

The claimant contends that the Lienor, by suffering, however involuntarily, the Military Authorities to cut down the cane, and by failing forthwith to replant the land with cane, has neglected or refused to conform to the terms of the agreement: that in consequence, the Lienee thereupon became entitled under s. 5 of the Crop Lien Ordinance 1904 to "enter into possession thereof and cultivate until maturity and reap and carry away and sell the same." The word "thereof" in this section clearly relates to the crop and not to the land: but the claimant argues that the right to possess the crop and to cultivate and reap it, necessarily entitled the Lienee to occupy the land: and hence that the Lienee is, by virtue of this provision, a person who for the time being is entitled to occupy the land within the meaning of Regulation 5 (2).

I am unable, however, to accept the argument that the Lienor, whose crop has been destroyed and whose land has been left bare by the Military Authorities acting in due exercise of the powers conferred upon them by the Defence Regulations, has neglected or refused to keep the land under crops as required by the clause of the Crop Lien which has been cited: and if, as I hold, there has been no such neglect or refusal on the part of the Lienor, the whole of the Claimant's contention must fail.

I find therefore that, as Lienee, the claimant has no right to compensation under the Defence (Compensation) Regulations 1940.

As this is the first application under the Defence (Compensation) Regulations which has come before this Court, and as the conclusion at which I have arrived is one which may affect many persons who have lent money upon the security of crops destroyed in the exercise of emergency powers, it may be desirable to state what is the position of the Proper Authority in relation to such persons under these Regulations.

Under Regulation 18, the sum paid as compensation to the owner of any property is deemed to be comprised in any mortgage, pledge, lien or other similar obligation to which the property is subject at the time when the compensation accrues due.

The Regulations, however, do not place upon the Proper Authority any duty to ascertain whether any mortgage, pledge, lien or other obligation exists, or to give notice of any claim or any payment of compensation, except in the case of restoration of the land or payment of a lump sum under Regulation 5 (3) (a) or (b), in which case notice must be published under sub-regulation (5).

POLICE *ats.* SAHADAT ALI.

[Appellate Jurisdiction (Corrie, C.J.) March 27, 1943.]

Army Act (Imperial) 44 and 45 Vict. c. 58—s. 153 (3)—assisting a soldier absent without leave to conceal himself—Military Forces Ordinance, 1923¹—s. 23—Army Act applied in Fiji "with respect to the discipline of members" of the force raised under the Ordinance—whether s. 153 (3) of the Army Act applies in Fiji—whether a member of a force raised in Fiji under the Fiji Military Forces Ordinance, 1923 is a "soldier" for the purposes of s. 153 of the Army Act.

¹ Cap. 63.

Sahadat Ali assisted one Jafar Ali, a member of a force raised in Fiji under the Fiji Military Forces Ordinance, 1923, to conceal himself while absent without leave.

HELD.—The provisions of s. 153 of the Army Act form part of the provisions of the Army Act with respect to the discipline of members of the Fiji Military forces and hence are within the operation of s. 23 of the Military Force Ordinance, 1923.

APPEAL BY CASE STATED against acquittal. The facts and arguments fully appear from the judgment.

A. G. Forbes, for the Appellant.

Said Hasan, for the Respondent.

CORRIE, C. J.—This is an appeal by way of case stated against the judgment of the Magistrate's Court, Suva, whereby it was held that the court had no jurisdiction to try an information preferred by the Assistant Superintendent of Police against the present Respondent, Sahadat Ali, "for that he, the said Sahadat Ali, did on the 24th day of November, 1942, at Suva, knowing Private No. 2102 Jafar Ali, a soldier in the Fiji Military Forces, to be absent without leave, unlawfully assist him in concealing himself; contrary to s. 153 (3) of the Army Act."

In declining jurisdiction the Learned Magistrate held as follows:

"By s. 23 Fiji Military Forces Ordinance 1923¹ the legislature of this Colony has applied the provisions of the Army Act to the Colony in a limited respect; namely 'with respect to the discipline of members' of the force raised under that Ordinance.
 "The section of the Army Act under which the present charge is laid (s. 153) does not relate to the discipline of the soldier himself and has not therefore been applied to the Colony by virtue of s. 23 Fiji Military Forces Ordinance nor does it apply of itself.
 "8. I was also of opinion that the said Private Jafar Ali was not a 'soldier' for the purposes of the said s. 153. The expression 'soldier' is defined as including every person subject to military law. (S. 190 (6)). Among the persons specified as being subject to military law are members of a colonial force to which the Act has been applied and the Act is made applicable to the members of such force subject to such adaptations, modifications and exceptions as may be specified by the law of the colony (S. 176 (11)).
 "The application of the Army Act to this Colony is modified to the extent of applying only in respect of the discipline of the members of the force (s. 23 Ordinance 3 of 1923) and accordingly I was of the view that Private Jafar Ali was a person subject to military law only as regards part 1 of the Army Act which relates to discipline."

S. 153 of the Army Act¹ is in the following terms:

"153. PUNISHMENT FOR INDUCING OR ASSISTING OFFICERS OR SOLDIERS TO DESERT OR ABSENT THEMSELVES WITHOUT LEAVE.—Any person who in the United Kingdom or elsewhere by any means whatsoever—
 "(1) Procures or persuades any officer or soldier to desert or absent himself without leave, or attempts to procure or persuade any officer or soldier to desert or absent himself without leave; or
 "(2) Knowing that an officer or soldier is about to desert or absent himself without leave, aids or assists him in deserting or absenting himself without leave, or
 "(3) Knowing any officer or soldier to be a deserter or absentee without leave, conceals such officer or soldier, or aids or assists him in concealing himself, or aids or assists in his rescue, shall be liable, on summary conviction, to be imprisoned, with or without hard labour, for a term not exceeding six months.

