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2, 1968

IN THE PRIVY COUNCIL

No. 7 of 1966

ON APPEAL FROM THE FIJI COURT OF APPEAL

B E T W E E N:

KULAMMA D/O VEDISA NAICKEN as
Administratrix of the Estate
of Sabhapati s/o Raghawan

(Plaintiff)

Appellant

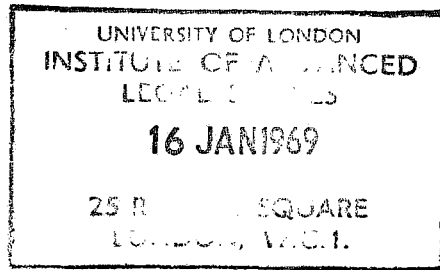
- and -

MANADAN S/O RAGHAWAN GOUNDEN

(Defendant)

Respondent

RECORD OF PROCEEDINGS



T.L. WILSON & CO.,
6 Westminster Palace Gardens,
London, S.W.1.

Solicitors for the Appellant.

CHARLES RUSSELL & CO.
37 Norfolk Street,
London, W.C.2.

Solicitors for the Respondent.

(i)

IN THE PRIVY COUNCIL

ON APPEAL FROM THE FIJI COURT OF APPEAL

B E T W E E N:

KULAMMA d/o Vedisa Naicken as
administratrix of the estate of
Sabhapati s/o Raghawan

(Plaintiff) Appellant

-and-

MANADAN s/o Raghawan Gounden

(Defendant) Respondent

RECORD OF PROCEEDINGS

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1.

IN THE PRIVY COUNCIL

No. 7 of 1966

ON APPEAL FROM THE FIJI COURT OF APPEAL

B E T W E E N:

KULAMMA D/O VEDISA NAICKEN as
Administratrix of the Estate
of Sabhapati s/o Raghawan
(Plaintiff) Appellant

- and -

MANADAN S/O RAGHAWAN GOUNDEN
(Defendant) Respondent

10

RECORD OF PROCEEDINGS

NO. 1

WRIT OF SUMMONS

No. 148 of 1963.

THE SUPREME COURT OF FIJI.

B E T W E E N:

KULAMMA daughter of Vedisa Naicken of
Saweni, Lautoka, Widow as
Administratrix of the estate of
Sabhapati son of Raghawan Gounden
late of Saweni, Lautoka deceased Plaintiff

and MANADAN son of Raghawan Gounden of
Vaivai, Lautoka, Cultivator Defendant

WRIT OF SUMMONS

ELIZABETH II, by the Grace of God of the United
Kingdom of Great Britain and Northern Ireland
and of Her other Realms and Territories Queen,
Head of the Commonwealth, Defender of the
Faith.

20

In the Supreme
Court

No.1

Writ of
Summons
25th October
1963

2.

In the Supreme
Court

To MANADAN son of Raghawan Gounden
of Vaivai, Lautoka, Cultivator

No. 1

Writ of
Summons
25th October
1963
(Continued)

WE COMMAND You, That within EIGHT days after the service of this Writ on you inclusive of the day of such service you do cause an appearance to be entered for you in an action at the suit of KULAMMA daughter of Vedisa Naicken of Saweni, Lautoka, Widow as Administratrix of the estate of Sabhapati son of Raghawan Gounden late of Saweni, Lautoka deceased and take notice that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

10

WITNESS the Honourable CLIFFORD JAMES HAMMETT Acting Chief Justice of our Supreme Court, at Suva, this 25th day of October 1963.

(LS)

KOYA & CO.
per: S.M. Koya

20

Solicitors for the Plaintiff.

N.B. - This writ is to be served within twelve calendar months from the date thereof, or, if renewed, within six calendar months from the date of the last renewal, including the day of such date and not afterwards.

The defendant may appear hereto by entering an appearance either personally or by Solicitor at the Supreme Court Registry at Suva.

30

GENERAL ENDORSEMENT OF CLAIM

The Plaintiff claims as Administratrix of the estate of Sabhapati son of Raghawan Gounden late of Saweni, Lautoka, deceased:-

1. FOR a declaration that the Share Farming Agreement made between Sabhapati son of Raghawan Gounden late of Saweni, Lautoka, deceased and the Defendant dated 23rd May, 1957 (concerning Cane Farm No. 581 situate

40

3.

at Saweni, Lautoka and forming part of Native Land and held by the said Sabhapati deceased under a Tenancy Agreement from the Colonial Sugar Refining Company Limited) is an illegal contract at law upon the grounds that such Share Farming Agreement is a dealing and that no consent has been obtained under Section 12 of the Native Land Trust Ordinance (Cap. 104).

In the Supreme Court

No. 1

Writ of Summons
25th October
1963
(Continued)

10

2. FOR an Order that the Assignment of Crops given by the Plaintiff to the Defendant in respect of the said Cane Farm on 15th day of November, 1960 be set aside.

20

3. FOR an order that the Defendant do give an account of the moneys collected by him from the Colonial Sugar Refining Company Limited or its successors under the said Assignment of Crops and an account be taken in respect of the such moneys and upon taking of such account the Defendant be ordered to pay the Plaintiff such moneys as may be found due and owing to the Plaintiff.

30

4. AN injunction restraining the Defendant his agents or servants from collecting by order or assignment or otherwise the moneys now lying to the credit of the Plaintiff in the hands of South Pacific Sugar Mills Limited Lautoka concerning the said farm and any further moneys due or payable to her by the said Company in respect of cane supplied from the said farm.

5. FURTHER or other relief as to this Honourable Court seems fit.

6. COSTS of this action.

In the Supreme Court

NO. 2

STATEMENT OF CLAIM

No.2

Statement of Claim
7th November, 1963

IN THE SUPREME COURT OF FIJI

No.148 of 1963

B E T W E E N:

KULAMIA daughter of Vedisa Naicken of Saweni, Lautoka, Widow as Administratrix of the estate of Sabhapati son of Raghawan Gounden late of Saweni, Lautoka, deceased

Plaintiff

10

- and -

MANADAN son of Raghawan Gounden of Vaivai, Lautoka, Cultivator

Defendant

STATEMENT OF CLAIM

The Plaintiff says:-

1. THAT the Plaintiff is the personal representative and the lawful widow of Sabhapati son of Raghawan Gounden (hereinafter called "the deceased") late of Saweni, Lautoka, deceased. The Defendant is the lawful brother of the deceased.

20

2. THAT at the time of his death the deceased was the holder of cane Farm No. 581 situate at Saweni, Lautoka (hereinafter called "the said farm") held by him under a Tenancy Agreement from the Colonial Sugar Refining Company Limited. The said farm forms part of Native land known as "Saweni Block 11" containing 758 acres 2 roods 0 perches held by the said Company from the Native Land Trust Board under an Approval to lease No. 4/7/1154.

30

3. THAT on the 23rd day of May, 1957 the deceased entered into a written agreement

5.

with the Defendant whereby it was agreed,
inter alia:-

In the Supreme
Court

No. 2

Statement of
Claim
7th November,
1963
(Continued)

- (a) that the Defendant would take possession of the said farm and cultivate same
- (b) that the deceased would share in equal shares the proceeds of cane supplied from the said farm
- 10 (c) that the said Agreement would enure until all moneys due and owing by the deceased to one Murtuza Hussain Shah were fully paid.

4. THAT the said Agreement purports to contain a clause whereby the deceased and the Defendant have allegedly agreed as follows:-

20 "4.A. UPON payment of all moneys owing or hereafter to become owing by the owner to Murtuza Hussain Shah the owner will apply for and use his best endeavours to obtain the consent of the Colonial Sugar Refining Company Limited to the transfer of one half interest in the said Farm No. 581 to the Farmer.

5. THAT pursuant to the said Agreement the Defendant went into the possession of the said farm and cultivated same and at the time of the deceased's death the Defendant was in possession thereof.

30 6. THAT the said Agreement constitutes a dealing within the meaning of the word in Section 12 of the Native Land Trust Ordinance (Cap.204) and no consent has been obtained in respect of such dealing as required.

40 7. THAT on the 19th day of November, 1958 the deceased died intestate at Saweni aforesaid and on the 2nd September, 1959 the Supreme Court of Fiji granted Letters of Administration to the Plaintiff to administer the deceased's estate.

8. THAT at the Defendant's request the Plaintiff

In the Supreme Court

No. 2

Statement of Claim
7th November, 1963
(Continued)

in or about the month of November, 1960 commenced to reside at the Defendant's house at Vaivai, Lautoka.

9. THAT in or about the month of November, 1960 and whilst the Plaintiff was residing at the Defendant's house at Vaivai, aforesaid the Defendant orally and falsely represented to the Plaintiff that the deceased during his life time had become indebted to the Defendant in the sum of £800 and not in the sum of £189.2.9 as was understood by all parties, that the Plaintiff was morally and legally responsible to pay same and persuaded upon her to execute an Assignment of Cane Crops growing or to be grown on the said farm to secure such indebtedness and undertook to discharge same when the sum of £800 was fully paid. 10
10. THAT on the faith of the said representations the Plaintiff on the 15th day of November, 1960 executed an Assignment of Cane Crops over the said farm. 20
11. THAT the said representations were made by the Defendant fraudulently well knowing the same to be false or recklessly and not carrying whether the same was true or false.
12. THAT in any event if such indebtedness did exist the said Assignment of Cane Crops was given for past consideration or illegal. 30
13. THAT pursuant to the said Assignment of Cane Crops the said Defendant has collected from the Colonial Sugar Refining Company Limited and its successor South Pacific Sugar Mills Limited the sum of £1086.15.7. made up as follows:-

"24/3/61	£216.	12.	0	
17/6/61	76.	0.	8	
27/7/61	121.	7.	0	
21/9/61	1.	19.	0	
19/10/61	36.	12.	0	
1/11/61	48.	14.	8	
3/5/62	116.	18.	11	40

7.

20/9/62	98.	17.	8
10/10/62	101.	8.	11
13/12/62	87.	16.	11
28/1/63	64.	19.	7
27/6/63	115.	8.	3
	<hr/>		
	1086.	15.	7 "
	<hr/>		

In the Supreme Court

No.2

Statement of Claim
7th November, 1963
(Continued)

10 14. THAT the Defendant has despite repeated requests refused to give any account to the Plaintiff in respect of the moneys collected by him under the said Assignment of Cane Crops.

15. THAT during the year 1962 and 1963 sugar cane was supplied from the said farm in respect of which the South Pacific Sugar Mills Limited is now holding the sum of £349.3.11. The Defendant claims that the said moneys are payable to him under the said Assignment of Cane Crops. The said amount is made up as follows:-

20	(a) 1962 final payment	£57.13. 0.
	(b) 1963 delivery payment	<u>291.10.11.</u>
		<u>£349. 3.11.</u>

WHEREFORE the Plaintiff claims:-

- 30 (a) For a declaration that the Share Farming Agreement made between the deceased and the Defendant on the 23rd day of May, 1957 is a dealing and as no consent has been obtained under Section 12 of the Native Land Trust Ordinance (Cap. 104) the said Share Farming Agreement is an illegal contract at law.
- (b) For an order that the Assignment of Cane Crops given by the Plaintiff to the Defendant on the 15th day of November, 1960 in respect of the said farm be set aside.
- (c) For an order that an account be taken between the Plaintiff and the Defendant and the Defendant do give an account of

In the Supreme
Court

No. 2

Statement of
Claim
7th November,
1963
(Continued)

the moneys collected by him from the Colonial Sugar Refining Company Limited or its successors South Pacific Sugar Mills Limited under the said Assignment of Cane Crops and that the Defendant be ordered to pay to the Plaintiff all sum or sums due to the Plaintiff upon the taking of such accounts.

- (d) An injunction restraining the Defendant his agents or servants from collecting by order or assignment or otherwise the moneys now lying to the credit of the Plaintiff in the hands of South Pacific Sugar Mills Limited, Lautoka concerning the said farm and any further moneys due or payable to her by the said Company in respect of cane supplied from the said farm. 10
- (e) Further or other relief as to this Honourable Court seems fit. 20
- (f) Costs of this action.

DELIVERED the 7th day of November 1963.

KOYA & CO.
per: Sgd. S.M. Koya
Solicitors for the Plaintiff

9.

NO. 3

DEFENCE

In the Supreme
Court

No. 3

IN THE SUPREME COURT OF FIJI No. 148 of 1963

Defence
30th November
1963

B E T W E E N:

KULAMMA daughter of Vedisa Naicken
of Saweni, Lautoka, Widow as
Administratrix of the estate of
Sabhapati son of Raghawan Gounden
late of Saweni, Lautoka deceased.

Plaintiff

- and -

MANADAN son of Raghawan Gounden
of Vaivai, Lautoka, Cultivator.

Defendant

DEFENCE

The defendant says:

1. HE admits paragraph 1 of the plaintiff's statement of claim.
2. AS to paragraph 2 he admits that the deceased held Farm No. 581 at the time of his death and that the said farm is situated at Saweni Lautoka and was held by the deceased under tenancy from the Colonial Sugar Refining Company Limited but save as to the allegations expressly herein admitted he denies each and every the allegations contained in the said statement of claim.
3. HE admits paragraphs 3, 4 and 5, of the statement of claim.
4. HE denies each and every the allegations contained in paragraph 6 of the statement of claim.
5. HE admits paragraphs 7 and 8 of the statement of claim.

In the Supreme
Court

No. 3

Defence
30th November
1963
(Continued)

6. HE denies each and every the allegations contained in paragraph 9 of the statement of claim and says that at the request of the plaintiff he advanced moneys to the plaintiff for the purpose of paying the debts of her deceased husband and for the maintenance of her family for which the plaintiff gave the defendant an assignment over the plaintiff's share of the cane moneys accruing from the said Farm No.581. 10
7. HE admits that the plaintiff executed an assignment on the 15th day of November 1960 but save as to the allegations expressly herein admitted denies each and every the allegations contained in paragraph 10 of the statement of claim.
8. HE denies each and every the allegations contained in paragraphs 11 and 12 of the statement of claim.
9. HE admits paragraph 13 of the statement of claim. 20
10. HE admits that plaintiff has asked for an account and says that he is preparing an account but save as is herein expressly admitted he denies each and every the allegations contained in paragraph 14 of the statement of claim.
11. HE admits paragraph 15 of the statement of claim.
12. FOR a further defence the defendant says that from the 23rd day of May 1957 he has worked the said Farm No. 581 and that the moneys derived therefrom were and are the product of the defendant's labour and that the plaintiff now seeks to enrich herself at the expense of the defendant and contrary to the agreement entered into by her late husband of which she has taken the benefit. 30

(sgd) K.A. STUART.
Solicitor for Defendant.

40

DELIVERED the 30th day of November, 1963.

11.

NO. 4

In the Supreme
Court

NOTICE TO ADMIT FACTS

No.4

IN THE SUPREME COURT OF FIJI No. 148 of 1963.

Notice to
Admit facts
26th February
1964

B E T W E E N:

KULAMIA daughter of Vedisa Naicken of
Saweni, Lautoka, Widow as Administratrix
of the estate of Sabhapati son of Raghawan
Gounden late of Saweni, Lautoka deceased.

Plaintiff

10

- and -

MANADAN son of Raghawan Gounden of
Vaivai, Lautoka Cultivator

Defendant

TAKE NOTICE that the Plaintiff in this cause
requires the Defendant to admit, for the purposes
of this cause only, the several facts respectively
hereunder specified; and the Defendant is hereby
required within six days from the service of this
notice, to admit the said several facts, saying
all just exceptions to the admissibility of such
facts as evidence in this cause.

20

DATED this 26th day of February 1964.

KOYA & CO.

per: Sgd. S.M. Koya.

Solicitors for the Plaintiff.

To: Messrs. Stuart & Co. of Lautoka Solicitors for
the above named Defendant.

The facts, the admission of which is required are:-

1. That Cane Farm No. 581 situate at Saweni,
Lautoka held by the Plaintiff under a
Tenancy Agreement from the Colonial Sugar
Refining Company Limited forms part of
Native land known as "Saweni Block 11"
containing 758 acres 2 roods 0 perch held
by the said Company from the Native Land
Trust Board under an Approval to lease No.
4/7/1154.

30

In the Supreme Court

NO. 5

No. 5

REPLY TO NOTICE TO ADMIT FACTS

Reply to Notice to admit facts 3rd March, 1964

IN THE SUPREME COURT OF FIJI No.148 of 1963.

B E T W E E N:

KULAMMA daughter of Vedisa Naicken of Saweni, Lautoka, Widow as Administratrix of the estate of Sabhapati son of Raghawan Gounden late of Saweni, Lautoka, deceased.

10

Plaintiff

- and -

MANADAN son of Raghawan Gounden of Vaivai, Lautoka, Cultivator

Defendant

THE Defendant does not admit that cane Farm Number 581 mentioned in the Plaintiff's Notice to Admit Facts served on the Defendant in this action forms part of Native Land and repeats paragraph two (2) of the Statement of Defence namely:

20

"As to paragraph 2 he admits that the deceased held Farm No. 581 at the time of his death and that the said farm is situated at Saweni Lautoka and was held by the deceased under Tenancy from the Colonial Sugar Refining Company Limited but save as to the allegations expressly herein admitted he denies each and every the allegations contained in the statement of claim".

30

DATED at LAUTOKA the 3rd day of March, 1964.

(Sgd) TULSI R. SHARMA.

Solicitor for the Defendant.



13.

NO. 6

PROCEEDINGS.

In the Supreme
Court

No. 6

IN THE SUPREME COURT OF FIJI

Civil Jurisdiction

Proceedings
6th August
1964

Action No. 148 of 1963

IN COURT

Before the Hon. Mr. Justice R.H.
Mills-Owens, C.J. On Thursday the
6th day of August, 1964 at 9.30 a.m.

10 B E T W E E N:

KULAMMA d/o Vedisa Naicken
Plaintiff

- and -

MANADAN s/o Raghawan Gounden
Defendant

Mr. Koya for the Plaintiff.
Mr. Stuart for the Defendant.

20 KOYA: With Stuart's consent wish to add to
paragraph 12 of Statement of Claim the words
"or illegal".

STUART: No objections.

Ordered that paragraph 12 be amended accordingly.

KOYA: Whether "Share Farming Agreement"
constitutes a dealing; if so, whether it is
an illegal contract in law.

Secondly whether the assignment of cane
crops was obtained by false representation on
part of defendant.

30 Thirdly, whether it is bad in law for
want of consideration.

Fourthly, whether it was given for illegal
consideration.

In the Supreme Court

No. 6

Proceedings
6th August
1964
(Continued)

As to claim (c) - for an order for an account - the defendant has since furnished an account - by agreement of counsel we will put that account in. But if documents held valid we will require some order for settling the disputed items.

STUART: Koya entitled to query the account I agree, but submit not to an order for an account - as we have delivered an account. Submit this matter should be left until judgment - parties may discuss meantime. 10

KOYA: I agree.

COURT: This appears more convenient course.

KOYA continues opening:

Refers to pleadings. As to the assignment we allege the consideration was as to £500 moneys due to defendant on his Share Farming Agreement and £283 advanced by him to pay creditors and the farm. 20

Plaintiff's Evidence

No. 7

Henry Stokes Examination

PLAINTIFF'S EVIDENCE

NO. 7

HENRY STOKES

Calls -

HENRY STOKES - Sworn on Bible in English

I am a registered surveyor employed by the South Pacific Sugar Mills at Lautoka - a subsidiary of the C.S.R. Co. I have lived in Lautoka since 1938. I do all the required survey work for the C.S.R. Co. in Fiji except that occasionally other surveyors are called in. 30

The C.S.R. Co. have a lease - called the Sawoni Native Lease - near Lautoka.

It was formerly called Saweni Block 'A'; block 11 called Mataitagaloa.

STUART: Make objections - not the best evidence.

In the Supreme Court

Witness continues:

Plaintiff's Evidence

To the best of my knowledge it is Native land. The C.S.R. Co. pay the rent - the area is 758 acres 2 roods.

No. 7

STUART: This is all hearsay.

Henry Stokes Examination (Continued)

KOYA: Ask leave to stand down the witness from there.

10 Allowed.

NO. 8

No. 8

HECTOR HATCH

Hector Hatch Examination

HECTOR HATCH - sworn on the Bible in English:

I live at Wainanu Road, Suva. I am in employ of the Native Land Trust Board. I handle the issue of Native leases; also issue of approval notices, that is approval of Board to issue of leases to applicants.

20 I have a file - an official file - No. 4/7/1154 - it refers to C.S.R. Co's lease on Block 11 Saweni. The land belongs to the Native owners - the Board administers it on their behalf. An approval notice was issued to the C.S.R. Co. in respect of Block 11 - I have the duplicate in the file - the original is with the C.S.R. Co.

STUART: I object.

30 Witness to Court:

The Native owners are registered in the Land Titles Office. The land is included in the Native Land Commissioner's plans.

KOYA: If Stuart still objecting I must ask for

In the Supreme Court

an adjournment; but object to continuing with plaintiff's case as far as possible.

Plaintiff's Evidence

Witness; also first witness; released.

No. 8

Hector Hatch Examination (Continued)

No. 9

Kulamma Examination

NO. 9

KULAMMA

Koya calls -

Plaintiff - KULAMMA d/o Vedisa Naicken - Sworn on Ramayan in Hindustani.

Engaged in domestic duties - widow of ^{L^o} Sabhapati s/o Raghawan Gounden. He died in 1958. I produce the Letters of Administration to his estate granted to me as his lawful widow. 10

During my husband's lifetime the defendant Manadan cultivated my husband's land by agreement - I produce the contract.

