defendant maintains that the Court has no power to grant an injunction, arguing that the matter is governed by article 5 of the rules contained in the order in council made on the 31st May 1910, and published on the 23rd October, 1914, in the *Fiji Royal Gazette* No. 80 at page 697,<sup>1</sup> and argues that the Court can only exercise the powers conferred by that article.

Article 5,<sup>1</sup> however, only applies where the judgment appealed from requires the appellant to pay money or perform a duty, and makes provision with regard to stay of execution of the judgment in such cases. It has no bearing upon a judgment such as that now under appeal, whereby the plaintiff's action was dismissed and where in consequence no question of stay of execution of the judgment can possibly arise.

<sup>1</sup> Vide now Revised Edition Vol. VI p. 125.

In the absence of any provision of the order in council dealing with the matter, I feel no doubt that the Rules of the Supreme Court are applicable and that this Court has power under order 50 rule 3 to grant the injunction sought—if in the opinion of the Court the circumstances of the case justify this course.

The applicant is relying upon the judgment of the Court of Appeal in *Polini v. Gray*, 12 Ch. D. 438. In that case the person who was appealing against a judgment dismissing her claim to a share in a fund and who had obtained an injunction against the distribution of the fund pending the hearing of the action applied to have the injunction continued pending the hearing of the appeal. The persons to whom the fund would in the absence of an injunction be paid over, were all resident out of the jurisdiction of the Court.

In that case therefore, it is clear that unless the injunction was continued the whole object of the appeal would be defeated.

The present application is based on an allegation that the defendant has no other means out of which to satisfy the judgment if the applicant is successful, and hence that if she should dispose of the chattels claimed, the object of the present appeal may be defeated. No ground however, is suggested from which it may be inferred that the defendant has any intention of disposing of the jewellery and policy in claim. Moreover in the present case no application for an injunction pending the hearing of the action was ever made.

For the applicant it is said that the reason for this was that the applicant was not certain whether the chattels claimed, were in the defendant's possession or not. But his action was in detinue and hence was based upon the defendant's possession or control of the chattels claimed; and the applicant is now seeking to be placed in a better position than he had before judgment was given against him.

I see no reason to grant this application.

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## SITA SUCHIT v. RAMA.

[Civil Jurisdiction (Corrie, C.J.) August 12, 1938.]

*Covenant for quiet enjoyment by lessor—premises demolished by lessor in obedience to local authority's demolition order—whether a breach of covenant by the lessor—whether an eviction by title paramount.*

Premises in Renwick Road, Suva were owned by the plaintiff and occupied by the defendant and his subtenants under a lease for a term of ten years from 1st September, 1932. In April, 1937 a closing order was served on the plaintiff, and notice of this order on the defendant. In obedience to the order the defendant and his subtenants vacated the premises in on 31st July, 1932. Subsequently, in obedience to a demolition order, the plaintiff demolished the premises. Rent had been paid by defendant up to 31st July, 1937, the date when he vacated the premises.