The Army Act¹ has in itself no validity either in the United Kingdom or elsewhere. It is brought into force year by year by a series of Acts of the Imperial Parliament, each of which has the short title "Army and Air Force (Annual) Act". No copy of the Act passed in 1942 is yet available in this Colony, but the wording of the provision by which the operation of the Army Act is annually extended does not vary from year to year. In the Army and Air Force (Annual) Act 1941, the operative section reads:

¹ 44 and 45 Vict. c. 58.

“2.—(1) The Army Act and the Air Force Act shall be and remain
“in force during the periods hereinafter mentioned, and no longer,
“unless otherwise provided by Parliament, that is to say:—

“(a) Within Great Britain and Northern Ireland, the Channel
“Islands, and the Isle of Man, from the thirtieth day of
“April, one thousand nine hundred and forty-one, to the
“thirtieth day of April, one thousand nine hundred and forty-
“two, both inclusive; and

“(b) Elsewhere, whether within or without His Majesty’s domi-
“nions, from the thirty-first day of July, one thousand nine
“hundred and forty-one, to the thirty-first day of July, one
“thousand nine hundred and forty-two, both inclusive.

“(2) Notwithstanding anything in sub-s. (1) of section 15
“of the Army and Air Force (Annual) Act, 1932, the amendment
“of the Army Act and of the Air Force Act made by this Act shall
“come into operation in all places as from the thirtieth day of April,
“nineteen hundred and forty-one.

“(3) The Army Act and the Air Force Act while in force, shall
“apply to persons subject to military law or to the Air Force Act,
“as the case may be, whether within or without His Majesty’s
“dominions.”

It is clear therefore that the operation of the Army Act¹ is not limited to the United Kingdom. S. 168 makes provision for the summary trial in a Colony of offences under the Act, and it is not contested that if Jafar Ali, the person whom the respondent is alleged unlawfully to have assisted in concealing himself, had been a soldier in His Majesty’s regular forces, s.153 of the Army Act would be enforceable against the Respondent in a Court of Summary Jurisdiction in this Colony.

Under s. 177 of the Army Act¹ where any force is raised in a Colony any law of the Colony may extend the Act to the officers, non-commissioned officers and men belonging to such force whether within or without the limits of the Colony; and any such law may apply, in relation to such force and to any officers, non-commissioned officers and men thereof, all or any of the provisions of the Act subject to such adaptations, modifications, and exceptions as may be specified in such law.

S. 23 of the Defence Force Ordinance 1923 (Ordinance 3 of 1923), to which there has now been given the short title, Military Forces Ordinance 1923, as now amended provides as follows:

“23. With respect to the discipline of members when they are on
“active service or undergoing drill exercise or inspection the provi-
“sions of the Army Act so far as applicable shall apply as if the
“Defence Force formed part of His Majesty’s Regular Forces with
“the following modifications:—

“(a) the word “Governor” may be read for the words “Army
“Council” and “Secretary of State”;

“(b) no sentence exceeding two years’ imprisonment imposed by
“a Field-General court-martial upon the trial of a member when
“serving within the limits of the Colony shall be carried into
“execution unless confirmed by the Governor;

“(c) such other modifications consistent with this Ordinance as
“may be necessary.”

¹ 44 and 45 Vict. c. 58.

The learned Magistrate has held that the sections which apply to the Fiji Military Forces are only those sections of the Army Act which relate "to the discipline of the soldier himself", which does not form part of Part I and hence that s. 153 of the Army Act has not been applied in this Colony.

It is admitted, however, on behalf of the Respondent that certain sections of the Army Act affecting the conduct of persons who are not subject to military law are nevertheless in force here in relation to the discipline of a member of the Fiji Military Forces. For example, s. 125 and 126, which require a person not subject to military law to give evidence at a court-martial and prescribe penalties, are admittedly in force.

It is to be noted also that those two sections are not included in Part I of the Army Act to which is given the heading "Discipline". It follows therefore that the fact that provisions of section 153 are not included in Part I, but are in Part IV under the heading of "General Provisions" is not material in determining whether s. 153 is a provision of the Act with respect to the discipline of members of Fiji Military Forces.

The offences to which s. 153 relates persuading a soldier to desert or absent himself without leave (sub-s. (1)), assisting him in deserting or absenting himself without leave (sub-s. (2)), and concealing a deserter or absentee without leave (sub-s. (3)), are all of them offences affecting the discipline of members of the Fiji Military Forces, and I see no reason to hold that because such an offence is committed by a person who is not himself subject to military law, the offence is not an offence against discipline. I hold therefore that the provisions of s. 153 form part of the provisions of the Army Act with respect to the discipline of members of the Fiji Military Forces; and hence that they are within the operation of s. 23 of the Military Forces Ordinance 1923.

Taking this view, it is not necessary for me to determine the question whether by virtue of s. 176 (11) any member of the Fiji Military Forces is or is not a soldier for all the purposes of the Army Act.

The learned Magistrate was of the view that Private Jafar Ali was a person subject to military law only as regards Part I of the Army Act which relates to discipline. Having held that s. 153 is one of the provisions of the Act with respect to discipline, it follows that I hold that Private Jafar Ali is a soldier for the purpose of that section.

In my judgment, therefore, the Magistrate's Court has jurisdiction to try a person accused of an offence under s. 153 of the Army Act¹, and accordingly the appeal is allowed.

¹ 44 and 45 Vict. c. 58.