On 15th November, 1960, I executed an Assignment of Cane Crops to the defendant Manadan - I tender same. A few weeks before this I had gone to live at Manadan's house - with my children - at Vaivai - it is 2 miles from Saweni. He said my husband owes £189 in debt - I came to know when I received the 'probate'. I applied for the 'probate' through Mr. Stuart's office. I stated the debt due to Manadan as £189.2.9 on applying for probate. 20

Two statements for death duty purposes produced by consent.

I don't know what amount was due. Manadan persuaded me - also he persisted - then in the end I signed for £800. He said my husband was indebted in the sum of £800 and I was to sign. He repeated this almost daily and in the end I signed. He told me that I was to live with him and with the children and that my husband owed him money and I must sign for it. Manadan is my 30

late husband's blood brother. I believed him when he told me my husband owed him £800.

(To Court: My husband did not tell me anything about it).

Manadan was farming the land for my husband before his death - I do not know if anything was due under that agreement.

10 Manadan did not tell me how the £800 was made up. He reminded me daily - and as he was a blood brother I believed him. This went on for a week - i.e. before we went to a Solicitor's office to sign.

(Q. Court: Why a week's persuasion if you believed him?

Witness: I believed him on the very first day)

Examination in Chief continued -

Q. Why did he have to persuade you for next 5 or 6 days?

20 A: He has been saying it daily and I came to believe him.

It was two or three days after he told me my husband owed him £800 that he asked me to give him an Assignment. I agreed on the same day. I trusted him because he was a blood relation.

I executed the Assignment in Mr. Stuart's office at Lautoka. I did so in reliance on what Manadan had said to me. Manadan and I signed 4 accounts before the Assignment was executed.

Accounts put in as agreed documents

30 After the Assignment I continued to stay with Manadan - for a fortnight then I asked for an account. When I did not get it I went back to Saweni.

I stayed with Manadan for 2 years altogether. He wasn't giving me the accounts - that is why I left. We did not go into the accounts at the Solicitor's office after the

In the Supreme Court

Plaintiff's Evidence

No. 9

Kulamma Examination (Continued)

In the Supreme
Court

Plaintiff's
Evidence

No. 9

Kulamma
Examination
(Continued)

Assignment.

Manadan received moneys under the Assignment. Even after the issue of the writ in this action he did not give me accounts. Nothing have been given since - in December, 1963.

By consent two accounts put in as agreed documents. One in respect of the Assignment which in respect of the Share Farming Agreement

I have secured a Court Order to prevent the South Pacific Mills making payments to defendant. The Company therefore holds some money pending outcome of this litigation. My husband owed money to Murtuza Hussain Shah - his estate still owes money to him. 10

11 a.m. Court adjourned 15 minutes.

11.15 a.m. Resumed - Examination in Chief
Continued -

His (M.H. Shah's) debt has been paid. It was paid before the Assignment Exhibit C.

In January, 1960, I signed an account with Shah. 20

(Put in by agreement).

He refunded some money to me - he had collected more than the estate owed him.

On 4th of this month I saw some persons near my farm at Saweni at about 5 p.m. - two were Europeans - one was Mr. Stokes; also there was Permal Goundar; the other European was Mr. Johnson the sector overseer of C.S.R. Co. and yourself (counsel). I pointed out to the two Europeans the farm of my late husband - cane was still growing on it. 30

There is a dwelling house on the farm in which I live with my children. My husband and I lived there for many years - my children were born there - my eldest child is 20 years old - she is a daughter - we lived there for 2 years before she was born. I lived there until I went to live at Vaivai. The adjoining farm on the sea side is that of one Yenktaiya. He 40

is not related to Permal Goundar. Permal Goundar owns a farm - this is towards the tramline. My farm fronts the feeder road to Saweni beach.

In the Supreme Court

Plaintiff's Evidence

No.9

Kulamma Examination (Continued)

The farm on the right as you come on to the feeder road is Permal Goundar's; on the left is the farm of Permal Goundar. My farm is between two other farms; one side is Permal Goundar; the other side is Yenktaiya. Mine is a 10 acre farm - i.e. my late husband's. The C.S.R. Co. deducts the rent from the cane moneys. The annual rent is £22.

10

Cross-examined by Stuart:

Cross-Examination

Q: Your late husband and defendant were brothers?

A: Yes.

Q: For some years before his death was your husband able to work on farm?

20

A: Yes.

Q: Why then did he enter an agreement with Manadan?

A: I do not know.

Q: No idea at all?

A: I knew a document was executed but I don't know for what purpose.

Q: No idea at all?

A: None.

Q: Before it was executed your husband owed money to Murtuza Hussain?

30

A: Yes - after a year before his death the defendant was paid.

Q: You knew Intaz Hussain was Murtuza's representative?

A: Yes.

Q: You had dealings with Intaz?

A: No.

Q: You did not?

A: Before?

In the Supreme
Court

Plaintiff's
Evidence

No.9

Kulamma
Cross-
Examination
(Continued)

Q: Yes and after?
A: Not after.

Q: What happened after debt paid off?
A: After that the Assignment to Manadan
was made.

Q: No - did anyone sign a discharge?
A: Yes.

Q: You did?
A: Say - I only knew that the debt was paid off.

Q: You refuse to know anything else? 10
A: Yes.

Q: You will tell me only what you think I should
know?
A: -

Q: A discharge signed when Murtuza's debt paid
off?
A: I signed.

Q: Anyone else?
A: I don't know.

Q: You gave him back £52.16.1? 20
A: No - I received £25.

Q: In the presence of Intaz Hussain?
A: He was not there.

Q: Who was there?
A: One Prasad, a clerk.

Q: Knew what you signed?
A: Yes.

Q: Look at this receipt?
A: What is this?

Q: It says you received £52.16.1? 30
A: I did not receive that amount - I
received £25.

(To Court: Precisely £25).

Q. When Murtuza's debt paid off?
A: Yes

Q: When you got this money (52 or £25) you knew Murtuza's debt was paid off?

A: Yes.

Q: You say you don't know why your husband made the document with the defendant?

A: No.

Q: Could it have been your husband was too ill to farm the land?

A: Yes.

10 Q: He could have been?

A: Yes.

Q: It was because he was sick?

A: Yes.

Q: So he made the arrangement with Manadan?

A: I don't know.

Q: After the agreement was made what happened to the farm?

A: I don't know.

20 Q: Did Manadan work on it?

A: Yes.

Q: Did your husband also?

A: Yes - both of them.

Q: You still lived there?

A: Yes.

Q: Until your husband's death and even after?

A: Yes, for a year.

Q: Manadan continued to work on the farm?

A: Yes.

30 Q: And you?

A: Yes - I did hoeing etc.

Q: After agreement with Manadan the cane cultivation improved?

A: Yes.

Q: Manadan increased the tonnage very considerably?

A: Yes.

In the Supreme Court

Plaintiff's Evidence

No. 9

Kulamma Cross-Examination (Continued)

In the Supreme Court

Plaintiff's Evidence

No. 9

Kulamma Cross-Examination (Continued).

- Q: And it continued to increase?
A: Yes - but I was also working and also my daughters.
- Q: Why leave the farm and go to live at Vaivai?
A: After my husband's death Manadan said I would be alone and asked me to go to his place.
- Q: Manadan was paying your expenses?
A: No. We worked as labourers - I also - and my two daughters - one is now 20 the other is 12.
- Q: There are 2 younger daughters?
A: Yes.
- Q: The two elder worked as labourers?
A: Yes.
- Q: On the farm or for others?
A: On someone else's farm.
- Q: They are now aged 20 and 12?
A: Yes.
- Q: Were they working as labourers before you went to Manadan's house?
A: Yes - before that - working on my farm.
- Q: Not other peoples?
A: That is correct.
- Q: You were friendly with Manadan he was your husband's brother and worked on the farm?
A: Yes.
- Q: He gave you food and paid your debts?
A: Yes.
- Q: He guaranteed your store account?
A: I don't know.
- Q: Did you not have a joint store account?
A: Yes.
- Q: Between yourself and Manadan?
A: No.
- Q: How was it joint?

10

20

30

(KOYA: He may not fully understand.)

In the Supreme
Court

Question repeated.

Plaintiff's
Evidence

No. 9

Kulamma
Cross-
Examination
(Continued)

A: I don't know.

Q: There was an account in Dhanji under which you purchased goods?

A: I don't know. I am illiterate. If the clerk Prasad asked me to sign I did so by thumbprint.

10 Q: This account refers to accounts of Dhanji and Jairam the tailor?

A: I don't know - have not heard of the tailor.

Q: Exhibit F is a statement signed by you?

A: It could be.

Q: It starts off with £189.2.9?

A: Yes.

Q: Then it gives various payments that were made (Interpreter reads out next item January 1959 £66.3.11) - it says that is one half share from the farm?

20

A: Yes.

Q: That was Manadan's half share?

A: Yes.

Q: It went in reduction of Murtuza's debt?

A: -

(KOYA: I agree that in effect Manadan paid Sabhapati's debt.)

Q: You agreed balance of £505.13.10?

A: Yes.

30 Q: In June 1960 there was a further account (Ex.F) indicating you owed Manadan

£496.5.0.?

A: I don't know.

Q: This document (Ex.F) is signed by you?

A: I may have signed but I don't know for what purpose.

In the Supreme
Court

Plaintiff's
Evidence

No.9

Kulamma
Cross-
Examination
(Continued)

Q: The other document shows £30.15.4 paid to Dhanji's store - remember that?

A: Who paid it?

Q: Manadan paid that?

A: I don't know.

Q: And £30 to Krishna?

A: I don't know.

Q: Further amounts of £11 and £26 to Dhanji?

A: I don't know.

Q: And £30 to Yankatigadu?

A: I don't know. 10

Q: You did know he was owed money before your husband under a Promissory Note?

A: That was paid before.

Q: By Manadan?

A: I don't know.

Q: And £35 - a judgment debt - who was it against?

A: I don't know.

Q: Also Manadan paid Drau (a Fijian) £61.?

A: I don't know. 20

Q: Also £60 for gan?

A: I don't know.

Q: Why sign?

A: I am illiterate.

Q: You said all these things were explained to you?

A: I understood a little - not all.

(To Court: I cannot even read figures.)

Q: You were told the £496 plus other items came to £780? 30

A: (Long pause) I cannot say anything about these figures.

Q: The accounts show you owed Manadan £780?

A: I did not.

Q: That was in June 1960?
A: -

In the Supreme
Court

Q: In November 1960 you signed something else?
A: What did I sign? No one explained this
account to me as you (Interpreter) have
just done now.

Plaintiff's
Evidence

No.9

Q: Why sign?
A: I understood a little so I signed.

Kulamma
Cross-
Examination
(Continued)

10 Q: That account (Ex.F) was followed by your
A: Yes.
signing the Assignment?

Q: It was the time of the 'strike'?
A: I don't know.

Q: Before signing the Assignment you went
A: Yes.
with Manadan to the C.S.R. Co.?

Q: For purpose of getting the farm put in
A: I did not sign.
Manadan's name?

20 Q: But that was the purpose?
A: I did not go.

Q: You said you did?
A: I cannot recall.

(To Court: What did I do on going to the Co.'s
office?)

Q: To transfer the farm to Manadan?
A: I did not go.

Q: You mean for that purpose - for what
A: I did not go at all.
purpose you did go?

30 Q: You agreed you went before you knew the
A: I did not go.
object of my questions - is that not so?

Q: Manadan will say you both went?
A: No.

In the Supreme
Court

Plaintiff's
Evidence

No.9

Kulamma
Cross-
Examination
(Continued)

Q: You two went with my clerk George - the one who wrote the accounts?

A: I did not go.

Q: You never asked the C.S.R. to transfer the farm to Manadan?

A: I never did.

Q: The farm was not in fact transferred to Manadan?

A: It was not.

Q: You knew it was agreed upon by the Agreement Ex.B?

10

A: I don't know.

Q: You swear you don't know what is in this Agreement?

A: I do not.

Q: Why did Manadan go on farming the land?

A: Sabhapati executed the Agreement - he would know.

Q: Why did you let Manadan go on farming?

A: He was still working there.

20

Q: Why?

A: I did not know this thing would happen.

Q: If your husband execute the Agreement you accept it?

A: Everything was in the lawyer's office. When the document was in the lawyer's office I came to know what was in it.

Q: You have been denying you never knew what was in it?

A: I now know what was in it - knew after it was in my lawyer's office.

30

Q: Still say you did not go to the C.S.R.?

A: Why should I go?

Q: Because Agreement says so?

A: -

Q: He farmed the land?

A: Yes.

Q: That was in the Agreement?
A: Yes.

In the Supreme
Court

Q: He paid Murtuza?
A: Yes.

Plaintiff's
Evidence

Q: That was in the Agreement?
A: Yes.

No. 9

Q: And it was provided in the Agreement that
after Murtuza's debt paid off the owner
should use best endeavours to secure
transfer to Manadan - why did you not go
to the C.S.R.?

Kulamma
Cross-
Examination
(Continued)

10

A: I don't know.

Q: He paid Murtuza's debt?
A: Yes.

Q: You will have to repay him for that?
A: He has taken a share. He had lifted the
money before.

Q: You get half each?
A: It is in the Court's hands - I don't know
anything about this.

20

Q: You have not looked at these accounts -
have not been through them?
A: I don't know about these accounts, the
account was not given to us.

Court adjourned to 2.15 p.m.

2.20 Resumed.

Further xxd:

Q: Murtuza paid off in 1960?
A: Yes.

30

Q: Manadan continued to farm the land?
A: Yes.

Q: On what basis?
A: I don't know.

Q: Why allow him to do so?
A: I did not allow him.

In the Supreme
Court

Plaintiff's
Evidence

No.9

Kulamma
Cross-
Examination
(Continued)

Q: Why not stop him?
A: I did not.

Q: Why not?
A: I did not stop him.

Q. Court: What right had he to remain?

A: I don't know).

Q: Please answer the question - never mind
what is ii for - why did you let him
remain?

A: I did not tell him to remain. I don't know
why he continued. He was working on his
own initiative. I did not stop him. 10

Q: Why not?
A: I did not stop him.

Q: After the Assignment he continued did he
not?

A: He did.

Q: You agreed he should remain?
A: Yes.

Q: On basis you got half proceeds and he the
other half? 20

A: Yes.

Q: You knew that was how the cane money was
being divided?

A: No.

Q: What did you think he was seeking for his
work?

A: I don't know.

Q: You did know he was to get something?

A: I did not. 30

Q: Was he waiting for something?

A: I don't know.

Q: You sent the children to school?

A: Yes.

Q: He paid their fees?

A: Yes.

Q: Why?

A: I don't know.

Q: Did you ask him to pay the fees?

A: He paid on his own accord.

Q: You did not prevent it?

A: I agree.

Q: There is no fraud in the matter at all?

A: -

Q: You knew all the time what he was doing?

A: -

Q: Why did you have a row with him?

A: He did not give me an account.

Q: Who farms the land?

A: The labourers - I pay them - I get credit from my brothers.

Q: Your brothers decided that Manadan was doing too well and they want something out of it - that is the truth of the matter?

A: No.

20 Rxd:

Q: After the Assignment you did not sign any other document or account with Manadan?

A: Yes.

Q: After the Assignment?

A: No.

Q: You had no other business dealing with him?

A: None.

In the Supreme Court

Plaintiff's Evidence

No. 9

Kulamma
Cross-
Examination
(Continued)

10

20

Re-Examination

NO.10

PROCEEDINGS

No. 10

Proceedings
6th August
1964

30

KOYA: I must now ask for an adjournment - to obtain evidence as to the land being native land of which the C.S.R. Co. is lessee - concede costs must be to other side.

STUART: I must object to an adjournment - this

In the Supreme
Court

matter within my friend's knowledge - he has had 5 months to get the information - knew it was not admitted. Realise in Court's discretion - 0.36 r.34 - expedient in interests of justice.

No.10
Proceedings
6th August
1964
(Continued)

Defendant has been put to considerable expense.

Case would be adjourned possibly for 2 months - then court asked to adjudicate on evidence of witness heard today (i.e. Plaintiff). Submit such should discontinue and start again. Refer to notes in White Book - as to proper cause for adjournment.

10

Submit in justice to defendant the plaintiff should discontinue and start again.

KOYA: Only reason we did not get the original was that Stuart was acting for both parties until action commenced. Evidence of representative of Native Land Trust Board has always been accepted. Also photostats of registered title have been admitted. Submit injustice would result if adjournment refused - other side will be fully compensated in costs - if necessary adjournment can be subject to payment of the costs. Also my case raises illegality of statute - a serious matter of public interest.

20

Adjourned to date to be fixed by Registrar in consultation with Counsel. Costs of adjournment i.e. costs till noon today to be taxed (in default of agreement) and paid forthwith.

30

(sgd) R.H. Mills-Owens, CJ
6/8/64.

10th September
1964

Thursday the 10th September, 1964 at 9.30 a.m.

Mr. Koya for the Plaintiff.
Mr. Stuart for the Defendant.

Adjourned to 10 a.m. at Counsel's request.

10 a.m.In the Supreme
Court

KOYA: By consent put in following documents -

No.10

Proceedings
10th September
1964.
(Continued)

- 10
- (1) Certified copy Crown Lease Book 4 Ba 88 Folio 34 from Buli Vuda to Commissioner of Lands for period of 99 years from 1st January, 1900 relating to land known as Block 11 containing 140 acres;
- (2) Certified copy. Crown Lease Book 4 Ba 88 Folio 37 from Buli Vuda to Commissioner of Lands for period of 99 years from 1st January, 1900 relating to land known as Block A containing 596 acres;
- 20
- (3) Certified copy Crown Sub-lease Book 1 Folio 35 by Commissioner of Land to the Colonial Sugar Refining Co. Ltd. for period of 10 years from 1st January 1900 (subsequently extended for 40 years from 1st January 1910) in respect to Block 11;
- (4) Certified copy Sub-lease Book 1 Folio 38 by Commissioner of Lands to the Colonial Sugar Refining Co. with the term of 10 years from 1st January 1900 (subsequently extended for 40 years from 1st January 1910) in respect to Block A;
- 30
- (5) Certified copy Native Lease No.7029 by the Native Land Trust Board to the Colonial Sugar Refining Co. Ltd. for period of 9 years from 1st January 1941 relating to land known as Mataitagaloa containing 31 acres 3 roods and 32 perches

We have also agreed certain statements of fact -

- 40
- (a) That the cane farm in question was held by Sabhapati from the C.S.R. Co. Ltd.

In the Supreme Court

No.10

Proceedings
10th September
1964
(Continued)

(b) That in respect to the agreement of 23rd May, 1957 (para. 3 of Statement of Claim) no consent was given to it by the immediate landlord the C.S.R. Co. Ltd. or the N.L.T. Board.

Plaintiff's Evidence

No.11

George James
Theodore Hansen
Examination

NO. 11

GEORGE JAMES THEODORE HANSEN

Calls -

GEORGE JAMES THEODORE HANSEN - Sworn in English -

I am the Secretary to the Native Land Trust Board set up by Ordinance. I have custody of the records in that capacity. 10

I produce certified copies of two approval notices sent to the C.S.R. Co. Ltd. - one is of Block 11 and Block A which (which cancels the first) is a consideration of 3 leases. The first refers to two leases of land known as Block 11 and Block A - 723 acres subject to survey - land is Crown Leases Book 4/1888 Folios 34 & 37 - dated 29th December 1951. The second one was issued on the 27th November, 1956 to the C.S.R. Co. - 754 acres 3 roods and 32 perches (subject to tenancy) and subject to surrender of leases Book 4/1888 - Folios 34 and 37 relating to Block A, Block 11 (Saweni) and Mataitagaloa - I see Ex. P. it relates to same land Mataitagaloa. 20

Exhibit R cancels Exhibit Q.

The land comprised in Exhibit M is part of the land dealt with in Exhibit R - Exhibit O is also part of the land comprised in Exhibit R. Exhibits M and) refer to Block A. The land comprised in Exhibits L and N - namely Block 11 - is also dealt with in Exhibit R. Exhibit P deals with Mataitagaloa land and is also dealt with 30

in Exhibit R.

The two leases in favour of the Crown are still in existence - in practice on the grant of a lease by the N.L.T.B. the leases to the Commissioner of Lands would be surrendered - i.e. to the N.L.T.B.

In the Supreme Court

Plaintiff's Evidence

No.11

George James
Theodore Hansen
Examination
(Continued)

10

The C.S.R. Co. Ltd. have been paying rent in respect of the land comprised in Exhibit R £513.9.8. per annum and have been occupying the land. The Board does not receive rents from the crown in respect of these lands. A draft lease to the C.S.R. Co. Ltd. has been prepared but it has not yet been executed - I produce it - with the plan forming part thereof.

(To Court: The C.S.R. Co. have been in occupation paying rent under the document Exhibit R since it was issued - it took effect to continue since previous sub-lease on its expiration).

20

The area on survey passed to be 758 acres and 2 roods - the draft Exhibit S refers to same land as Exhibit R. The reason for the non-completion of the draft Exhibit S is that part of the lands is to be excised - an area of nearly 8 acres - that is the only reason.

30

I produce a copy the plan attached to Exhibit S which I have marked in green to show how it comprises the 140 acres, the 596 acres and the 31 acres 3 roods and 32 perches - I have also known the names of the Mataqali - the Fijian land owning units in all. The rents received from the C.S.R. Co. Ltd. - after deduction of expenses is paid to the mataqali - paid half yearly in June and December. I have not received any notice that any of the mataqali in question has become extinct.

11 a.m. Court adjourned 15 minutes.

11.15 a.m. Resumed

40

I have not been notified that the land comprised in Exhibits R, S and T has been acquired by the Crown under any legislation - one of the proposed extensions is however of a small area

In the Supreme Court

Plaintiff's Evidence

No.11

George James
Theodore Hansen
Examination
(Continued)

acquired by the crown.

According to the Board's records in 1959 there was a list of changes of occupancy - one was in respect of Farm No. 581 in name of Sabhapati f/n Raghawan - to which approval was being sought by the Co. and to which the Board gave approval by letter dated the 24th March, 1959. I produce the list and accepting letter and the letter sent by the Board conveying its approval. My Board does not keep the register of mataqali - the findings of the Native Land Commission are published as a Council Paper on which we rely.

10

XXd.:

Cross-Examination

Q: Letter Exhibit U is dated 13th March, 1959 and your reply on the 24th?

A: Yes.

Q: That list Exhibit U1 - was it a list of changes?

A: It so appears. The name Sabhapati is marked "deceased" which indicates in effect a transmission to his representative.

20

Q: Do I understand in respect of this land there is a lease registered to the Crown?

A: Yes.

Q: Then a sub-lease to the C.S.R. Co. which has expired?

A: Yes.

Q: Present position is Crown has a lease which continues until 1999?

A: Yes.

30

Q: And Crown although it has not yet done so is going to surrender?

A: Yes - by arrangement - physical surrender has been made - an agreement to that effect was made - between Crown, the Board and the C.S.R. Co. - with respect to the land.

Q: It is a purely equitable arrangement - not evidenced by registration?

A: That is so.

40

Q: The point of registration, C.S.R. Co. has no title at all?

A: Correct.

In the Supreme Court

Plaintiff's Evidence

No.11

Q: From your point of view you have purported to agree to lease to the C.S.R. Co. of Crown land?

A: Yes.

George James
Theodore Hansen
Cross-
Examination
(Continued)

10

Q: Really the position is although the Board is exercising the rights of a lessor, in point of title it has no authority to do so?

A: As regards registration I agree but in fact not.

Q: Legal title is in Crown of equitable title in the Board?

A: Yes.

Q: Even so far as consent to Sabhapati is concerned that is - one might say - an 'equitable consent'?

20

A: It would seem to be so.

Q: Again strictly from point of view of title C.S.R. Co. had no power to give consent?

A: They would need consent of the Board. Even if they had a registered sub-lease they would need consent of Board to any change of occupancy.

Q: Although C.S.R. Co. has no title Sabhapati has?

30

A: I could not say so - I would say Sabhapati is not in illegal occupation of Native land - in view of the Board's consent.

Q: Could you indicate where these various lands are - by reference to Exhibit T?

A: Yes.

A: Mataitagaloa is the 31 acres 3 roods and 32 perches; Block 11 is the North Eastern portion - the 140 acres; and Block A comprises whole balance as edged in yellow - 596 acres.

40

Q: The excision?

A: Some part has gone to Native Reserve - they have been excluded from Exhibit T.

In the Supreme
Court

Plaintiff's
Evidence

No. 11

George James
Theodore Hansen
Cross-
Examination
(Continued)

Q: Two roads - one from North to South is Queen's Road - and road from South to West is Saweni Beach Road?

A: Yes.

Q: Land to North of Saweni Beach?

A: That fell in Block A.

Q: Native land - is there any title registered?

A: Description of boundaries and name of landowning unit is registered by name. It is not a registered dealing. It is the root of title I would agree as respects native lands. There are two sets of plans - one we call the Native Land Commission Plan which show the boundaries of native land units in reference to records of the landowning units. No leases or dealings are shown on the Native Land Commission plan. 10

Q: When C.S.R. Co. asked the Board for consent did it submit any document giving title to Sabhapati? 20

A: No, Board gives overall approval to the C.S.R. Co. to effect dealings subject to a return at intervals which requires the Board's approval.

(By Court Q: "Native grant"?)

A: Means grant in fee simple. The native grant is one in fee simple. It is a matter of history.)

Re-
Examination

Rexd:

30

Q: Seen a native grant for a term of years?

A: There are about 3 in existence - not for a fixed term - a freehold subject to payment by means of an annuity.

Q: The leases for 99 years to the Crown - of lands Exhibits L and M?

A: These simply give a lease - a native grant is in fee simple.

(By Court Q: Why restrict 'grant' to freehold?)

A: It has become so by usage in this Colony.) 40

Q: Before the establishment of the Board the Commissioner of Lands dealt with native lands on behalf of the native owners?

A: Yes.

In the Supreme Court

Plaintiff's Evidence

(To Court: These land leased to Commissioner of Land on behalf of the Crown - the Lands Department did regard it as Crown Land until by arrangement the Department agreed to place the land at the disposal of the Board).

No.11

George James Theodore Hansen Re-Examination (Continued)

10

Koya to Court: Defendant no longer in occupation.

NO. 12

CHARLES JAMES DOYLE

CHARLES JAMES DOYLE - Sworn in English -

No.12

Charles James Doyle Examination

I am a Land Officer of the C.S.R. Co. Ltd. office at Suva I keep records of its lands. I see Exhibit R - the signed original has been lost or mislaid - I have searched for it - we have been in touch with our Sydney office they cannot assist. A couple of years ago we lost a lot of records in a fire at our Lautoka premises.

20

No cross-examination.

Court adjourned to 2.15 p.m.

2.15 p.m. Resumed

Koya re-calls -

NO.13

HENRY STOKES (Recalled)

HENRY STOKES - resworn in English -

No.13

Henry Stokes (Recalled) Examination

30

I am a registered surveyor - I see Exhibit T I have seen a copy of it before. I see the tramline and road to Saweni Beach. I know the locality. I remember visiting there two days before the first day of the hearing of this case - the plaintiff pointed out a farm to me - Mr. Johnson the C.S.R. Co.'s field officer was

In the Supreme
Court

Plaintiff's
Evidence

No.13

Henry Stokes
(Recalled)
Examination
(Continued)

Cross-
Examination

present - the farm is to the East of the marking "Saweni N.D. 3537 the farm is well within the limits outlined in Exhibit T - it is mostly cane - the farm was referred to as No.581. I am stationed in Lautoka. I made efforts to find the original approval by the N.L.T.B. to the Company sub-leasing the land - I could not find it. I found only a copy.

XXd by Stuart:

Q: That land - farm 581 - do you know what title it is held under? 10

A: At the moment the new lease is in abeyance. Previously it was held under Crown Sub-lease which has expired.

Q: Exhibits N and O - are they the Crown Sub-leases you have referred to?

A: The area I am referring to is not in Crown Sub-lease Book 1 folio 35 (Ex.N.). It is comprised in the Sub-lease Book 1 folio 38 - Ex.O. 20

Q: Was the C.S.R. Co. freehold land there?

A: Yes - on South-West thereof - within $\frac{1}{2}$ a mile.

Q: C.S.R. Co. have quite a good deal of freehold in that area - some 2000 acres for example within 2 miles of this farm?

A: Within 3 miles. Yes - on the Lautoka side.

Q: On other side?

A: 3 pieces - containing approximately 2,000 acres altogether; between 500 and 700 acres each. 30

Q: The farm in question is sandwiched between Company's freeholds?

A: It is in between the five freehold lots which I have referred to.

Q: What of the C.S.R.Co's 5 lots?

A: Over 4,000 acres.

Rexd:

Q: Any doubt whether the farm falls within the Company's freeholds?

A: To best of my knowledge and belief no.

(To Court: It would be wholly within Exhibit M).

In the Supreme Court

Plaintiff's Evidence

No.13

Henry Stokes (Recalled) Re-Examination

NO. 14

PERMAL

No.14

Permal Examination

PERMAL f/n Bedi Govender - Sworn on Ramayan in Hindi -

10

I am a Clerk at Morris Hedstrom's Lautoka. The plaintiff is my aunt. Proceeding to Saweni Beach the first farm is Kand Swamy, next farm is Plaintiff's; hers is No.587; next is Kullandappa Gaundan - he is my brother - I live there. I was present when Mr. Stokes, Mr. P.A. Johnson of the C.S.R. Co. and S.M. Koya and the Plaintiff inspected the farm on the 4th August. Mr. Johnson and the Plaintiff pointed out the Plaintiff's farm to Mr. Stokes.

20

XXd:

Plaintiff is my aunt - I am the son of her brother - I live at farm next door.

Cross-Examination

Q: Who farms Plaintiff's farm?

A: My father and uncle assist her.

Q: Manadan was got out of the farm so that your father and uncle could farm it?

A: No.

No re-examination.

In the Supreme Court

GEORGE SERAVAKI MATE

Plaintiff's Evidence

GEORGE SERAVAKI MATE - Sworn on Bible in English -

No.15

I am the Deputy Chairman of the Native Lands Commission.

George Seravaki Mate Examination

I see Exhibit T - I see the names of landowning units marked in ink - I have with me certified true copies of the original register prepared under Cap.103.

At Vol.4 Folio 446 the owners are the tokatoka Nakelo of the mataqali Eluvuka of the yavusa Sabutoyatoya - Lot 46.

10

At Vol.4 Folio 487 the names are the tokatoka Navitarutaru of the mataqali etc. - Lot 15.

At Vol.4 Folio 488 etc. Lot 17.

At Vol.4 Folio 490 etc. Lot 10.

At Vol.4 Folio 492 etc. Lot 7.

At Vol.4 Folio 495 etc. Lot 3.

3.5 p.m. Court adjourned.

20

3.15 p.m. Resumed

The maps Exhibit T shows the lot number and names of tokatoka and mataqali - in each case. According to the records these mataqalis are still alive - that is according to the register kept by the Land Titles Registrar.

I see Exhibits L and M the post of 'Buli' is an official - he is head of a Tikina (a district).

As Deputy Chairman of the Commission I have seen "Native Grants" - we don't deal with leasing of native. A 'native grant' is a grant of freehold - the documents Exhibits L and M are native leases not native grants.

30

NO. 16

ROBERT HUGH REGNAULT

ROBERT HUGH REGNAULT - Sworn on Bible in English -

In the Supreme Court

Plaintiff's Evidence

No.16

Robert Hugh Regnault Examination

I am the Acting Director of Lands. I see Exhibits L and M. I see endorsements of subleases to the C.S.R. Co. for terms which have expired.

10 The Crown is not using these lands - nor paying rent to my knowledge. There is an arrangement with the N.L.T.B. that the Crown will surrender these two leases when the Board is ready to grant leases thereof under Native Lands Trust Ordinance. The Crown has handed the control of these lands to the Board. I must have seen 'native grants' in my Department. There is an officially recognised distinction between native grants and native leases - native grants were common in the years 1905-7 - there were about 200 of them.

XXD:

The Crown subleased these lands to the C.S.R. Co. - the Commissioner of Lands did so on behalf of the Crown.

Cross- Examination

Q: He dealt with it as Crown land?

A: Presumably, yes.

No re-examination.

Close of Plaintiff's Case.

30 STUART: Will be calling evidence do not wish to address - Call -

In the Supreme
Court

GEORGE SHANKARAN

Defendant's
Evidence

GEORGE SHANKARAN f/n Ganpati Shankaran -
Sworn in English on Ramayan.

No.17

George Shankaran
Examination

I am a clerk to Messrs. Stuart & Co. Solicitors, Lautoka, I know the Plaintiff and Defendant.

I accompanied them to the C.S.R.Co.'s office at Lautoka - at the South Pacific Sugar Mills - in November 1960. The South Pacific Sugar Mills are the successors of the C.S.R.Co. There is an agreement between the late Sabhapati and the Defendant - there is a clause by which half of the land is to be vested in the Defendant. The Plaintiff and Defendant asked him to go to the Company to get that done - they were on good terms then.

10

I went and saw Mr. Abrahams - an executive officer dealing with lands for the C.S.R. Co. There was a sugar strike on at that time - November 1960. Mr. Abrahams flatly refused - he said there was a sugar strike and nothing could be done then. I left the parties outside Mr. Abraham's office then I went in to speak to him. I informed them of the result.

20

XXD.:

Cross-
Examination

Q: In 1960 all Sabhapati's debts paid off?

A: Some were. She still owed money to Manadan in November 1960 - about £800.

30

Q: For what?

A: The bulk was - according to the Agreement Manadan was to have half the proceeds but his half was used to pay Sabhapati's debts.

I was the Clerk dealing with the accounts between them. Also there were advances from Manadan to Kulamma. There is an account - accounts from time to time - they are stated accounts - both parties used to agree and I would get them to sign.

40

Q: About £800 at the time of the Agreement of cane crops?

A: Yes.

Q: Did you go to the C.S.R. Co.'s office before or after the Assignment?

A: Before.

Q: After the Assignment until about December, 1963 Manadan did not give any account to Kulamma?

10 A: The accounts were gone into and signed - Messrs. Stuart & Co. acted for both - she did not ask for an account which would have been given her.

Q: Accounts furnished only after the issue of writ?

A: She could have had them at any time on request. Before she consulted her Solicitors she never asked for a copy of the accounts.

20 Rxd:

I see several accounts - one is dated 15th November, 1960 - showing she owed £780.0.4. - it was read over and explained to her and she signed it. That is the last account signed by her.

There were further advances to Kulamma by Manadan after the Assignment - cash - store accounts and school fees.

30 Adjourned to date to be fixed by Registrar in consultation with Counsel.

Wednesday the 7th day of October, 1964 at 9.30 a.m.

Adjourned to 11.10 a.m.

Mr. Koya for the Plaintiff.

Mr. Stuart for the Defendant.

Stuart calls -

In the Supreme Court

Defendant's Evidence

No.17

George Shankaran
Cross-
Examination
(Continued)

Re-
Examination

In the Supreme
Court

NO. 18

MANADAN

Defendant's
Evidence

MANADAN s/o Raghawan Gounden - Sworn on
Ramayan in Hindi-

No.18

Manadan
Examination

I live at Saweni, Lautoka and am a
farmer.

(Koya: By consent put in 'sample' of native
grant and Certificate of Title Exhibit DD.

Secondly Crown Grant and Certificate
of Title also as agreed documents.
Exhibit EE.)

10

I am the party Manadan to Exhibit B -
that is my thumbprint on it. My brother owed
money to Murtuza - he asked me to work his
farm and pay off the debt for him - because he
could not himself work the farm - he was sick.
I agreed and this Agreement was made - in 1957.
I had already started working the farm before
the Agreement was made - over a year prior to
the Agreement. My brother died in 1958. I
continued working the farm on the same basis.
I did not get my share - I paid it to Murtuza
so that his debt could be paid off. (Stuart
queries interpretation). I was having Murtuza's
debt off by paying my share to him as well as
my brother's share. The purpose of paying my
share (as well as my brother's) was because it
was agreed that after I paid him off I would get
half of the land.

20

Intaz is Murtuza's brother - he managed
Murtuza's affairs.

30

As a result of my share going to Murtuza
I made an account with my brother's wife, Kulamma.
After the debts were paid off it was found she
owed me £505. The statement of account Exhibit F
shows how this amount is made up - £505.13.10
- that was in 1960. Later in the year 1960
another account was drawn up showing £780.0.4.
due (Ex.F.) Then I had an Assignment executed
to secure my money. I was to continue working
the farm after the Assignment and in fact did so.
I used to maintain the plaintiff. She stayed at

40

my house. At the time of the Agreement in 1957 my brother and his wife previously lived in their farm. When he died she came to stay with me with her children - this was I think in 1959 - they lived on their farm for only about six months following my brother's death. They came to my place because they had no one to look after them. Her brother lived some distance away from her. I maintained her and the children - because she was my brother's widow. I gave them food and shelter. I used to deduct half of the amount of her share of the farm profits as the cost of maintaining her and her family and paid the remainder to her. And I paid her children's school fees too.

10

The Assignment of 1960 remained in force - it still remains in force. I continued to work the farm until 1963 - that is for 3 years. My sister-in-law and I were on good terms until she went away to Sigatoka in 1963 - when she returned trouble arose. Previously we were quite happy together.

20

I am not working the land now - I ceased to do so in 1964. I asked the C.S.R. Co. to transfer the tenancy to me. The plaintiff and I went to see the overseer - I think it was in 1960 - no transfer was made - because there was then a strike in force - a strike of cane growers.

XXD by Koya:

30

Q: The Agreement of 1957 - it was to last until Murtuza fully paid (clause 2)?

A: I don't know about that. I agree it says so.

Q: The other aspect of the Agreement (clause 4A) was that there would be a transfer to you - your brother would use his best endeavours etc.?

A: Yes.

40

Q: No further Agreement was made after your brother's death in 1958?

A: Agreed.

Q: No agreement in writing subsequently made between you and Kulamma?

A: Agreed.

In the Supreme Court

Defendant's Evidence

No.18

Manadan Examination (Continued)

Cross-Examination

In the Supreme
Court

Defendant's
Evidence

No.18

Manadan
Cross-
Examination
(Continued)

Q: November, 1960 - date of Assignment - you say an account was taken and sum of £780.0.4 found owing?

A: No - it would be more than that.

Q: Exhibit F shows that figure? You signed the account that same day as Assignment signed?

A: That is correct.

Q: The £780.0.4 emanated from the Share Farming Agreement?

A: Yes.

10

(By Court:

Q: Entirely?

A: No - there were other debts).

Q: How much in respect of each?

A: I think the amount under the Agreement was £505; for the remainder my Solicitor has the accounts.

Q: Because you were not paid under the Agreement there was an accumulated value to your credit - amount to £505.13.10?

A: Yes.

20

(By Court Q: Does it represent some money as that paid out of your share to Murtuza?

A: Yes.)

Q: On 15th November, 1960, position was you did not have any security for the amount of £780.0.4 owed you by Kulamma?

A: Correct.

30

Q: So you took the Assignment of cane crops?

A: Yes.

Q: Was that the only reason?

A: Yes.

Q: Did you receive any moneys under the Assignment?

A: I have no account of that - my Solicitor may have it.

Q: Did you not have benefit of any moneys under the Assignment?

40

- A: I think I uplifted some money on one occasion - it might be £100 or something over - I am not quite certain.
- Q: At time of Assignment Kulamma was living at your place?
- A: Yes.
- Q: At time of brother's death you claimed £189.2.9. as a debt due from him to you at the date of his death?
- 10 A: I don't remember that.
- Q: That was figure shown in application for Probate?
- A: I don't remember that there may be an account like that in the (Solicitor's) office.
- Q: The account for £505 - you both signed it?
- A: Yes.
- Q: First item is the £189.2.9?
- 20 A: Yes - I don't the figure of £1892.9. - I do remember the £505.
- Q: When she was living with you you told her your brother owed you £800 not £189?
- A: Yes - I told her that her husband owed debts of about £800 to others - but I paid them off.
- Q: Told her he was indebted to you in sum of £800?
- 30 A: No - I told her he owed debts up to that amount. I told her about the amount I had paid to Murtuza. I knew that amount. She never asked me for my accounts and I never had a dispute with her (at the time). The Assignment was made for round about the £700 which has been mentioned already.
- Q: Is it the position that the Assignment was to cover only the amount then due?
- 40 A: Yes.

In the Supreme Court

Defendant's Evidence

No.18

Manadan
Cross-
Examination
(Continued)

In the Supreme Court

Q: That is to say £780.0.4?
A: Yes.

Defendant's Evidence

Q: Did you or your Solicitors in fact collect £1086.15.7?
A: My Solicitors would have the account.

No.18

Manadan Cross-Examination (Continued)

(Koya: Rely on paragraph 13 of Statement of Claim - admitted by paragraph 9 of Defence).

Q: About October/November last year you stopped working the farm? 10
A: November.

Q: After her husband's death Kulamma used to help you on the farm?
A: Nothing of the sort.

Q: In respect of any goods supplied to the other children you did not have a separate account at the storekeepers?
A: I did not.

Q: You want this farm transferred to you? 20
A: No.

Re-Examination

Rexd:

Q: When Assignment made in 1960 what was to happen to the farming carried on afterwards?
A: It was to continue under the old Agreement after paying off the debts the money was to be divided in one half - I was to get one half and she the other - I would uplift the money under the Assignment as it came to the office. 30

Q: How was she to live?
A: I was to supply her just as before.

(By Court Q: What security were you to have for this peculiar expenditure?

A: There was no such arrangement.

Q: How were you going to recover your expenditure on her?
A: When the cane proceeds were received I would pay the debt out of that).

Stuart calls -

INTAZ HUSSEIN SHAHINTAZ HUSSEIN SHAH Sworn on Koran in Hindi -

I am the son of Sahib Dean. I live at Saweni and am a cane farmer.

I lent Sabhapati money in the name of my brother Murtuza. It was repaid - not by Sabhapati - I was put to a lot of difficulty in endeavouring to recover it. I got Sabhapati's brother Manadan to farm the land in order to get it back. Sabhapati was not a good worker he indulged in yaqona and did not work the farm properly. I came to know this. So I spoke to his brother Vellayadin - he offered to work the land. I offered to help but it seemed I would not get my money back unless the farm was worked. It came to nothing. On one occasion I met Manadan and told him he should help his brother. I don't know what transpired between them but Manadan came and told me that he would work the land. He started doing so and then he and his brother executed a Share Farming Agreement - I was present when it was signed. The profits of the farm were to be paid off the debts. It was paid to your (Mr. Stuart's) office. You (Mr. Stuart) came into it as my Solicitor as you used to handle my business. The farming improved quite a lot. As a result my debt was paid off by 1960.

Manadan accelerated the payment by paying me his share as well as Sabhapati's.

I received an account drawn between Manadan and Kulamma about the time I was paid off - Manadan was owed about £500 or a little more. The account is Exhibit F.

I knew that Manadan maintained Kulamma and her children.

I gave Kulamma £52.16.1 back when I was repaid. After that Kulamma went to live at Manadan's house - I am not too sure - whether she left the farm before or after I was paid off.

In the Supreme Court

Defendant's Evidence

No.19

Intaz Hussein Shah Examination

In the Supreme Court

Defendant's Evidence

No.19

Intaz Hussein Shah
Cross-examination

XXd by Koya:

- Q: Kulamma and the children assisted Manadan to work the land?
- A: Yes - Manadan and his wife Kulamma and the children.

No.20

Counsel's Addresses
7th October 1964

NO. 20

COUNSEL'S ADDRESSES

STUART: Issues as originally defined by Koya were (1) whether the Agreements etc. etc. (1), (2) and (5) arise out of the Native Land Trust Ordinance. 10

Submit no substance in accusation of fraudulent representation.

The Assignment - whether it was bad for want of consideration - Koya succeeded in obtaining admissions that it was for a past debt.

Submit was made for valuable considerations - Manadan continued to farm and to maintain widow. 20

He reimbursed himself from the moneys received under the Assignment. Not only for past debt but in consideration of Manadan continuing to farm the land and maintain her. Both loyally acted on this basis. No suggestion Assignment was to cease when existing debt paid.

(To Court: Not affected by Crop Lien Ordinance).

Point I make is good consideration may consist partly in past consideration and partly in present consideration. 30
As to points (1), (2) and (5) these are

highly technical issue - not one on merits - raised against Manadan who acted faithfully in the Agreement.

In the Supreme Court

No.20

The C.S.R. Co. held other land as well as this Block. Submit three answers to these issues.

Counsel's
Addresses
7th October
1964
(Continued)

- 10
- (1) Whether the Agreement is a dealing. Submit it is not. Refer to authorities thereon (no known case where share farming agreement held to be contrary to the Native Land Trust Ordinance or Crown Land Ordinance.)
- (1) Ramlingham etc. v. Ram Krishna Mission (1963) F.L.R. 128.
- (2) Chalmers v. Pardoe (1963) W.L.R. 677.
- 20
- (3) Genga Singh v. Balak Ram C.A.No. 20/63 (Supreme Court Appellate Jurisdiction).

Only case these share farming agreements as such may come before the Court - not to be determined by label - terms of agreement to be considered in each case.

Submit -

- 30
- (1) Defendant did not have excessive possession - evidence was plaintiff's husband - then she herself lived there - evidence for plaintiff is she worked on the land.
- (2) Clauses 2 and 4 of the Agreement - submit purpose is apparent - not to give defendant an interest in the land but to get Murtuza's debt repaid.
- (3) Rent paid in equal proportions.
- (4) Moneys to be paid to Murtuza's solicitors.

In the Supreme Court

No. 20

Counsel's Addresses
7th October 1964
(Continued)

(5) The agreement was only to continue until the debt was paid.

Defendant has left the land and can claim no further interest in it.

Submit all this goes to show no "dealing" in land.

As to issue (2) - accepting for purpose of argument it was a "dealing".

Court adjourned to 2.15 p.m.

2.15 p.m. Resumed - Stuart continues -

10

Assuming the Agreement to be a "dealing" under Native Land Trust Ordinance (Cap.104) (alone) section 12 - "Except lawful for any lesseeetc." What is a "lessee". Under section 35 includes "lessee" under lease granted under the 1905 Ordinance. Submit a lease granted under any date prior to 1905 does not come under Cap. 104. We are dealing with land leased in 1901 - see Exhibits L and M. Sabhapati denied title from document anterior to 1905. Native land (Occupation) Ordinance 1933 not material - it deals only with licences.

20

(By Court: Any sublease denied from Exhibits L and M?

A: Yes - but Exhibit P is a Native Lease granted under Cap. 104.)

When Crown has surrendered its lease then the Board could grant a lease under Cap. 104 but at present the Crown still has its lease and we are dealing with legal rights not equities.

30

Further, definitions of "native lands" under Cap.103 and 104 - compare the two - Cap. 103 "native lands"; Cap.104 "native land". Submit the land is "Crown land". Refer to Cap. 138 (Crown Lands Ordinance) section 2 - under control of A.M. by (inter alia) "agreement". Submit that includes the leases Exhibits L and M.

40

In the Supreme
Court

—————
No. 20

Counsel's
Addresses
7th October
1964
(Continued)

10 The Ordinance extends to land leased to the Crown - then the land ceased to be native land. In these circumstances the Agreement is good too. But even if tainted as a dealing in land it has several parts - is an assignment of crops; security of improvements; thirdly of moneys. Submit severable - even if had as an assignment of land would be good as an assignment of moneys. Refer hereon to *Chalmers v. Pardoe* (supra) at p.681 (last para.) - inviting or encouraging another to expend money on land - an equitable lien. Submit if all else fails Manadan entitled to say he has expended money in faith of getting an Assignment or a transfer.

20 Also at p.683 (ibid) - 2nd para. "Their Lordships observe etc." Refer to O.32 r.4 - notice to admit facts - Court required to certify refusal to admit reasonable. Submit by refusal to admit land is native land was reasonable.

As to the accounts - defendant says plaintiff still owes him £869.0.7 - account rendered after writ issued - Exhibit H.

30 Koya: Over £800 now held by the C.S.R. Co. - the £1,086 went to Manadan. Whether Agreement was a "dealing" - first question is: is it "Native Land". When Fiji ceded to Great Britain - Deed of Cession (Vo.VI) - declaration as Crown Lands. Native grants were made under section 9 of Native Land Trust Ordinance 1905 - this indicates a "native grant" is a grant in fee simple. Refer to section 2 of Cap.104 - definitions of "native grant" and "native land".

Concede "native grant" means grant in fee simple.

40 In this case no document to show land-owning unit's title. Native land remained undefined until Native Land Commission performed their work. The Deputy Chairman of the Commission produced the relevant copy registers.

In the Supreme
Court

No.20

Counsel's
Addresses
7th October
1964
(Continued)

Until 1940 native owners dealt with their lands under Ordinance of 1905 - i.e. with consent of Governor in Council. That remained position until 1940 when control of native land vested in the Board - section 4.

Submit mere act of leasing native land - whether to Government or anyone else - does not change its character. Only so if grant is made in fee simple. Am mindful of the Crown Lands Ordinance (Cap.138) section 3. Submit these were not "public lands" - nor required for a public purpose. 10

Submit it is not correct - as Stuart argues - that land taken on lease by the Crown is crown land - refer hereon to section 5 - submit merely refers to matter of director having title.

3.30 p.m. adjourned 10 minutes. 20

3.40 p.m. Resumed:

Koya continues -

As to submission that Exhibits L and M having been issued before 1905 the Ordinance Cap.105 does not apply - submit one does not have to look at these documents. Refer hereon to section 7 of Cap.104.

Sabhapati "dealt" with the land after Cap.104 came into force in 1940. 30

Under section 27 of Cap.104 it is an offence to unlawfully occupy native lands.

Submit whole tenor of the Agreement between Sabhapati and Manadan was to let a half-interest in the land. It was not confined to sharing proceeds of the crops. Refer hereon to Chalmers v. Pardoe (supra).

As to section 35 of Cap. 105 40

Exhibits L and M issued long before 1905, therefore not affected by section 35.

In the Supreme Court

No.20

Counsel's
Addresses
7th October
1964
(Continued)

Section 12 of Cap.105 is very wide indeed - have raised it specifically in the pleadings. Do not confine my argument to word "dealing". Submit possession was parted with - pleaded in para. 5 of Statement of Claim and admitted in para. 3 of Statement of Defence.

10

On matter of "dealing" refer to Kuppan v. Unni (1956) F.L.R. 188.

(By Court: "In pari delicto"?)

Koya: Concede I cannot get back any money which has already gone into defendant's lands.

As to onus of proof of consent submit it lies on defendant - rely on case of Angamuttu v. Jai Narayan 7 Fiji L.R. 36.

20

As to "dealing" refer also to Jumman Sai v. Atchson (ibid) at p.71.

Submit evidence shows de facto control of the land was in the hands of the Board - according to Mr. Hanson's evidence.

Submit if the Agreement illegal then Assignment also tainted with illegality as the consideration therefor or the major part of it consisted of moneys due under the illegal Agreement.

30

Alternatively it was given as a renewal of the Share Farming Agreement (in another form).

Also for past consideration - defendant admitted this. But do argue past evidence not admissible to construe written document.

If documents held good then parties may well argue the accounts.

In the Supreme
Court

No.20

Counsel's
Addresses
7th October
1964
(Continued)

As to Stuart's pleading in para.12
of Statement of Defence - this is not
in form of counter claim - no relief
sought hereunder.

As to costs of proving it is native
land court will consider that on the matter
of costs. The matter of misrepresentation
is simply one of belief for the Court - make
no submission thereon.

Stuart: On the matter of accounts there has been 10
ample time to reach agreement.

Koya: Accounts were delivered well after issue
of writ when parties at loggerheads.

C.A.V. to date to be notified to parties.

(Sgd.) R.H. Mills-Owens, C.J.

7/10/64

No.21

Judgment
9th December
1964

NO. 21

JUDGMENT

IN THE SUPREME COURT OF FIJI

Civil Jurisdiction

20

Action No.148 of 1963

B E T W E E N:

KULAMMA d/o Vedisa Naicken Plaintiff

- and -

MANADAN s/o Raghawan Gounden Defendant

JUDGMENT

The Plaintiff is the widow and personal
representative of Sabhapati who died in November,
1958. At the date of his death Sabhapati was
tenant of a sugar-cane farm known as Farm No.581 30
Saweni, Lautoka, comprising approximately 10

acres. He held the farm as tenant of the Colonial Sugar Refining Co. Ltd. (the C.S.R.Co.) The tenancy, it is agreed, is now vested in the Plaintiff. The Defendant is the brother of Sabhapati deceased. On the 23rd May, 1957, Sabhapati and the Defendant entered into a "Share-Farming Agreement" Exhibit B, under the terms of which the Defendant was to cultivate the farm, bearing equally with Sabhapati the expenses of cultivation and sharing equally with him the net proceeds; the crops were to be sold to the C.S.R. Co. and the proceeds paid into an account to be kept by the parties' solicitors; Sabhapati's half-share was to be applied towards discharge of a debt owed by him to one Murtuza and the Agreement was to enure until that debt was discharged; thereupon Sabhapati was to use his best endeavours to obtain the consent of the C.S.R.Co. as landlord to a transfer of a one-half interest in the tenancy to the Defendant.

In the Supreme Court

—
No.21

Judgment
9th December
1964
(Continued)

Sabhapati and the Defendant acted under the Agreement until the former's death in 1958. Following his death the Plaintiff and the Defendant continued to act under the Agreement. That state of affairs continued until shortly before the present proceedings were commenced in October, 1963, when disputes arose between them as to the state of the accounts and the Defendant ceased to cultivate the farm. In the meantime, that is to say in November, 1960, the Plaintiff together with her children had gone to live in the Defendant's household at his own farm. In the same month, whilst residing there, she executed, under hand, an Assignment Exhibit C purporting to assign to the Defendant all sugar-cane crops then growing, or thereafter to be grown, on Farm No.581 and all moneys payable or thereafter to become payable in respect of such crops. The Defendant signed an endorsement authorising the C.S.R. Co. to pay the moneys to the solicitors. The Assignment bears an acknowledgment of sight by the Company. The Plaintiff and her child-

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ren continued to reside in the Defendant's household for a period of about 2 years following the Assignment. Throughout the whole of the relevant period accounts were maintained by the solicitors, but copies were not supplied to the Plaintiff until shortly before the trial, although the writ claimed an account. Certain of the earlier accounts had however been presented and explained to her at the solicitors' office prior to the proceedings and acknowledged by her as correct.

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The Plaintiff became convinced that she was being cheated by the Defendant, particularly as to the amount due to him at the date of Sabhapati's death. There was then due to the Defendant, it is agreed, a sum of £189.2.9 in respect of his one-half share of the proceeds of crops under the Share-Farming Agreement [see the Account Exhibit D]. According to the Plaintiff's case that was the only amount due to the Defendant at the date of the Assignment. Clearly, on the evidence, this was only part of the story. [Here it should be interpolated that the accounts remain to be investigated, as Counsel for the parties agreed at the trial that the legal issues involved should first be determined; I must however deal broadly with the accounts, leaving the details for subsequent investigation or, possibly, agreement]. The Plaintiff professed to be almost completely ignorant of her late husband's affairs and of events following his death. I can place no reliance on her evidence. It is abundantly clear that following Sabhapati's death the Defendant not only cleared off the balance due to Murtuza but also paid other sundry creditors of Sabhapati's estate and that he, the Defendant, also bore the expenses incurred in the subsequent cultivation of the farm. I am satisfied that all this was done with the Plaintiff's knowledge and concurrence. Thus an account [Exhibit F] shews that at the date of the Assignment (November, 1960) the Plaintiff had become indebted to the Defendant in the sum of £780.0.4 (inclusive of the £189.2.9, and subject, as I have said,

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to verification of the details). Although the Plaintiff denied it, I am satisfied she was a party to an attempt to procure the Company's consent to the Defendant becoming a tenant in common of the farm, as was contemplated by the Share-Farming Agreement. The Plaintiff alleges that she was induced to sign the Assignment on the faith of a fraudulent misrepresentation by the

10 Defendant that the sum owed to the Defendant by the estate of Sabhapati at the date of his death was £300, whereas, as it is alleged, in truth and in fact the amount owing was the £189.2.9 only. No doubt the '£300' is the sum of £780.0.4 shewn in the account Exhibit F. It is evident, in my view, that the Plaintiff thought fit to shut her eyes to all except the £189.2.9. There are no grounds whatsoever to support the allegation of

20 misrepresentation. Then, following the Assignment, as is common ground, the Plaintiff and her children lived in the Defendant's household for some two years. Again the Plaintiff professed almost entire ignorance of the expenditure necessarily incurred by the Defendant in maintaining her and her children. The subsequent accounts /Exhibits G and H/ are not acknowledged by her signature or thumbprint but I am satisfied that she and

30 her children were so maintained at the expense of the Defendant, with her express or implied assent, and that he continued, with her concurrence, to incur expense in cultivating the Farm No.581. Subject to the legal issues, I find, the Defendant is entitled to credit for such amounts as may be shewn, on investigation of the accounts, to have been expended by him in payment of Sabhapati's debts, in maintenance of the

40 Plaintiff and her children, and in cultivation of the Farm No.581 since the death. It appears to be agreed that the aggregate amount collected by the solicitors on account of proceeds of crops under the Assignment is £1,086.15.7 (up to the 27th November, 1963) and that the Company, or its successor, holds a balance of £349.3.11 pending the outcome of this litigation.

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Turning to the legal issue, it is alleged on the part of the Plaintiff that the Assignment was given for a past, or an illegal, consideration. The allegation as to past consideration has not been fully argued either on the facts or the law. I assume that so far as it rests on matters of fact it is based on the ground that the Assignment was made in consideration of an antecedent debt, namely the amount then due to the Defendant, be it £780.0.4 or whatever on investigation the figure proves to be. The alternative allegation that the consideration was illegal rests on the assertion that the Share-Farming Agreement was an illegal dealing in native land, contrary to section 12 of the Native Land Trust Ordinance (Cap.104). Admittedly, the consent required by that section was not obtained.

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In my view, the contention that the Assignment was invalid as given for past consideration wholly fails, both on the facts and the law. On the evidence and in the light of the surrounding circumstances, I find that it was given to the Defendant as a security, and that such security was to extend not only to the then present debt due to the Defendant but also to such future expenditure as the Defendant was to incur in maintaining the Plaintiff and her children on their going to live in his household, and in continuing to cultivate the farm under the Share-Farming Agreement. The Defendant incurred such expenses, the exact amount of which remains to be ascertained. Thus there was present consideration consisting, at least, in his promise to maintain her and her family, and probably also in consenting to continue cultivation of the farm. The obligations which the Defendant thereby assumed were subsequently acted upon and performed. Moreover as it appears to me, in so far as the £780.0.4 - or whatever be found to be the precise amount on the taking of the accounts - has been liquidated by the receipt of proceeds of crops by the solicitors and the crediting thereof to the Defendant's account, it is too late for the Plaintiff to take objection. The same applies to any such credit on account of the Defendant's subsequent expenditure. On general principles the first receipts on account of proceeds of the crops would be appropriated to the discharge of the earlier, the antecedent, debt.

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Although performance of a promise given for past consideration may not be enforced, if in fact the promise is performed no cause of action arises merely because the consideration for the promise was past consideration. An antecedent debt is nevertheless a valid subsisting debt.

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10 Even on the assumption that the only consideration for the Assignment was the antecedent debt and, further, that the Assignment amounted to no more than an agreement that the proceeds of the crops should be received by the Defendant, as it appears to me, the Plaintiff's case fails on the plea of past consideration. First, I would say that if it actually effected the vesting of an interest in property in the Defendant (the crops or the proceeds of sale thereof) then, as appears from the recent case of Bhagwat Prasad v. Jayantilal & Others (Fiji Court of Appeal, C/A No. 2 of 1964) it is immaterial whether or not there was consideration. Apart from fraud, and such statutory provisions as are contained, for example, in the Bills of Sale and the Money lenders legislation, the only relevance of consideration in the case of a document effecting or purporting to effect the creation, transfer, mortgage etc. of an interest in property is in a case where the document is imperfect when the absence of consideration may give rise to the defence that 'Equity' does not aid a volunteer' or that 'There is no equity to perfect an imperfect gift'. In other words, the doctrine of consideration is a contractual one. But assuming for one moment that the Assignment operated only as a contract to assign property as a security, without consideration other than the antecedent debt, what is the legal position? In Alliance Bank v. Broom, L.R. (N.S) 34 Eq. 256, where a customer of a bank, by letter, promised to hypothecate certain goods to secure his already overdrawn account, it was held that from the nature of the transaction some forbearance to sue on the part of the bank must be assumed and that this was sufficient to prevent the promise to hypothecate from being nudum pactum. In that case, however, the bank had requested the defendants to give security. In the case of Fullerton v. Provincial

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Bank of Ireland (1903) A.C. 309, forbearance was inferred. Lord MacNaughten, at p.313, said -

"In such a case as this it is not necessary that there should be an arrangement for forbearance for any definite or particular time. It is quite enough if you can infer from the surrounding circumstances that there was an implied request for forbearance for a time, and that forbearance for a reasonable time was in fact extended to the person who asked for it. That proposition seems to me to be established by the case of Alliance Bank v. Broom"

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The concurring judgments of Lords Shand, Davey and Lindley were to the same effect. In Glegg v. Bromley (1912) 3 K.B. 474, Mrs. Glegg being indebted to her husband executed in his favour a Deed of Assignment. It was recited that he had requested her to give him further security. The Court of Appeal held that the Assignment was made for a good consideration, which was the matter there in question. Vaughan Williams L.J. referred to the decision of Parker J. in Wigan v. English and Scottish etc. Association (1909) 1 Ch. 297, and proceeded -

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"In the early part of his decision Parker J. affirms a proposition with which I should imagine every one agrees - that is, that the mere existence of a debt is not good consideration in itself. One expects the assignment to be connected with some benefit or advantage which accrues to the assignor. Parker J. then proceeds to consider whether in that case there was good consideration or not. He says this: 'It appears to me to be reasonably clear that the mere existence of a debt from A to B is not sufficient valuable consideration for the giving of a security from A to B to secure that debt'. I may say that I entirely agree with that proposition. He goes on: 'If such a security is given, it may of course be given upon some express agreement to give time for the payment of

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the debt, or to give consideration for the security in some other way, or, if there be no express agreement, the law may very readily imply an agreement to give time'."

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Fletcher Moulton L.J., at p.486, said -

10 "..... the mere existence of an ante-
cedent debt is not good consideration
for an assignment even by way of further
security. If there has been pressure
and in response to that pressure the
further assignment is made, that suffices.
But the cases also show that even if there
has not been pressure, but there has been
a further assignment, and it is known to
the person who is the creditor and has
the power to put pressure upon the debtor
that a further assignment has been made,
20 the law will, if it possibly can, give
effect to the probability that the fact
that the security has been increased will
have influenced the creditor and made
him more forbearing. I go so far as to
say that in the absence of evidence to the
contrary I should presume that the increase
of the security when known would be
responded to by an increase of forbearance
on the part of the creditor."

30 Parker J., in his concurring judgment, pointed
out that in *Wigan v. English and Scottish etc.*
Association the mortgagee had no notice of
the security. He went on to say, at p.491 -

"I think that where a creditor asks for
and obtains a security for an existing debt
the inference is that, but for obtaining
the security, he would have taken action
which he forbears to take on the strength
of the security"

40 These authorities were referred to with approval
by Denning J., as he then was, in *Bob Guinness*
Ltd. v. Salomonsen (1948) 2 K.B. 42. Applying
these decisions I hold that even if the
Assignment had effect contractually only and
was given merely to secure an antecedent debt it
is to be implied in the light of the surrounding

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circumstances that there was consideration therefor consisting in forbearance by the Defendant to enforce payment. The fact that the Assignment is prefaced "For valuable consideration" goes to support this view.

Thus far I have assumed that consideration was required by law on the basis that the Assignment is in terms, substantially, of an assignment of future property, namely future crops and the proceeds of sale thereof. In so far as it affects the proceeds it is an assignment of a future chose or future choses in action. In *re McArdle* (1951) 1 All E.R. 905, Lord Evershed, dealing with that subject, approved the following statement appearing in the twenty-second edition of Snell's Equity:

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"Whether value is necessary for an equitable assignment is not clearly settled.

It has been held that value is not necessary for an assignment of a legal thing in action which complies with the statutory provisions, and it would seem to be unnecessary also for an assignment of an equitable thing in action, such as a legacy or an interest in trust funds, provided that the assignment is complete and perfect; there is no reason why a man should not be able to give away an equitable interest as freely as he can give away a legal interest. But value appears to be necessary for an equitable assignment of a legal thing in action; such an assignment being inoperative at law, the assistance of equity is needed to make it effective, and equity will not assist to make perfect an imperfect gift. Value is certainly necessary for the assignment of rights of property not yet in existence".

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The reference to statutory provisions is to section 136(1) of the Law of Property Act 1925, replacing (in England) section 25(6) of the Judicature Act, 1873. The statement that consideration is necessary for an equitable assignment of a legal chose in action may be open to criticism (see 59 L.Q.R. 58, 129 and 208), but the statement that consideration is required

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for an assignment of a future chose in action appears unexceptional (Subamma v. Aziz & Sons (1958) Fiji L.R. 109, per Sir George Finlay at p.112). It has been held that future rents are capable of legal assignment under the statute; so also a balance thereafter standing due to the credit of the assignor's account at a bank (see 4 Halsbury para. 1003). The basis of these decisions was explained by Scrutton, L.J. in Earle v. Hemsworth R.D.C. (1928) 149 L.T. 69, as follows:-

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".....it has been effectively determined by a series of cases binding upon us now that where the thing assigned arises out of an existing contract, although it may not become payable until a future date than the assignment, it is a debt or other legal thing in action which can be assigned (under the statute)."

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In the present case it is by no means apparent that the proceeds of future crops were to arise out of a contract existing at the date of the Assignment; I would assume that the contrary is the case. On that view the proceeds were not capable of legal assignment, without consideration, under the relevant statutory provisions. Further, it may well be that the section of the Judicature Act, 1873 is not in force locally. As I have held, however, the Assignment was good as a contract, for consideration, to assign future proceeds.

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The same result would, of course, follow if the Assignment took immediate effect as a perfected assignment of crops, present and future. In this connection, Halsbury (Vo. 29 para. 774) states -

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"774..... Personal chattels, which, at the date of the assignment, are either not in existence or not the property of the grantor, are not assignable at common law, unless the grantor has already a potential property in them as present owner or possessor of that which is expected to produce them."

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The case of Petch v. Tutin (1846) 15 M. & W. 109 is referred to in a footnote to this passage in support of the proposition that a tenant of land may make a presently effective assignment of all his interest in future crops. But in that case the transaction was by deed and thus it was effectual at law. This must, I think, distinguish it from the present case. I would therefore prefer to rest my decision on this aspect of the case upon the grounds previously stated.

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The moral is obviously to execute such documents under seal.

Turning to the question whether the Assignment was given for an illegal consideration, it is first to be observed that, if it was, the Plaintiff is debarred from recovery of any of the proceeds already collected by, or credited in the accounts to, the Defendant under the Assignment (vide Scott v. Brown etc. (1892) 2 Q.B. 724, 734). Further, assuming the Share-Farming Agreement to have been an illegal transaction, inasmuch as the Plaintiff's predecessor in title, Sabhapati, was a party to the illegality, and she herself has likewise acted on the Agreement, the maxim in pari delicto potior est conditio defendentis applies (vide Berg v. Sadler & Moore (1937) 1 All E.R. 637). The Plaintiff is not one of a class for whose benefit or protection section 12 of the Ordinance (Cap.104) was enacted.

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Subject to these observations, the questions which arise on this issue are whether the Farm No.581 was native land; if so, whether the Share-Farming Agreement was 'dealing' within the meaning of section 12; if so whether the Assignment was tainted with the illegality; and, ultimately, whether it would be of any assistance to the Plaintiff to have it declared that the Assignment was void for the illegality.

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It is common ground that the farm is comprised in a Lease made between the Buli Vuda, a Fijian official of the Vuda

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10 district, on behalf of the Fijian owners
of the one part, and the Commissioner
of Lands on behalf of the Crown on the
other part. Under this Lease (hereinafter
referred to as 'the Lease') the land was
demised to the Crown for the term of 99
years from the 1st January, 1900. The
Lease is still subsisting in favour of the
Crown. It is also clear on the evidence
that the land was found by the Native Land
Commission, acting under the Native Lands
Ordinance (Cap.103) in the year 1914, to
be owned by a Fijian proprietary unit. The
Lease is endorsed as registered in the
"Register of Crown Leases" and is head
"Crown Lease". (There are in fact two
such leases in identical terms but according
to the evidence the relevant lease is
20 Exhibit M, the land in question being part
of land called Block A.) By a Sub-lease
Exhibit O dated the 13th November, 1901,
the Commissioner of Lands, on behalf of the
Crown, subleased Block A to the C.S.R. Co.
for the term of 10 years from the 1st January
1900. It was expressly declared therein
that the Sub-lease was a protected lease under
the provisions of Ordinance No. lv of 1888,
that is to say that restrictions on alienation
were to apply. A memorandum dated September,
30 1910, is endorsed on the Sub-lease to the
effect that it was renewed for a term of
40 years from the 1st January, 1910, by the
Commissioner of Lands. In 1940 the Native
Land Trust Board was established under Cap.
104 and thereby entrusted with the control
of and power to grant leases of native land,
as defined. Sometime thereafter, according
to the evidence, by informal arrangement the
Board took over administration of (inter
40 alia) Block A from the Commissioner of
Lands. By a document dated the 29th December,
1951, signed by its Secretary, the Board
agreed to grant to the C.S.R.Co. as lease of
(inter alia) Block A for the term of 50 years
from the 1st January, 1950. A further
document, in substitution for the foregoing,
was issued on the 27th November, 1956, conveying
the Board's decision to grant a lease to
the Company for 50 years from the 1st January

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1957 Exhibit R. The Company periodically submits a list of changes in the occupancy of the land by its tenants to the Board which issues overall approvals thereof, purporting to be consents to such dealings under the Ordinance (Cap. 104). The Board collects the agreed rent from the Company, and accounts for the net rent to the ultimate Fijian owners. For some years therefore, following the informal arrangement between the department responsible for Crown lands and the Board, the Board has acted as if the land were 'native land', notwithstanding the subsistence of the Lease in favour of the Crown. It is part of the arrangement that as soon as the formalities of survey are completed the Crown will surrender the Lease, presumably to the Fijian owners as the Ordinance (Cap.104) does not contemplate the vesting of native land in the Board. Thereupon the Board will implement its agreement Exhibit R to grant a lease to the C.S.R. Co. by executing a formal lease in the Company's favour under the powers conferred by the Ordinance. The C.S.R. Co. has throughout remained and still remains in occupation, by itself or its tenants; latterly, of course, under the document Exhibit R.

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The functions of the Board are entirely statutory and limited to 'native land'. 'Native land' is defined, by the Ordinance (Cap.104) to mean land which is neither Crown land nor the subject of a Crown or native grant. The term 'native grant' may be ignored as it is recognised, at least for the purpose of these proceedings, that this means a native grant in fee simple. Under the Native Lands Ordinance (Cap.103), which established the Native Land Commission and charged it with the duty of ascertaining the extent, ownership and boundaries of native lands (with the object not only of defining native lands but also of the remaining lands not privately owned being declared Crown lands), 'native lands' are defined to mean lands which are neither Crown lands nor the subject of a Crown grant. It is contended by Mr. Stuart, for the Defendant, that during the currency of the Lease the land thereby demised to the Crown must be 'Crown land'; the informal arrangement

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between the Government and the Board that the land is to be dealt with by the Board pending surrender of the Lease as if it were native land is an arrangement having effect only in equity, not affecting the registered title. Mr. Koya, for the Plaintiff, contends that the Commission found the land to be native land and duly caused it to be registered as such; the fact that the Lease subsists in favour of the Crown does not affect the status of the land as native land; alternatively, the Government having agreed to surrender the Lease and having agreed to the Board exercising control pending a formal surrender, and the Board having agreed to grant a lease under the Native Land Trust Ordinance to the C.S.R. Co., the Company now holds subject to that Ordinance, and so therefore does anyone deriving title under the Company. So it is argued.

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Neither Ordinance, it appears, defines 'Crown land', nor does either of them make express provision for the case where native land was already leased to the Crown when the Board came into existence, as is the position in this case. The Crown Lands Ordinance (Cap. 138) is not helpful except that it appears to recognise 'Crown grant' as meaning a grant in fee simple, as does also section 9 of the Land (Transfer and Registration) Ordinance (Cap.136), and that the Crown Lands Ordinance does contemplate leases of land to the Crown, as did the Ordinance No. IV of 1888. The argument as to registration of title does not appear to me to lead to a solution of the problem. The provisions of the land (Transfer and Registration) Ordinance with regard to both Crown grants and native grants relate to grants in fee simple. Initial registration of Crown leases, that is leases by the Crown, is dealt with by the Crown Lands Ordinance and initial registration of native leases granted by the Board under Cap.104 is dealt with by that Ordinance. There appears to be no provision for registration of leases to the Crown. There being no subsisting lease to the C.S.R. Company capable of registration, it follows, in my view, that the state of the various Registers of Title does not affect the position.

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As I see it, both the Ordinances, Cap.103 and Cap.104, contemplate a broad division between native lands and Crown lands in reference to the ultimate title (not, of course, including the Crown's rights as ultimus haeres but rather in the sense of the freehold title). It is at least clear that the Ordinance Cap.104 did not have effect to extinguish the Lease. No doubt if the land comprised therein had continued to be dealt with by the department responsible for Crown lands the department would have dealt with it under the provisions of the Crown Lands Ordinance, but by virtue of the informal arrangement it has been, and remains, treated as if it had been properly brought within the scope of the functions of the Board as a result of formal surrender. Did this arrangement, or does the fact that the 'freehold' is native land, followed by the agreement by the Board to grant a lease to the Company, have the effect of making the Company and anyone deriving title under it a 'lessee (or sublessee) under the Ordinance' (section 12(1) and (2))? The point was not dealt with in Ramlingham v. President etc. of the Rankrishna Mission Fiji (Action No.190/61) to which Counsel have referred. The matter appears to raise questions of estoppel and ultra vires. In Harnam Singh v. Jamal Pirbhai (1951) A.C. 688, at 699, the Privy Council held that where a landlord and tenant had agreed that the tenancy was a statutory tenancy their respective rights and obligations were to be regarded in law as so governed (see also Lyle-Meller v. Lewis (1956) 1 All E.R.247 at 251). The cases of Stratford v. Syrett (1957) 3 All E.R. 363 at 365 and Stone v. Levitt (1946) 2 All E.R. 653 at 655 shew, however, that estoppel cannot give rise to jurisdiction contrary to the terms of a statute. A closer analogy, perhaps, is to be found in the case of Rhyl U.D.C. v. Rhyl Entertainments Ltd. (1959) 1 All E.R.257, at 265-6, and in the cases there cited, which establish that the doctrine of estoppel cannot operate to overcome the ultra vires rule. Applying these decisions, the conclusion to be reached in my judgment is that although the Company has agreed to accept a lease by the Board under the Native Land Trust Ordinance,

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which it obviously has done by continuing in occupation and paying rent under the terms of the document Exhibit R, this cannot operate to estop a third party such as the Defendant from asserting that it was ultra vires the Board to grant, and consequently to agree to grant, a lease thereof prior to the actual surrender of the Lease. (See also Howell v. Falmouth etc. Co. (1951) 2 All E.R. 278 to the effect that no conduct or representation on the part of the Crown can affect the application of statutory provisions). Whilst it might be competent for a private person, or a corporation with unlimited powers, to act upon an arrangement such as that arrived at by the Board with the Crown, the position is different where the capacity of a party is limited by statute, as the Board's capacity is limited. The question remains whether the land was, as a matter of law, 'native land' within the meaning of Cap.104. It would not be enough to say that where there is a subsisting lease of native land, granted before the constitution of the Board, the Board is not competent to deal with the land except by the grant of some interest reversionary on, or subject to the terms of, the lease, because this is a case where the lessee, the Crown, has agreed to it doing so. And I do not mean to imply that it is ultra vires the Board to grant reversionary leases per se. But, as I have said, no informal arrangement can serve to enlarge the powers of the Board, such as by treating as 'native land' land which is not, for the time being, native land within the meaning of the Ordinance. Nor am I to be taken as holding that a person who has merely agreed to take a lease of native land from the Board, where the Board is in a position to grant such a lease in the exercise of its statutory powers, is not a 'lessee under this Ordinance' for the purposes of section 12 of Cap. 104; such a person, it might well be said, could not accept the benefit without accepting the burden of the agreement, and would, therefore, be bound by the provisions of section 12. The matter must, I think, be determined primarily as one of statutory construction. Under Cap. 104 the land is native land. The Board is not purporting to deal with Crown land. In the

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absence of the arrangement with the Crown the Board's powers would be limited to the grant of interests reversionary on or subject to the Lease. The arrangement permits the grant of leases taking effect in possession. It is not to be viewed as an attempt to enlarge the statutory powers of the Board, but rather as an arrangement which any person having power to deal with land might enter into. The division between native land and Crown land contemplated by the two Ordinances is between land which is primarily native land and land which is primarily Crown land, and the main purpose of Cap. 103 was to ascertain which category lands fell within. On this basis I hold that where, by agreement with the holder of a subsisting lease of Native land granted prior to the commencement of Cap.104, be the holder the Crown or someone else, the Board is enabled to grant a lease of the land taking effect in possession the statutory provisions present no obstacle to it so doing. For these reasons I hold that the restrictions contained in section 12 of Cap. 104 applied, and continued at all material times to apply, to Farm No.581.

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As to whether the Share-Farming Agreement was a 'dealing' within the meaning of section 12, I have no doubt it was. Under its terms the Defendant was to enter into immediate occupation of the farm and to cultivate it, sharing in the expenditure and sharing in the proceeds. At the least he was a licence with an interest. The word 'dealing' is deliberately chosen to embrace such situations. In all but name he was a tenant in common with the deceased, and after his death with the Plaintiff.

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Then the question arises, whether the Assignment was tainted with the illegal Share-Farming Agreement as a document collateral to it. It would appear that it was (Fisher v. Bridges (1853) 22 L.J.Q.B. 270; on appeal (1854) 23 L.J.Q.B. 276) except, possibly, so far as it was intended to secure moneys other than

those arising under the Share-Farming Agreement (cf. Pickering v. Ilfracombe Railway Co. (1868) L.R. 3 C.P. 235; Re Burdett (1888) 20 Q.B.D. 310; and Re No. Wales etc. Co. (1922) 2 Ch. 340). This latter question of severance however appears academic, in the circumstances of the case, as no doubt the Defendant will have already received, or been given credit in the accounts for, amounts due to him otherwise than under the Share-Farming Agreement. Further, in so far as he has already received, or been given credit in the accounts for, moneys payable under the Share-Farming Agreement, the Plaintiff, as I have said, has no right of recovery.

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Finally there is the question whether the Plaintiff should have it declared that the Assignment was void as given for an illegal consideration, at least in part. This is relevant to the proceeds still held by C.S.R. Co. or its successor, namely the £349.3.11 and to any proceeds not paid over to or credited to the Defendant prior to these proceedings. In my view, for the reasons I have endeavoured to state, the Assignment is void for illegality with respect to those moneys and the Plaintiff is entitled to a declaration accordingly, notwithstanding that she became a party to the illegality.

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In the result the Plaintiff's case fails on the issue of misrepresentation and on the claim that the Assignment was void as given for a past consideration. On the claim for a declaration that the Assignment is void as given for an illegal consideration, I grant a declaration in the terms that the Assignment is void for illegality, to which the Plaintiff was a party, with respect to the sum of £349.3.11 and with respect to such other sums (if any) representing proceeds of crops as appear not to have been paid over to the Defendant or credited to him in the accounts prior to the commencement of this action. If necessary the form of the declaration may be settled in Chambers. I will hear Counsel as to the making of any necessary order for the taking of accounts,

In the Supreme Court

and on the matter of costs also. Liberty to apply.

No.21

(Sgd) R.H. Mills-Owens.

Judgment
9th December
1964
(Continued)

CHIEF JUSTICE.

SUVA,
9th December, 1964.

No.22

NO.22

Order
22nd January
1965

ORDER

IN THE SUPREME COURT OF FIJI No. 148 of 1963

B E T W E E N:

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KULLAMMA daughter of Vedisa
Naicken of Saweni, Lautoka
Widow as Administratrix of
the estate of Sabhapati son
of Raghawan Gounden late of
Saweni, Lautoka, deceased.

Plaintiff

- and -

MANADAN son of Raghawan Gounden
of Vaivai, Lautoka, Cultivator

Defendant

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Before Mr. Justice Mills-Owens the Chief
Justice of Fiji

Dated and Entered the 22nd day of January,
1965.

THIS ACTION coming on 6th day of August, 1964
10th day of September, 1964 and 7th day of
October, 1964 for trial before this Court
in the presence of Counsel for the Plaintiff
and for the Defendant AND UPON READING the
pleadings AND UPON HEARING the evidence and
what was alleged by Counsel for the Plaintiff
and for the Defendant THIS COURT DID ORDER
that the said action should stand for
Judgment AND THIS ACTION stood for Judgment
on the 9th day of December, 1964 and in the

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presence of Counsel for the Plaintiff and for the Defendant THIS COURT ORDERED that Judgment be entered for the Plaintiff and having further heard Counsel for the Plaintiff and for the Defendant in Chambers on the 22nd day of January, 1965 concerning the form of declaration sought by the Plaintiff THIS COURT DOTH DECLARE that the Share Farming Agreement dated the 23rd day of May, 1957 made between SABHAPATI son of Raghawan Gounden late of Saweni, Lautoka, deceased of the one part and the Defendant of the other part concerning Cane Farm No.581 situate at Saweni, Lautoka, aforesaid and the Assignment of Cane Crops given by the Plaintiff to the Defendant on the 15th day of November, 1960 in respect of cane proceeds from the said Cane Farm are illegal transactions and are void at law AND IT IS ORDERED that the Defendant by himself his agents or servants be and is hereby restrained from collecting or disposing of by way of letter of Authority or assignment or otherwise the moneys now held by the South Pacific Sugar Mills Limited Lautoka in respect of sugar cane supplied and or to be supplied from the said Cane Farm AND IT IS ORDERED that the Defendant do pay to the Plaintiff Four-Fifths of the costs of this action.

BY THE COURT

(Sgd) G. Yates.

REGISTRAR.

In the Supreme Court

No.22

Order
22nd January
1965
(Continued)

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In the Court
of Appeal

No.23

Notice of
Motion of
Appeal
26th January
1965

NO.23
NOTICE OF MOTION
OF APPEAL

IN THE FIJI COURT OF APPEAL

Civil Jurisdiction

No. 4 of 1965.

ON APPEAL from the Supreme Court
of Fiji in Civil Action No. 143
of 1963.

B E T W E E N:

MANADAN son of Raghawan Gounden 10
of Vaivai Lautoka Cultivator
Appellant
(Original Defendant)

- and -

KULAMMA daughter of Vedisa
Naicken of Saweni Lautoka
Widow as Administratrix of
the estate of Sabhapati son of
Raghawan Gounden late of
Saweni Lautoka deceased. 20
Respondent
(Original Plaintiff)

NOTICE OF MOTION OF APPEAL

TAKE NOTICE that this Honourable Court will be
moved at the expiration of 14 days from the date
hereof or so soon thereafter as Counsel can be
heard on behalf of the above named Appellant
for an Order that the judgment of the Chief
Justice of Fiji dated the 9th day of December
1964 insofar as it was in favour of the
Respondent (plaintiff) be set aside upon the
following grounds: 30

1. THAT the learned Judge did not adjudicate
upon the appellant's argument based upon
Section 35 of Cap.104.
2. THAT if the learned Judge did so adjudicate
(which is denied) then he misdirected
himself in law in that the real question

which arose on this issue was not so much whether the land in question was Native land as whether the respondent could be described as "a lessee under this Ordinance".

In the Court
of Appeal

No.23

Notice of
Motion of
Appeal
26th January
1965
(Continued)

3. THAT alternatively the learned Judge misdirected himself in law in holding that the land in question was not Crown land.
- 10 4. THAT the learned Judge misdirected himself in holding that the transaction evidenced by the share-farming agreement between the respondent's deceased husband and the appellant dated the 23rd day of May 1957 was a "dealing" with Native Land within the meaning of Section 12 of Cap.104.

DATED the 26th day of January 1965.

(Sgd) K.A. STUART

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Solicitor for the Appellant.

In the Court
of Appeal

NO.24

JUDGMENT OF GOULD J.A.

No.24

Judgment of
Gould J.A.
16th July
1965

IN THE FIJI COURT OF APPEAL

Civil Jurisdiction

Civil Appeal No. 4 of 1965

B E T W E E N:

MANADAN s/o Raghawan Gounden
Appellant

- and -

KULAMMA d/o Vedisa Naicken Respondent

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K.A. Stuart for Appellant
S.M. Koya for Respondent

JUDGMENT OF GOULD, J.A.

This is an appeal from a judgment of the Supreme Court of Fiji dated the 9th December, 1964, in an action arising out of transactions in relation to a sugar-cane farm at Saweni, Lautoka. In the action the respondent, who was the plaintiff, sought a declaration that a share-farming agreement made on the 23rd May, 1957, between her deceased husband and the appellant, was illegal as having been made without the consent of the Native Land Trust Board required by section 12 of the Native Land Trust Ordinance (Cap.104 Laws of Fiji, 1955) to which I will refer hereafter as "the Ordinance". There were other issues, but that is the only one which has been argued on this appeal and it is unnecessary to discuss the others. The learned Chief Justice held that the share-farming agreement was illegal, with the result that an assignment of cane proceeds, for which the agreement was (in part) the consideration, was also void as to such moneys as had not already been paid and credited under it.

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The following passage from the judgment of the learned Chief Justice gives the general facts:-

In the Court
of Appeal

No.24

Judgment of
Gould J.A.
16th July
1965
(Continued)

10 "The Plaintiff is the widow and personal
representative of Sabhapati who died in
November, 1958. At the date of his death
Sabhapati was tenant of a sugar-cane
farm No.581 Saweni, Lautoka, comprising
approximately 10 acres. He held the
farm as tenant of the Colonial Sugar
Refining Co. Ltd. (the C.S.R. Co.). The
tenancy, it is agreed, is now vested in
the Plaintiff. The Defendant is the
brother of Sabhapati deceased. On the
23rd May, 1957, Sabhapati and the Defendant
entered into a "Share-Farming Agreement"
(Exhibit B), under the terms of which
the Defendant was to cultivate the farm,
20 bearing equally with Sabhapati the
expenses of cultivation and sharing equally
with him the net proceeds; the crops were
to be sold to the C.S.R. Co. and the
proceeds paid into an account to be kept
by the parties' solicitors; Sabhapati's
half-share was to be applied towards
discharge of a debt owed by him to one
Murtuza and the agreement was to enure
until that debt was discharged; there-
upon Sabhapati was to use his best
30 endeavours to obtain the consent of the
C.S.R. Co. as landlord to a transfer of
a one-half interest in the tenancy to
the Defendant.

40 Sabhapati and the Defendant acted under
the Agreement until the former's death
in 1958. Following his death the
Plaintiff and the Defendant continued
to act under the agreement. That state
of affairs continued until shortly
before the present proceedings were
commenced in October, 1963, when disputes
arose between them as to the state of
the accounts and the Defendant ceased
to cultivate the farm. In the meantime,
that is to say in November, 1960, the
Plaintiff together with her children had
gone to live in the Defendant's household
at his own farm. In the same month,

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of Appeal

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1965
(Continued)

whilst residing there, she executed, under hand, an Assignment (Exhibit C) purporting to assign to the Defendant all sugar-cane crops then growing, or thereafter to be grown, on Farm No. 581 and all moneys payable or thereafter to become payable in respect of such crops."

It will be convenient at this point to set out section 12 of the Ordinance in order to indicate the legal issues. It reads:-

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"12.(1) Except as may be otherwise provided by regulations made hereunder, it shall not be lawful for any lessee under this Ordinance to alienate or deal with the land comprised in his lease or any part thereof, whether by sale, transfer or sublease or in any other manner whatsoever without the consent of the Board as lessor or head lessor first had and obtained. The granting or withholding of consent shall be in the absolute discretion of the Board, and any sale, transfer, sublease or other unlawful alienation or dealing effected without such consent shall be null and void: "Provided that nothing in this section shall make it unlawful for the lessee of a residential or commercial lease granted before the 29th day of September, 1948, to mortgage such lease.

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(2) For the purposes of this section "lease" includes a sublease and "lessee" includes a sublessee."

By virtue of that section the share-farming agreement entered into between Sabhapati and the appellant was illegal if it were shown that Sabhapati's tenancy from the Colonial Sugar Refining Company Limited was such as to bring him within the meaning of the phrase "any lessee under this Ordinance", and if the share-farming agreement was an alienation or dealing within the meaning of the section. For the purpose of considering the first of those requirements, I take the following further narration of facts from the judgment of the learned Chief Justice:-

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"It is common ground that the farm is comprised in a Lease made between the Buli Vuda, a Fijian official of the Vuda district, on behalf of the Fijian owners of the one part, and the Commissioner of Lands on behalf of the Crown on the other part. Under this Lease (hereinafter referred to as 'the Lease') the land was demised to the Crown for the term of 99 years from the 1st January, 1900. The Lease is still subsisting in favour of the Crown. It is also clear on the evidence that the land was found by the Native Land Commission, acting under the Native Lands Ordinance (Cap. 103) in the year 1914, to be owned by a Fijian proprietary unit. The Lease is endorsed as registered in the "Register of Crown Leases" and is head "Crown Lease". (There are in fact two such leases in identical terms but according to the evidence the relevant lease is Exhibit M, the land in question being part of land called Block A). By a sublease (Exhibit O) dated the 13th November, 1901, the Commissioner of Lands, on behalf of the Crown, subleased Block A to the C.S.R. Co. for the term of 10 years from the 1st January, 1900. It was expressly declared therein that the Sub-lease was a protected lease under the provisions of Ordinance No. IV of 1888, that is to say that restrictions on alienation were to apply. A memorandum dated September, 1910, is endorsed on the sublease to the effect that it was renewed for a term of 40 years from the 1st January, 1910, by the Commissioner of Lands. In 1940 the Native Land Trust Board was established under Cap. 104 and thereby entrusted with the control of and power to grant leases of native land, as defined. Sometime thereafter, according to the evidence, by informal arrangement the Board took over administration of (inter alia) Block A from the Commissioner of Lands. By a document dated the 29th December, 1951, signed by its Secretary,

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(Continued)

the Board agreed to grant to the C.S.R. Co. a lease of (inter alia) Block A for the terms of 50 years from the 1st January, 1950. A further document, in substitution for the foregoing, was issued on the 27th November, 1956, conveying the Board's decision to grant a lease to the Company for 50 years from the 1st January, 1957 (Exhibit R). The Company periodically submits a list of changes in the occupancy of the land by its tenants to the Board which issues overall approvals thereof, purporting to be consents to such dealings under the Ordinance (Cap. 104). The Board collects the agreed rent from the Company, and accounts for the net rent to the ultimate Fijian owners. For some years therefore, following the informal arrangement between the department responsible for Crown Lands and the Board, the Board has acted as if the land were 'native land', notwithstanding the subsistence of the Lease in favour of the Crown. It is part of the arrangement that as soon as the formalities of survey are completed the Crown will surrender the Lease, presumably to the Fijian owners as the Ordinance (Cap. 104) does not contemplate the vesting of native land in the Board. Thereupon the Board will implement its agreement (Exhibit R) to grant a lease to the C.S.R. Co. by executing a formal lease in the Company's favour under the powers conferred by the Ordinance. The C.S.R. Co. has throughout remained and still remains in occupation, by itself or its tenants; latterly, of course, under the document Exhibit R."

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The grounds of appeal as set out in the Notice of Motion (excluding Ground 3 which was abandoned at the Hearing) are:--

- "1. THAT the learned Judge did not adjudicate upon the appellant's argument based upon section 35 of Cap. 104.

2. THAT if the learned Judge did so adjudicate (which is denied) then he misdirected himself in law in that the real question which arose on this issue was not so much whether the land in question was Native land as whether the respondent could be described as "a lessee under this Ordinance".

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.....

10 4. THAT the learned Judge misdirected himself in holding that the transaction evidenced by the share-farming agreement between the respondent's deceased husband and the appellant dated the 23rd day of May 1957 was a "dealing" with Native Land within the meaning of section 12 of Cap. 104."

20 The argument on the first ground, as presented to this Court, was on a narrow basis. Section 35 of the Ordinance provides that any lease granted before the commencement of the Ordinance under the Native Lands Ordinance 1905 and the Native Lands (Occupation) Ordinance 1933, shall continue in force as if granted under the Ordinance and shall be in all respects subject to the provisions of the Ordinance. Counsel's submission was that as
30 the original lease to the Crown (which I shall call the 99 year lease) was granted before 1905, it could not have been granted under either of the two Ordinances mentioned and was not therefore subject to the provisions of the Ordinance. If this argument was put before the learned Chief Justice it would seem that he must have accepted it, as counsel conceded that if the argument was invalid, he had no case at all. The learned Chief Justice would not then have needed to consider all the other
40 matters which are discussed in his judgment.

As to the merits of the argument, it seems obviously a good one unless by some legislative provision the 99 year lease is deemed to have been made under the Native Lands Ordinance 1905,

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or the Native Lands (Occupation) Ordinance 1933. Counsel were unable to state under what Ordinance the 99 year lease was issued, but it seems abundantly apparent that it was under section 19 et seq. of the Native Lands Ordinance 1892, which was repealed by section 19 of the Native Lands Ordinance 1905. Under the 1892 Ordinance leases of native land were restricted to terms of 21 years except in the case of leases to the Crown which could be for any period. The lease, Exhibit M, follows exactly the form in Schedule C to that Ordinance. No provision in any of the legislation has been pointed to by counsel under which a lease under the 1892 Ordinance is deemed to be a lease under the 1905 Ordinance; nor have I been able to find such a provision, though section 12 of the 1905 Ordinance incorporates into Native leases registered under any Ordinance theretofore in force, the conditions contained in sections 51 - 57 of the Real Property Ordinance 1876. They do not affect the position in relation to the argument now under consideration, and there is nothing of relevance in the Native Lands (Occupation) Ordinance 1933.

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It would seem clear, therefore, that there is no legislation which deems the 99 year lease to be a lease under the Ordinance. That, however, is only one aspect of the question and is only a preliminary to the next matter for consideration, which is one of difficulty. It arises under the second ground of appeal and may be stated thus. Assuming for the moment that the share-farming transaction has rightly been held to be a dealing with the land in question, was Sabhapati at the relevant time "a lessee under" the Ordinance in respect of that land? The question is whether he should rightly be regarded as a subtenant deriving title from the 99 year lease (which, as has been seen, is not under the Ordinance) through the Colonial Sugar Refining Company Limited, holding under some type of tenancy at common law, or as a sub-tenant deriving title from that Company holding under a lease from the Native Land Trust Board to which I shall refer hereafter as "the Trust Board". In the last mentioned case Sabhapati would be a lessee under the Ordinance.

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There is no precise evidence showing the nature of the tenancy granted by the Colonial Sugar Refining Company Limited to Sabhapati. It was established that he was a tenant and had been on the farm since about 1942. Therefore one fact emerges with clarity - that at the time Sabhapati's tenancy was granted, the Colonial Sugar Refining Company Limited was itself holding under a sublease from the Commissioner of Lands which subsisted until the 31st December, 1950. What restrictions upon alienation there were in the tenancy is not known to the Court, but they are immaterial as a breach of them could only have given the Colonial Sugar Refining Company Limited such rights as it had reserved in relation thereto and could hardly have rendered illegal any act of Sabhapati in the sense of section 21 of the Ordinance.

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After the 31st December, 1950, it would seem that the Colonial Sugar Refining Company Limited continued to regard Sabhapati as a tenant and presumably accepted rent. It seems probable in the case of a cane farm that he had some form of periodic tenancy, but if he had a term of years, it must have come to an end on the 31st December, 1950, and there would be an implied grant of a new tenancy of some kind. As from the 1st January, 1951, the Colonial Sugar Refining Company Limited has regarded itself as holding a direct lease or agreement to lease from the Trust Board in the circumstances outlined in the passage from the judgment of the learned Chief Justice which I have quoted. What has to be ascertained is whether this new source of the title of the Colonial Sugar Refining Company Limited has the effect of converting Sabhapati's tenancy from a tenancy which was not, into one that is, under the Ordinance.

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The argument of counsel for the appellant before this Court proceeded thus. The respondent, about to deal with Sabhapati, would search the register of titles and find that the land was subject to the 99 year lease to the Commissioner of Lands. He would observe that a sublease to the Colonial Sugar Refining Company Limited had

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expired on the 31st December, 1950, but would know that the Colonial Sugar Refining Company Limited was still in possession and acting as landlord. The appellant would be entitled to assume that the title of the Colonial Sugar Refining Company Limited to function as landlord flowed in some way from the Commissioner of Lands holding under the 99 year lease. As a third party the respondent could not be affected by private arrangements between Government departments for purposes of convenience or policy.

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While one may have a measure of sympathy with the appellant in the circumstances, it could be pointed out in relation to this argument that, having found the sublease to the Colonial Sugar Refining Company Limited had expired, the appellant was put on inquiry as to the Company's title. The question is one which must be resolved by endeavouring to ascertain the position which arose in law. It will be necessary to look at Exhibit R, the root of the title of the Colonial Sugar Refining Company Limited after 1950, but before doing so, I will refer to the findings of the learned Chief Justice.

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A large part of his judgment was devoted to the consideration of the question whether the land in question was Native Land, or Crown Land, an issue which was much to the fore at the Supreme Court hearing. The learned Chief Justice found that the land was Native Land and counsel for the appellant conceded on this appeal that he could not challenge this finding. On the point now in issue the learned Chief Justice first considered authorities relating to estoppel and concluded that the appellant was not estopped from asserting that it was ultra vires the Trust Board to grant a lease, and consequently to agree to grant a lease prior to the actual surrender of the 99 year lease. He found that no informal arrangement with the Crown could enlarge the powers of the Trust Board, which were statutory: but that the Trust Board did not exceed its statutory powers by agreeing to grant a lease of Native land to the Colonial Sugar Refining Company Limited; and that

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the informal arrangement with the Crown enabled the Board to make the lease so agreed to be granted, one in possession and not, as it would otherwise have been compelled to do, one in reversion. It was an arrangement which any person having power to deal with land might enter into. The learned Chief Justice then held that the restrictions contained in section 12 of the Ordinance applied at all material times to Farm No.581. Finally, I quote one sentence which the learned Chief Justice said in the course of his consideration of the matter:-

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(Continued)

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"Nor am I to be taken as holding that a person who has merely agreed to take a lease of native land from the Board, where the Board is in a position to grant such a lease in the exercise of its statutory powers, is not a 'lessee under this Ordinance' for the purposes of section 12 of Cap.104; such a person, it might well be said, could not accept the benefit without accepting the burden of the agreement, and would, therefore, be bound by the provisions of section 12."

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Those findings indicate the learned Chief Justice's opinion that at the material time the Colonial Sugar Refining Company Limited held a valid agreement to lease from the Trust Board and was therefore a lessee under the Ordinance and that Sabhapati, as a sub-tenant under the Colonial Sugar Refining Company Limited, was consequently a sub-lessee under the Ordinance.

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Exhibit R, the source of title of the Colonial Sugar Refining Company Limited is dated the 27th November, 1956, and gives "provisional approval" for a term of 50 years from the 1st January, 1957. The document was therefore in force during the year 1957 when the share-farming transaction took place in May of that year. Although the approval is designated "provisional" it would seem from paragraphs 3 and 4 of the document that final approval depended only upon payment of

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(Continued)

the first six months' rent and of the estimated survey fee. There appears to be no evidence when it was given, but no point has been made of this by counsel. Paragraph 5 reads:-

"5. In the event of it being shown by survey that the land provisionally approved for lease forms part of any land the subject of an existing freehold or leasehold title, this notice of approval of lease shall be deemed to be cancelled, without prejudice or loss to the Board."

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There is the following typed endorsement:-

"Subject to the surrender of N.L.s. Book IV/1888 Folios 34 and 37 by the Crown w.e.f. 1.1.1950. Subject to usual C.S.R. conditions.

Obviously paragraph 5 must be read in the light of that endorsement and could not operate to cancel the approval. It will be seen that, under the endorsement, the 99 year lease is to be surrendered with effect from the 1st January, 1950. I do not think that what is there contemplated is possible in law, whatever result the contractual arrangement between the parties may have in the interim. A surrender is something which extinguishes the lessee's estate and in this case would terminate a registered lease; though it is possible to have a binding agreement to surrender a lease at some future date, an actual surrender in futuro is not a possibility, and in my view similar considerations would apply to a surrender with purported retrospective effect: I do not think that the matter is material in the present circumstances.

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In my view the Trust Board could validly give a lease of the land in question which was good in equity. It is unusual to have a position in which a statutory body which is empowered to lease has no interest or estate in the land which it leases. It is obvious, however, that, as the name imports, the Trust

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Board is in the position of a trustee or, at least of a statutory agent and, once it is established that the land to be dealt with is Native Land, the Trust Board's power of effective leasing would be co-extensive with, or at least no less than, that of the native owners of the freehold. I am referring of course to the power arising from estates in land and not in relation to statutory restrictions as to term or purpose. In this case the land was already subject to the registered 99 year lease, but, having the agreement of the Commissioner of Lands to surrender that lease, I think the owners and consequently the Trust Board could create by agreement a lease in equity, probably creating a full equitable estate, but at the least by estoppel. I see no justification for thinking that an estoppel of that nature would confer upon the Trust Board powers which were beyond those given by the Ordinance and therefore ultra vires.

I agree with the learned Chief Justice that the tenancy created by Exhibit R was one under the Ordinance. There is no limitation in section 12 making it applicable to registered or legal leases only, and in my judgment, as the Trust Board derives its powers only from the Ordinance, any form of tenancy which is intra vires the Trust Board must be under the Ordinance. I agree also that the tenancy of Sabhapati's cane farm was under the Ordinance. That follows inevitably from the fact of the equitable lease of the Colonial Sugar Refining Company Limited from the Trust Board; its existence must exclude any question of a tenancy to the Colonial Sugar Refining Company Limited arising by holding over as sublessee of the Commissioner of Lands. I cannot find any basis for saying that the position is different because Sabhapati's tenancy was in existence before the expiry of the original sublease of the Colonial Sugar Refining Company Limited. Sabhapati's tenancy could only continue in existence in any form by virtue of the title flowing from its equitable lease

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from the Trust Board and the altered conditions of Sabhapati's tenancy arose, not from any unilateral act of the Colonial Sugar Refining Company Limited, but from statute, against which there could be no estoppel by the terms of any tenancy between Sabhapati and the Colonial Sugar Refining Company Limited.

Sabhapati being, in my view, a lessee under the Ordinance it follows that the share-farming agreement with the appellant was illegal if it contravened section 12. The learned Chief Justice was satisfied that it did, and said so quite briefly, as follows:-

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"As to whether the Share-Farming Agreement was a 'dealing' within the meaning of section 12, I have no doubt it was. Under its terms the Defendant was to enter into immediate occupation of the farm and to cultivate it, sharing in the expenditure and sharing in the proceeds. At the least he was a licensee with an interest. The word 'dealing' is deliberately chosen to embrace such situations. In all but name he was a tenant in common with the deceased, and after his death with the Plaintiff."

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The question is to be resolved by ascertaining whether the transaction fell within the meaning of the words "... or deal with the land ... or any part thereof, whether by sale, transfer or sublease or in any other manner whatsoever ..." The important words are "deal with".

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It is now expedient to examine the share-farming agreement, Exhibit B. It is dated the 23rd May, 1957, and made between Sabhapati (the Owner) and the appellant (the Farmer); it recites that the owner is lessee of Farm 581 and has agreed with the farmer to farm it. Paragraphs 1, 2 and 3 are as follows:-

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"1. THE Owner will employ the farmer to farm and the farmer will farm the said land to the best of his skill and ability.

2. THIS agreement shall enure until all moneys owing by the Owner to Murtuza Hussain Shah are fully paid.

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3. THE farmer will at all times during the currency of this Agreement cultivate and farm in sugar-cane in a good and husband-like manner and according to the most approved system of Agriculture practised in the Saweni district all such parts of the land as are suitable therefor or which may be for the time being included in any contract for the time being held by the Owner from the Colonial Sugar Refining Company Limited for the sale and/or purchase of sugar-cane and shall in due course of cultivation harvest the same."

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It is then set out that the farmer will provide the farm implements and stock and pay one-half of the expenses and conform to the directions of the Colonial Sugar Refining Company Limited as to planning and harvesting; and that all cane shall be sold in the name of the Owner to the Colonial Sugar Refining Company Limited and paid to the solicitor for the parties.

Then come paragraphs 7, 8 and 9 as follows:-

- "7. THE farmer will at all times keep observe and perform all and singular the terms conditions and agreement of any agreement made between the Owner and the Colonial Sugar Refining Company Limited whether relating to the leasing of the said Farm No. 581 or the sale and/or purchase of sugar-cane or otherwise howsoever and the Farmer hereby agrees to hold and keep the Owner free and clear of any loss or damage arising from the breach of any such agreement by the Farmer.

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(Continued)

8. ALL moneys received from the growing of sugar-cane on the said land will be divided after payment thereof of all expenses of and incidental to the growing and harvesting of the said sugar-cane between the parties in equal shares and all moneys receivable by the owner shall be applied in reduction of the owner's indebtedness to Murtuza Hussain Shah now standing at £550. 10
9. THE owner shall from time to time order and procure from the Colonial Sugar Refining Company Limited all such supplies and necessaries for the cultivation of the said land as the Farmer may reasonably require and the cost of all such supplies and necessaries shall be borne by the parties in equal shares." 20

I have so far omitted reference to paragraph 4A as there appeared to be no particular reason for its insertion at the point it occupied in the agreement; it reads:-

- "4A. UPON payment of all moneys owing or hereafter to become owing by the owner to Murtuza Hussain Shah the owner will apply for and use his best endeavours to obtain the consent of the Colonial Sugar Refining Company Limited to the transfer of one-half interest in the said Farm No. 581 to the Farmer." 30

The use of the word "employ" in the first paragraph implies a relationship of master and servant between Sabhapati and the appellant, but it is difficult to find any further indication of such a relationship in the agreement. The sale of cane to the Colonial Sugar Refining Company Limited was to be in Sabhapati's name which would be expected in any event as the cane contract was in his name; the proceeds of sale were to be equally divided. The agreement is silent as to possession of the 40

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—
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Gould J.A.
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1965
(Continued)

10 land. Obviously it is implied that the appellant would have the right to enter upon the land and farm it but, although that right would be in the circumstances an extensive one, it is not a right as against Sabhapati to possession and certainly not a right of exclusive possession. It was common ground in the course of the argument before this Court that the appellant continued to reside on his own land and Sabhapati (and after his death the respondent) continued to live on the land in question.

20 Under the agreement the appellant appears to have complete control of the farming operations and was obliged to supply all farm implements and stock, and, it would seem, all the labour. The respondent in evidence, whilst admitting that Sabhapati was very sick at the time and that the production increased substantially under the appellant's management, said that Sabhapati, herself and the children continued to work. If that is so it was not required by the agreement. The position as to the rent payable to the Colonial Sugar Refining Company Limited is obscure. It might well fall technically within the obligations of the appellant under paragraph 7, though I doubt if that was in fact the intention. If, as seems probable, the rent would be deducted from the cane proceeds by the Colonial Sugar Refining Company Limited, would it be regarded as an expense of and incidental to the growing and harvesting under paragraph 8? There seems to be no plain answer to these queries.

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40 In Genda Singh v. Balak Ram, Civil Appeal No. 20 of 1963, the Supreme Court, on appeal from a Magistrate, considered another share-farming agreement and held that it did not contravene section 12 of the Ordinance; at the same time it was held that the expression "share-farming" is not a term of art and each case must be decided upon its own facts. The agreement in that case was not set out in the judgment but the salient facts can be ascertained from the following passage of the Magistrate's judgment which the Supreme Court approved:-

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"Plaintiff did not live on the land. He had no house there. Defendant did still live on the land. He had his house there. Plaintiff paid no part of the rent. He had no security that he could continue to work the farm for any particular period. To that extent at least defendant maintained control. Plaintiff worked the land and was repaid by a percentage of the cane proceeds he grew there. He obtained no sort of interest in the land itself and this Court quite fails to see that there was any dealing with the land itself of any sort whatever. It follows there was nothing unlawful about the agreement or the arbitration."

10

So far as residence is concerned the position is the same here but in the present case there was an ascertainable time limit at the expiration of which the parties hoped to divide the land (whether by way of area or undivided interest seems immaterial) between them. I have indicated that the position regarding the rent in the present case is obscure. I will advert to the question of an interest in land later, but before I do so, it will be well to mention other cases decided in this Court and in the Privy Council.

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The document considered in Ramkrishna Mission v. Ramlingham, Civil Appeal No. 20 of 1962, contained first a declaration of trust in relation to the land and then a declaration that all crops were the property of the grantee. It was argued that the second provision was severable and amounted only to a sale of chattels or fructus industriales. The Court held that the deceased had only one object, to pass to the grantee the land and the crops and that, being without the consent of the Trust Board, it was illegal. It was not necessary for the Court to consider the position of the crops separately.

40

The decision of the Privy Council in Chalmers v. Pardoe (1963) 3 All E.R. 552 was in relation to facts of a rather different nature. P. who

had a lease from the Trust Board made an arrangement with C. that he might build a house and outbuildings on part of P's leasehold. C. erected the buildings but no consent of the Trust Board was applied for. P. and C. then had a disagreement and C. claimed an equitable lien on the land for the cost of the buildings; it was held that he would have been entitled to such a lien but for the fact that the arrangement between P. and C. coupled with the erection of the buildings, and without the consent of the Trust Board was unlawful. The Privy Council considered that the "friendly arrangement" between P. and C. amounted to an agreement for a lease or sublease. The Fiji Court of Appeal had put it as "a licence to occupy coupled with possession" and on this question their Lordships said, at p. 557:-

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"Even treating the matter simply as one where a licence to occupy coupled with possession was given, all for the purpose, as Mr. Chalmers and Mr. Pardoe well knew, of erecting a dwellinghouse and necessary buildings, it seems to their Lordships that, when this purpose was carried into effect, a "dealing" with the land took place. On this point their Lordships are in accord with the Court of Appeal: and since the prior consent of the Board was not obtained it follows that under the terms of s.12 of the Ordinance, Cap. 104, this dealing with the land was unlawful. It is true that in Harnam Singh and Backshish Singh v. Bawa Singh (7), the Court of Appeal said that it would be an absurdity to say that a mere agreement to deal with land would contravene s.12, for there must necessarily be some prior agreement in all such cases. Otherwise there would be nothing for which to seek the Board's consent. In the present case, however, there was not merely agreement, but, on one side full performance: and the Board found itself with six more buildings

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(Continued)

on the land without having the opportunity of considering beforehand whether this was desirable."

There is one implication there that (unless a sublease could be inferred) the inchoate arrangement between P. and C. might not have infringed section 12, but that, when the buildings were erected there was a completed dealing. Their Lordships' approach to the "licence to occupy" basis was cautious and I think it is obvious that a mere licence to enter land, which would serve only as a defence in an action of trespass, would not be a dealing with land. On the other hand, a licence to occupy coupled with possession, if the latter is exclusive, would frequently amount to a lease. It may be that a question of degree between these extremes is involved. On my reading of the judgment in Harnam Singh and Backshish Singh v. Bawa Singh (1958-9) 6 F.L.R. 31 the dictum from that case to which their Lordships referred in Chalmers v. Pardoe (supra) was obiter. Their Lordships expressed no dissent from it and applied what was only a small part of what had been said by the learned President. Obviously agreements are numerous and varied, and I do not think that anything in the passage referred to detracts from the necessity of examining and considering each one in the light of its own contents and circumstances.

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Returning to the agreement now under consideration, I will look first at paragraph 4A. One possible construction of it is that it is an agreement to sell an interest in the land subject to the consent of the Trust Board being obtained. On the other hand, particularly in the light of the surrounding circumstances of Sabhapati's illness and the fact that Sabhapati and the appellant were brothers, it might be little more than an expression of intention at a later date to approach the Colonial Sugar Refining Company Limited, and if it consented, to take the necessary steps to effect the transfer a re-arrangement. I

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think this is the better view and certainly until the Colonial Sugar Refining Company Limited had consented it would have been premature and useless to approach the Trust Board. The Board would undoubtedly have refused to consider the question on the ground that the parties were not in a position to "deal" with each other even if the Trust Board's consent were forthcoming. I think this view receives some support from the reference in *Chalmers v. Pardoe* (supra) to the decision in *Harnam Singh and Backshish Singh v. Bawa Singh* (supra). The position is also, I think, analogous to what the Privy Council had in mind in relation to the phrase "grant or disposition of land" when it said in *Director of Public Works v. Ho Po Sang* (1961) 2 All E.R. 721 at 734:-

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"If that agreement were no more than an agreement thereafter to grant a lease, their Lordships would not regard it as being a grant or disposition of land. It is one thing to make a grant or disposition of land. It is quite another thing to enter into an agreement to make thereafter a grant or disposition of land. A mere agreement thereafter to grant a lease would not, their Lordships conclude, be a grant or disposition within Art.XIII."

That, insofar as paragraph 4A is concerned, I would hold to be the position here, but their Lordships went on to say:-

40

"This, however, does not conclude this case because there can be no doubt that there are many provisions in the document of June 7, 1955, which might be said to amount to an immediate grant of a present interest in land which was of such a substantial character as to be a grant or disposition of land."

Are there indications in the remainder of the share-farming agreement in the present case that it is a dealing with land? I would indicate

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first that this is not a case in which it is suggested that the agreement is a sham to cover the de facto transfer of wider benefits or rights. Its effect must be ascertained from its tenor having due regard to surrounding circumstances. It appears to me to be a not unnatural arrangement between brothers, one of whom is ill, that the other will farm his land for him, in consideration of one-half on the proceeds of the crops. The appellant did not have possession and was not entitled, under the agreement, to enter on the land except for the purpose of farming it. He was a licensee but I see little to indicate that the agreement went beyond pure contract. When in *Chalmers v. Pardoe* (supra) reference was made to "a licence to occupy coupled with possession", it was possession of a very different calibre - in fact exclusive possession.

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20

The learned Chief Justice considered that the appellant was a licensee "with an interest" and a tenant in common in all but name. As to the latter I think he did not have the legal right to possession which a tenant in common would have had. As I have indicated, the position regarding payment of the rent to the Colonial Sugar Refining Company Limited is obscure and I think that if any presumptions are made they should not be those in favour of invalidating the agreement. As to the former, I would say first that it would not, in any opinion, be right in construing the agreement as a whole to cast over the remainder of it a shadow from paragraph 4A. That the parties hoped later to be permitted to divide the land is not, I think, good reason for thinking they would choose an illegal means of covering the interim period when the method, legal and equally effective, of pure contract, was open. A mere licence to enter and work on the land does not convey an interest in it. The appellant had no easement or profit a prendre and was not, in my view, a tenant. Therefore, if he had an interest in the land

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10 it must have arisen in relation to the
 crops. That question was not argued
 before this Court and I am doubtful in
 that account whether I should entertain it.
 However, I do not find anything in the
 share-farming agreement which would place
 the ownership of a half share in the crops,
 while growing, with the appellant. Certainly,
 he was entitled to half of the net proceeds
 but that is only the method under the
 contract by which he is recompensed for
 his employment under paragraph 1 of the
 agreement. I do not think the agreement can
 in any way be construed as a sale of a
 proportion of the cane crops to the appellant
 and therefore it is unnecessary to embark upon
 consideration of the question whether sugar-
 cane is fructus naturales (a sale whereof
 would pass an interest in land) or fructus
 20 industriales.

30 There is little guidance to be had on
 the appropriate meaning to be attached to the
 phrase "deal with" the land in the context
 of this Ordinance. To my mind the word "with"
 implies that the land or part of it or an
 interest in it at least, must be the subject-
 matter of the dealing. That does not mean that
 a purportedly innocuous agreement concealing
 a far-reaching *de facto* arrangement would
 escape, as the illegal dealing would be the
de facto transaction. I think it cannot have
 been the intention of the Ordinance to render
 illegal the bringing onto a cane farm of an
 employee or an independent contractor to farm it
 in consideration of a share of the proceeds.

40 I have reached the conclusion, though with
 considerable hesitation, that it is on that
 side of the line that the present case falls.
 I would therefore hold that the share-farming
 agreement Exhibit B was not in contravention
 of section 12 of the Ordinance and would allow
 the appeal, setting aside the judgment in the
 Court below and substituting a judgment
 dismissing the action with costs: the respondent
 to pay the costs of the appeal.

(Sgd) T.J. Gould
JUDGE OF APPEAL

SUVA 16th July, 1965

In the Court
 of Appeal

No.24

Judgment of
 Gould J.A
 16th July
 1965
 (Continued)

100.

In the Court
of Appeal

NO. 25

JUDGMENT OF MARSACK J.A.

No. 25

Judgment of
Marsack J.A.
16th July 1965

IN THE FIJI COURT OF APPEAL

Civil Jurisdiction

Civil Appeal No. 4 of 1965

B E T W E E N:

MANADAN Appellant

-and-

KULAMMA Respondent

JUDGMENT OF MARSACK, J.A.

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I have had the advantage of reading the carefully reasoned judgment of Gould, J.A. and agree that in the circumstances of this case the agreement between Sabhapati and Manadan is not a dealing in land within the meaning of the Native Land Trust Ordinance, Cap. 104. I fully endorse the reasons given for his reaching that conclusion. Accordingly, I agree that the appeal should be allowed, with the consequences set out in that judgment.

20

With regard to the other section of the judgment, however, I find myself in some doubt as to whether the respondent can properly be regarded as a "lessee" within the meaning of section 12 of the Ordinance. As Gould J.A. points out in the course of his judgment, there is no precise evidence showing the nature of the tenancy granted by the C.S.R. Company Limited to Sabhapati. It may be, as is there stated, that any form of periodic tenancy previously held by Sabhapati must have come to an end on the 31st December, 1950, and that there would be an implied grant of a new tenancy of some kind. There is no finding in the judgment appealed from as to the class of tenancy held by Sabhapati, and, as far as I

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can ascertain, no evidence upon which such a finding could be based. In the pleadings it is agreed that the lands in question were held by Sabhapati "under tenancy from the C.S.R. Ltd." There is, however, nothing, in either the pleadings or the evidence, from which the nature of that tenancy can be ascertained. It is possible, and perhaps even probable, that it is a mere tenancy at will. The question then arises: are the terms 'tenant' and 'lessee' synonymous for the purposes of section 12?

In the Court
of Appeal

No. 25

Judgment of
Marsack J.A.
16th July 1965
(Continued)

The term "lessee" is not defined in the Ordinance, Cap. 104. Section 12 (2) merely provides that for the purposes of that section lease includes a sub-lease and lessee includes a sub-lessee. It is perfectly true that in the agreement dated 23rd May, 1957, between Sabhapati and Mandan, the former recites that he is the "lessee" of a piece of land comprising 10 acres more or less "leased" by him from the C.S.R. Company Limited. But the term in that context may well have been used loosely, and its use there is not in itself sufficient, in my view, to bring the tenancy within the ambit of section 12. In section 12, however, the words "lease" and "lessee" must, in the absence of express definition in the Ordinance itself, be taken to have their strict legal meaning. When any dealing in land by a "lessee" without the consent of the Board is invested with the attributes of illegality, there should be no vagueness as to the form of tenancy intended to be covered by the section. In my opinion it is thus necessary, in deciding whether Sabhapati could at the 23rd May, 1957, properly be described as a "lessee" to use that term in its strict connotation. In Woodfall's Landlord and Tenant, 26th Ed., at p.2, "lease" is defined as:-

"The grant of a right to the exclusive possession of land for a determinate term less than that which the grantor has himself in the land."

In Stroud's Judicial Dictionary, 3rd Ed., p. 1601, it is stated:-

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of Appeal

No.25

Judgment of
Marsack J.A.
16th July 1965
(Continued)

"There must be a certain beginning and a certain ending otherwise it is not a perfect lease."

In these definitions emphasis is laid on the principle that to constitute a lease there must be a definite date of commencement and a definite date of termination. Some of the decided cases appear to lead to the same conclusion: Camberwell & South London Building Society & Holloway, 13 Ch. D. 754; in re Negus (1895) 1 Ch. D. 73; Nell v. Longbottom (1894) 1 Q.B. 767; and also 23 Hals. (3rd Ed.) 469 para. 1088. I have been unable to find any authority for the strict use of the term "lease" to indicate a tenancy which was not for a definite period.

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If then it appears from the authorities quoted to be of the essence of a lease that the grant of the right to exclusive occupation should be made for a determinate period, the vague tenancy which Sabhapati seems to have enjoyed in the present case at the time of execution of the agreement with Manadan, cannot properly be described as a lease within the meaning of section 12 of the Native Land Trust Board Ordinance, Cap. 104.

20

Section 12 must be taken to contemplate, in using the terms 'lessee' and 'lease', that the tenure of the land is such as to make it possible for the person concerned to alienate or otherwise deal with it, as for example by sale, transfer or sub-lease. I can find no evidence of such a form of tenure here. There is nothing to show that any form of tenancy which Sabhapati held constituted an interest in land capable of being alienated or in any way dealt with by action on the part of the tenant.

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There is also perhaps the further question of whether the form of equitable estate held in the land by the C.S.R. Ltd. under what has been called the "Notice of Provisional Approval" from the Native Land Trust Board, is sufficient to enable the Company to grant a tenancy which would amount to a sub-lease under the Ordinance, Cap. 104.

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10 It is for these reasons that I am impelled to express a doubt whether the word 'lease' in section 12 is wide enough to cover such form of tenancy as Sabhapati may have held. In the absence of evidence definitely establishing the terms of Sabhapati's tenancy, which is here treated as a matter of presumption only, and of legal argument on the subject from counsel appearing on the appeal, I cannot give a definite judgment on the point. Consequently all I wish to say is that my concurrence with my brother Gould as to the fate of the appeal should not necessarily be taken as an agreement with his opinion that Sabhapati was, at material times, a lessee within the scope of section 12 of the Ordinance.

(Sgd) C.C. Marsack

JUDGE OF APPEAL

20 SUVA, 16th July, 1965

NO. 26

JUDGMENT OF KNOX-MAWER J.A.

IN THE FIJI COURT OF APPEAL

Civil Jurisdiction

Civil Appeal No. 4 of 1965

B E T W E E N:

MANADAN Appellant

-and-

KULAMMA Respondent

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JUDGMENT OF KNOX-MAWER, J/A

I have enjoyed the advantage of reading the learned judgments of my brothers Gould and Marsack JJ/A, in this most difficult case.

In the Court
of Appeal

No.25

Judgment of
Marsack J.A.
16th July 1965
(Continued)

No.26

Judgment of
Knox-Mawer, J.A.
16th July 1965

In the Court
of Appeal

No.26

Judgment of
Knox-Mawer, J.A.
16th July 1965
(Continued)

Addressing myself shortly to the question 'is the share-farming agreement Exhibit B a dealing with the land, within section 12 of Cap. 104?', I would answer that, upon the face of it, it is not. No clause in this agreement confers upon the "farmer" (the Present appellant) any interest in the land, such as a right to joint possession for instance, as distinct from a mere licence to go on the land to cultivate it in his capacity as a sort of farm manager to his brother.

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A further question arises: does Exhibit B purport to conceal a de facto dealing with the land? It was the conclusion of the learned trial Judge that the appellant had become a tenant in common with Sabhapati 'in all but name'. My learned brother Gould J/A has challenged the validity of this conclusion, and my learned brother Marsack J/A agrees with him. I concur with them upon this issue, but I do so after considerable deliberation because at one stage of the argument I was otherwise inclined. Upon balance, I think it is correct to say that no dealing with the land, concealed or otherwise, in contravention of section 12 has been established in this case. I would therefore allow the appeal on this ground and set aside the judgment in the Court below, substituting therefor a judgment dismissing the action with costs. I would order the respondent to pay the costs of the appeal.

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In case a higher tribunal, upon appeal from this Court, should hold, with the learned trial Judge, that there was a dealing with the land within section 12, I will advert briefly to the other main issue (it being no longer disputed that this is native land).

This is the question whether Sabhapati was a lessee under the Ordinance within the meaning of section 12. The respondent is the widow and personal representative of Sabhapati who died in November, 1958. At the date of his death Sabhapati held the land as tenant of the Colonial Sugar Refining Company Limited. It is common ground that

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10 this tenancy is now vested in the respondent. In my view, it has also been the basis of the whole argument in this case that at the time when the share farming agreement, Exhibit B, was executed, Sabhapati's tenancy from the Colonial Sugar Refining Company Limited was a periodic tenancy, although the evidence did not disclose by reference to what particular period rent was being paid by Sabhapati to the Company at the time of his death.

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of Appeal

—
No.26

Judgment of
Knox-Mawer, J.A.
16th July 1965
(Continued)

20 The source of title of the Colonial Sugar Refining Company (from which this periodic sub-tenancy is derived) is the document Exhibit R. By Exhibit R, the Native Land Trust Board conveyed to the Colonial Sugar Refining Company Limited its decision to grant to the Company a lease for fifty years from the 1st January, 1957. It has been a further basis of the argument, both in this court and in the court below, that, at the time when the Native Land Trust Board, as statutory agents of the native owners, issued Exhibit R to the Colonial Sugar Refining Company, the Board had the agreement of the Commissioner of Lands that he would surrender the head lease. This basis remains unchallenged. I consider that the Board has validly created in favour of the Colonial Sugar Refining Company an equitable "lease" within the meaning of this word as used in section 12, and the holder of a tenancy deriving from this equitable head-lease is in my view a sub-lessee (and hence a 'lessee under this Ordinance') within the meaning of the section.

40 I have given careful thought to the observations of my learned brother Marsack J/A in this regard, but, for myself, I would not, with respect so restrict the meaning to be given to the words "lease", "lessee", "sub-lease", "sub-lessee" in section 12, as to exclude Sabhapati's tenancy from the operation of the section.

Accordingly, upon this, the other main question that remains in issue in the case,

In the Court
of Appeal

No.26

Judgment of
Knox-Mawer, J.A.
16th July 1965
(Continued)

I find myself in substantial agreement
with Gould J/A and with the learned trial
Judge.

(Sgd) R. Knox-Mawer.

JUDGE OF APPEAL.

16th July, 1965.

No.27

Order
16th July 1965

NO.27

ORDER

IN THE FIJI COURT OF APPEAL

Civil Jurisdiction

10

Civil Appeal No. 4 of 1965.

B E T W E E N:

MANADAN

Appellant

-and-

KULAMMA

Respondent

ORDER

FRIDAY the 16th day of July, 1965.

UPON READING the Notice of Motion on behalf
of the above named Appellant dated the 26th day
of January 1965 and the Judgment hereinafter
mentioned AND UPON READING the Judge's notes
herein and upon hearing Mr. K.A. Stuart of
Counsel for the Appellant and Mr. S.M. Koya
of Counsel for the Respondent AND MATURE
DELIBERATION THEREON HAD this Court having
found that the share farming agreement dated
the 23rd day of May 1957 made between
Sabhapati son of Raghawan Gounden late of
Saweni Lautoka deceased of the one part
and the appellant of the other part was
not illegal as having been made in contravention
of Section 12 of The Native Land Trust Ordinance

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(Cap. 104) IT IS ORDERED that this appeal be allowed and that the judgment of the Supreme Court of Fiji dated the 9th day of December, 1964 be set aside and the Respondent's action be dismissed out of the Supreme Court of Fiji AND IT IS FURTHER ORDERED that the Respondent do pay to the Appellant his costs in the Supreme Court of Fiji and occasioned by this appeal such costs unless agreed upon by the parties to be taxed by the Taxing Master.

In the Court
of Appeal

No.27

Order
16th July 1965
(Continued)

10

BY THE COURT

(Sgd) G. Yates.

REGISTRAR

In the Court
of Appeal

No.28

Order allowing
final Leave
to Appeal to
Her Majesty
in Council
20th August
1965

108.

NO.28

ORDER ALLOWING FINAL LEAVE
TO APPEAL TO HER MAJESTY IN
COUNCIL

IN THE FIJI COURT OF APPEAL No. 4 of 1965

B E T W E E N:

MANADAN son of Raghawan Gounden
of Vaivai, Lautoka, Cultivator

Defendant/Appellant

- and -

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KULAMMA daughter of Vedisa Naicken
of Saweni, Lautoka Widow as
Administratrix of the estate of
Sabhapati son of Raghawan Gounden
late of Saweni, Lautoka, deceased

Plaintiff/Respondent

INJUNCTION AND ORDER GIVING FINAL
LEAVE TO APPEAL TO HER MAJESTY IN
COUNCIL

FRIDAY THE 20TH DAY OF AUGUST, 1965
BEFORE MR. JUSTICE HAMMETT IN CHAMBERS.

20

UPON MOTION for an Injunction this day made unto
this Court by Counsel for the Plaintiff/Respondent
AND UPON HEARING MESSRS. KARAM CHAND RAMRAKHA and
DEO NARAYAN SAHAY of Counsel for the Plaintiff/
Respondent AND UPON HEARING MR. KENNETH ALBERT
STUART of Counsel for the Defendant/ Appellant
AND UPON READING the Notice of Motion herein
dated the 3rd day of August 1965 and the Affidavits
of MR. BAL KRISHNA PILLAY filed on the 3rd day
of August, 1965 and Mr. Manadan son of Raghawan
Gounden THIS COURT DOETH ORDER that the
Defendant/Appellant his servants and agents be
restrained until the determination of this Appeal
by the Judicial Committee of the Privy Council
or until the 26th day of March, 1966 whichever
is the sooner or further order from obtaining
by order or assignment or otherwise the moneys
now held by the South Pacific Sugar Mills Limited

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Lautoka, in respect of the Plaintiff's/
Respondent's Cane Farm No.581 situate
at Saweni, Lautoka and any further
moneys now held by the said Company in
respect of cane supplied or to be supplied
from the said farm AND IT IS FURTHER
ORDERED that the Plaintiff/Respondent do
have final leave and final leave is hereby
granted to the Plaintiff/Respondent to
enter and prosecute her Appeal before the
Privy Council against the Judgment of this
Honourable Court dated the 16th day of
July, 1965 AND IT IS FURTHER ORDERED that
the Defendant/Appellant do have liberty
to apply to vary or rescind this Order and
that the costs of this application be costs
in the cause.

BY THE COURT

(Sgd) G. Yates.

REGISTRAR

In the Court
of Appeal

No.28

Order allowing
final Leave
to Appeal to
Her Majesty
in Council
20th August
1965
(Continued)

10

20

Exhibits

EXHIBITS

Exhibit L
 Lease,
 Asaeli Kalo,
 Buli Vuda
 to
 Commissioner
 of Lands
 16th
 September
 1901

EXHIBIT L - LEASE, ASAEI KALO, BULI
 VUDA TO COMMISSIONER OF LANDS.

Register of Crown Leases Book $\frac{IV}{88}$ 34 Folio Nabasara
 (1) Crown Lease

THE Buli Vuda for the Nabasara tribe on
 behalf of themselves and Matagalisi hereby
 Lease to The Commissioner of Lands
 on behalf of the Crown

ALL that piece of land containing One 10
 hundred and forty acres be the same a
 little more or less situate at Vuda
 and known as block 11 (Saweni) the
 boundaries of which said piece of land
 are as follows; that is to say:-

See descriptions and plan attached herein
 and conditions overleaf.

to be held by him the said Commissioner of 20
 Lands on behalf of the Crown as tenant for
 the term of ninety-nine years computed
 from the First day of January 1900 yielding
 and paying to the Lessors at the office
 of the Commissioner of Lands in the town
 of Suva during the continuance of the
 said term the rent hereinafter specified
 on the days and in the manner hereinafter
 mentioned; that is to say:- On the 31st
 day of December in every year during the 30
 continuance of the said term See Conditions

at back hereof for every acre of land
 hereby demised as shall in any year during
 the continuance of the said term be taken
 into actual occupation by the said
 Commissioner of Lands or by any person
 holding from or under him. Subject to
 the covenants and powers implied in leases
 under "The Real Property Ordinance 1876"
 and subject also to the following covenant
 and proviso; that is to say:- 40

PROVIDED ALWAYS that the Lessors
 may from time to time so long as any
 portion of land hereby demised shall remain
 unoccupied by the said Commissioner of
 Lands or some person holding from
 or under him enter upon such land and cut
 and remove the timber and the fruits and

edible roots growing thereon without let or hindrance.

I George Moore of Suva do hereby accept this lease.

Dated this sixteenth day of September 1901.

(Sgd) Asaeli Kalo: Lessor.
Buli Vuda.

(Sgd) Geo. Moore : Lessee
Commissioner of Lands.

Exhibits

Exhibit L
Lease, Asaeli
Kalo, Buli
Vuda to
Commissioner
of Lands
16th September
1901
(Continued)

10 The Signature Asaeli Kalo)
was made in my presence and)
I verily believe that such) (Sgd). R.M. Booth
signature is of the proper) Commissioner Supreme
handwriting of Asaeli Kalo) Court of Fiji.
Buli of the district of Vuda)

20 The Signature Geo. Moore was)
made in my presence and I)
verily believe that such) Sgd. T. Keanuf
signature is of the proper) Govt. Surveyor.
handwriting of the person)
described in the above lease)
as Commissioner of Lands.)

CONDITIONS

Option of renewals of lease allowed, for the whole of the land herein described, for terms of five years up to fifty years in all. Annual rental to be at the rate of s ^d 3/- per acre, per cultivatable

30 land, h/3 per acre for all hill land. If any of the said hill land be brought under cultivation, the rental charged will be 3/- per acre for such land commencing from the date of commencement of such cultivation.

80 acres flat land at ^s 3/- per acre

60 acres hill land at ^d -/3 " "

Total 140 acres.

Exhibits
 Exhibit L
 Lease, Asaeli
 Kalo, Buli
 Vuda to
 Commissioner
 of Lands
 16th September
 1901
 (Continued)

REGISTERED ON 5 December 1901 at 3 0'C
 afternoon.

SEE REGISTER OF Crown Leases Book IV
 Folio 34 88

(sgd) W.S. Dods.

Sublease registered 5 December 1901 at 3 o'c
 p.m.

Register of C.L. Subleases Book 1 Folio 35
 Commissioner of Lands to the Colonial
 Sugar Refining Company Ltd leasing to them
 the whole of this land for ten years from 1st
 January 1900.

10

(sgd) W.S. Dods.

Extension of Cr. S/Lease 1/35 registered 14th
 Sept. 1910 at 12 o/c. noon. Register of Cr.
 S/Leases Book 1 Folio 87 F. Commissioner of
 Lands to Colonial Sugar Refining Co. Ltd.
 extending Cr. S/Lease 1/35 for 40 yrs. from
 1st Jan. 1910.

(sgd) W.S. Dods.

20

(Description and Plan omitted)

Exhibit M
 Lease, Asaeli
 Kalo, Buli
 Vuda to
 Commissioner
 of Lands
 16th November
 1901

EXHIBIT M

LEASE, ASAEI KALO, BULI VUDA
 TO COMMISSIONER OF LANDS

REGISTER OF CROWN Leases BOOK IV
 FOLIO 37. 88

(1) Crown Lease.

THE Buli Vuda for the Nabasara and Sabutoyatoya
 tribes on behalf of themselves and
 Mataqalis hereby Lease to The Commissioner
 of Lands on behalf of the Crown

30

ALL that piece of Land containing Five hundred & ninety six acres be the same a little more or less situate at Vuda and known as block A the boundaries of which said piece of land are as follows; that is to say:-

See descriptions and plan attached herein and conditions overleaf.

Exhibits
 Exhibit M
 Lease, Asaeli
 Kalo, Buli
 Vuda to
 Commissioner
 of Lands
 16th November
 1901
 (Continued)

10 to be held by him the said Commissioner of Lands on behalf of the Crown as tenant for the term of ninety-nine years computed from the First day of January 1900 yielding and paying to the Lessors at the office of the Commissioner of Lands in the town of Suva during the continuance of the said term the rent hereinafter specified on the days and in the manner hereinafter mentioned; that is to say:- on the 31st day of December in every year during the
 20 continuance of the said term See Conditions at back hereof for every acre of land hereby demised as shall in any year during the continuance of the said term be taken into actual occupation by the said Commissioner of Lands or by any person holding from or under him. Subject to the covenants and powers implied in leases under "The Real Property Ordinance 1876" and subject also
 30 to the following covenant and proviso; that is to say:-

PROVIDED ALWAYS that the Lessors may from time to time so long as any portion of the land hereby demised shall remain unoccupied by the said Commissioner of Lands or some person holding from or under him enter upon such land and cut and remove the timber and the fruits and edible roots growing thereon without let or hindrance.

40 I George Moore of Suva do hereby accept this lease.

Dated this sixteenth day of September 1901.

(Sgd) Asaeli Kalo: Lessor.
 Buli Vuda.

Exhibits

Exhibit M
Lease, Asaeli
Kalo, Buli
Vuda to
Commissioner
of Lands
16th November
1901
(Continued)

(Sgd) Geo Moore: Lessee.
Commissioner of Lands.

The Signature Asaeli Kalo)
was made in my presence and)
I verily believe that such)
signature is of the proper) (Sgd) R.M. Booth
handwriting of Asaeli Kalo) Commissioner Supreme
Buli Vuda) Court Fiji.

The Signature Geo Moore was)
made in my presence and I) 10
verily believe that such)
signature is of the proper) (Sgd) T. Keanuf.
handwriting of the) Govt. Surveyor
person described in the)
above lease as Commissioner)
of Lands.)

CONDITIONS

Option of Renewals of lease allowed for the whole
of the land herein described, for terms of five
years up to fifty years in all. 20

Annual Rental to be at the rate of 3/- per acre
for cultivated land and -/3 per acre for all hill
land. If any of the said hill land be brought
under cultivation, the rental charged will be
3/- per acre for such land, commencing from
the date of commencement of such cultivation.

480 Acres flat land at 3/4 per acre.
116 Acres hill land at -/3 per acre.

Total 596 Acres

REGISTERED ON 5 December 1901 AT 3 O'C Afternoon 30
SEE REGISTER OF Crm Leases Book IV Folio 37.
88

(sgd) W.T. (Registrar of Titles Stamp.)
Dods.

Sublease registered 5 December 1901 at 3 o'clock p.m. Register of C.L. Subleases Book 1 Folio 38. Commissioner of Lands to the Colonial Sugar Refining Company Ltd. leasing to them the whole of this land for ten years from 1st January 1900.

(Sgd) W.T. Dods

Exhibits
 Exhibit M
 Lease, Asaeli
 Kalo, Buli
 Vuda to
 Commissioner
 of Lands
 16th November
 1901
 (Continued)

10 Extension of Cr.S/Lease 1/38 registered 14th Sept. 1910 at 12 O/C noon. Register of Cr. S/Leases Book 1 Folio 89 F. Commissioner of lands to Col. Sugar Refining Co. Ltd. extending Cr.S/Lease 1/38 for 40 yrs. from 1st Jan.1910.

(Sgd) W.T. Dods

20 Partial Surrender regd. 15th Dec. 1919 @ 12 o/c Register of C.L. Surrenders Bk. 1 Folio 61 C.S.R.Co.Ltd. to Comnr. of Lands, surrendering C.Sub.Lease 1/38 is affecting an area of rent reduced by 4/- pa.)
 1a. 1r. 12.3p of this land)

(Sgd) C.E. Pennefather.

Sub.Lease regd. 15th Decr. 1919 @ 12 o/c Register of Cr. Sub.Leases Bk. C.S.L. Folio 12 Commr of Lands to C.S.R.Co.Ltd. sub-leasing to it 1a.1r.12.3 p. of this land for 81 yrs from 1/1/1918 @ 4/- p.a.

(Sgd) C.E. Pennefather.

DESCRIPTION

30 Description of a block of land known as Block A containing an area of 596 acres in the District of Vuda Island of Viti Levu. Commencing at the most easterly corner of C.L. Sahl's block of land known as Nakorokoro and containing 201 acres in the District of Vuda Island of Viti Levu and bounded on part of the South by part of the Northern boundaries of that block bearing 303° 14' 1681 lks and 230° 45' 1008 lks the
 40 termination of each line being indicated by a peg marked on the North by lines bearing 53°, 59'

Exhibits

Exhibit M
 Lease, Asaeli
 Kalo, Buli
 Vuda to
 Commissioner
 of Lands
 16th November
 1901
 (Continued)

594 lks 101° 19' 639 lks 61° 51' 525
 lks 88° 53' 302 lks 177° 16' 424 lks
 112° 53' 215 lks 78° 46' 220 lks 177° 10'
 401 lks 137° 4' 423 links 88° 55' 388 lks
 94° 22' 286 lks 7° 32' 223 lks 73° 21'
 287 lks 143° 52' 524 lks 109° 49' 1000
 lks 130° 28' 832 lks 120° 26' 773 lks 359°
 24' 1022 lks 22° 3' 706 lks 83° 41' 525 lks
 112° 41' 444 links 130° 31' 498 links 133°
 15' 277 lks the termination of each line
 being indicated by a peg marked ↑ and 129°
 56' 45 lks to a point indicated by a peg
 marked on the left bank of the Sava Qiri
 Creek on part of the east by the left bank
 of that creek upwards in a southerly direct-
 ion to a point indicated by a peg marked
 ↑ again on the North by lines bearing 120°
 1' 1794 links 81° 50' 2435 lks 68° 61' 1102
 lks 152° 3' 1245 links 125° 30' 321 lks the
 termination of each line being indicated by a
 peg marked ↑ and 78° 19' 1167 links to a point
 indicated by a peg marked on the east by lines
 bearing 186° 39' 480 lks 139° 18' 474 lks 119°
 28' 419 links 94° 25' 307 links 138° 26' 402
 lks 268° 29' 700 lks 332° 46' 431 links 307°
 5' 621 links 263° 9' 226 links 163° 20' 1239
 links 131° 44' 1087 links 114° 24' 346 links
 89° 36' 546 links 168° 45' 689 lks 244° 20'
 825 links 220° 48' 957 links 273° 46' 1367 links
 251° 27' 468 links 216° 41' 573 links 173° 23'
 807 links 141° 25' 710 links the termination
 of each line being indicated by a peg marked
 ↑ and 224° 27' 709 links to a point indicated
 by a peg marked ↑ on the south by lines bearing
 291° 55' 548 links 233° 34' 410 links 218° 5'
 1272 links the termination of each line being
 indicated by a peg marked ↑ and 279° 21' 2353
 links to a point indicated by a peg marked ↑
 on the west by lines bearing 6° 37' 256 links
 343° 59' 582 links 345° 37' 2924 links 340°
 10' 448 links 39° 56' 482 links 99° 45' 820 links
 71° 8' 420 links 336° 46' 866 links 326° 28' 796
 links 19° 50' 190 links 3° 44' 728 links the
 termination of each line being indicated by a
 peg marked ↑ and 324° 19' 1006 links to a point
 indicated by a peg marked ↑ again on the southerly
 lines bearing 250° 35' 549 links 222° 52' 974
 links 325° 8' 907 links the termination of each
 line being indicated by a peg marked ↑ and 259° 15'
 2952 links to a point indicated by a peg marked ↑

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again on the west by lines bearing $16^{\circ} 2'$
 400 links $328^{\circ} 54'$ 500 links $63^{\circ} 59'$ 433
 links $313^{\circ} 19'$ 861 links the termination of
 each line being indicated by a peg marked
 and $357^{\circ} 50'$ 1477 links to a point indicated
 by a peg marked \uparrow and again on part of the
 south by a line bearing $315^{\circ} 21'$ 290 links to
 a point indicated by a peg marked \uparrow and 304°
 $12'$ 390 links to the point of commencement.

Exhibits

Exhibit M
 Lease, Asaeli
 Kalo, Buli
 Vuda to
 Commissioner
 of Lands
 16th November
 1901
 (Continued)

10

Registered Surveyor

Lautoka.

22nd March 1901.

DESCRIPTION

Description of a block of land containing 65
 acres measured as a reserve for natives in
 the District of Vuda Island of Viti Levu:
 Commencing on the western boundary of block A
 of 596 acres in the District of Vuda Island
 of Viti Levu at the most northerly end of
 20 the boundary line bearing $340^{\circ} 10'$ 448 links
 and bounded on the north by lines bearing
 $319^{\circ} 45'$ 347 links to a point indicated by a
 peg marked \uparrow and $282^{\circ} 28'$ 2138 links to a point
 indicated by a peg marked \uparrow on the west by
 lines bearing $154^{\circ} 21'$ 506 links $199^{\circ} 25'$ 974
 links $114^{\circ} 3'$ 1195 links $118^{\circ} 26'$ 800 links
 $173^{\circ} 46'$ 1300 links $148^{\circ} 47'$ 400 links 210°
 $7'$ 600 links the termination of each line
 being indicated by a peg marked \uparrow and $150^{\circ} 44'$
 30 210 links to a point indicated by a peg marked \uparrow
 on the south by lines bearing $87^{\circ} 7'$ 358 links
 $52^{\circ} 57'$ 469 links the termination of each line
 being indicated by a peg marked \uparrow and $64^{\circ} 8'$ 686
 links to a point on the western boundary of
 block A indicated by a peg marked \uparrow and thence
 on the east by the western boundary of that
 block being lines bearing $345^{\circ} 37'$ 2924 links
 to a point indicated by a peg marked \uparrow and 340°
 40 $10'$ 448 links to a peg marked \uparrow at the point of
 commencement as more particularly delineated
 on plan herewith.

(Sgd) H.I. Allen

Registered Surveyor - Sabeto -

23rd August 1900.

Exhibits

EXHIBIT "N"

Exhibit N
Lease,
Commissioner of
Lands to Colonial
Sugar Refining
Co.Ltd.
13th November,
1901

LEASE, COMMISSIONER OF LANDS TO
COLONIAL SUGAR REFINING CO. LTD

TO ALL TO WHOM THESE PRESENTS SHALL COME

I EDWARD PERCY SIMPSON Notary Public by Royal Authority duly admitted and sworn dwelling and practising in the City of Sydney in the State of New South Wales DO HEREBY CERTIFY that on the day of the date hereof personally come and appeared before me EDWARD WILLIAM KNOX the attesting witness to the annexed instrument and declared that he personally knew Henry Edward Kater Frederick Close Griffiths and Henry Normand MacLaurin Directors of The Colonial Sugar Refining Company Limited the persons signing the same and who affixed the Seal of the said Company to the annexed Instrument and whose signature thereto he has attested and that the names purporting to be the signatures of the said Henry Edward Kater Frederick Close Griffiths and Henry Normand MacLaurin are in their own proper handwriting and that the said seal of the said Colonial Sugar Refining Company Limited was duly affixed to the annexed Instrument in accordance with the constitution of the said Company

10

20

IN FAITH AND TESTIMONY WHEREOF I have hereunto set my hand and seal of office

30

(Seal)

DATED in Sydney aforesaid the fifteenth day of November in the year of Our Lord one thousand nine hundred and one.

(Sgd) E.P. Simpson
Notary Public
Sydney.



REGISTER OF C.L.Subleases
Book 1 Folio 35.

Exhibits

Exhibit N
Lease,
Commissioner of
Lands to
Colonial Sugar
Refining Co.
Ltd.
13th November,
1901
(Continued)

Saweni
(1) Crown Lease (Sub.)

THE COMMISSIONER OF LANDS of Fiji on behalf
of the Crown hereby Leases to The
Colonial Sugar Refining Company Ltd.
of Fiji

10 ALL that piece of Land containing One hundred
& forty Acres be the same a little more
or less situate at Vuda and known as
Block 11 (Saweni) and being The whole of
the land comprised in Register Crown
Leases Lease Book IV folio 34 and the
88
boundaries of which said piece of land
are as follows; that is to say:-

See descriptions and plan attached
herein and conditions overleaf.

20 to be held by the said Colonial Sugar
Refining Company Ltd. as tenant for the
term of Ten years computed from the
First day of January 1900 at a yearly
rental of £12.15.0. payable to the
Commissioner of Lands at his office in
Suva as follows; that is to say:-
By two equal half-yearly payments on the
30th day of June and the 31st day of
30 December in every year. Subject to the
covenants and powers implied in leases
under "The Real Property Ordinance 1876"
and subject also to the following
covenants and provisoes; that is to
say:-

40 PROVIDED NEVERTHELESS that it shall
at all times be Lawful for The Lessor
to resume without compensation any part
of the said Lands which it may be
deemed necessary to resume for making
Roads Canals Bridges Towing-paths
or other works of Public utility or

Exhibits

Exhibit N
Lease,
Commissioner of
Lands to
Colonial Sugar
Refining Co.
Ltd.
13th November,
1901
(Continued)

convenience: So NEVERTHELESS that the Lands so to be resumed shall not exceed one-twentieth part of the whole of the Lands hereby leased and that no such resumption shall be made of any land upon which any building may have been erected or which may be in use as gardens or otherwise for the more convenient occupation of any such buildings.

And provided further and it is expressly declared that this lease is a Protected Lease under the provision of Ordinance No.IV of 1888.

10

And we do hereby reserve to Us Our Heirs and successors all Precious Metals or Coals upon or under the said Lands with full liberty at all times to search dig for and carry away such Metals and Coals and for that purpose to enter upon the said lands or any part thereof.

20

(Sgd) Geo. Moore
Commissioner of Lands.

The Colonial Sugar Refining Company Ltd. of Fiji hereby accepts this lease.

Dated this 13th day of November 1901.

The Colonial Sugar Refining Company..... hereto by the Directors present Directors of that Corporation held day of November 1901 and thereupon also signed this lease

(Sgd)H.E.Kater
" F.C.Griffiths
" H.N. MacLaurin
Lessor.

30

Lessee

(Sgd) ?

The Signature Geo Moore
 was made in my presence and
 I verily believe that such
 signature is of the proper
 handwriting of George Moore
 who at present holds the
 office of Commissioner of
 Lands of Fiji.

(sgd) C.H.H.Muir
 Solicitor, Suva.

Exhibits

Exhibit N
 Lease,
 Commissioner
 of Lands to
 Colonial
 Sugar Refining
 Co. Ltd.
 13th November,
 1901
 (Continued)

CONDITIONS

10 Option of renewals of lease allowed, for
 the whole of the land herein described, for
 terms of five years up to fifty years in all.
 Annual rental to be at the rate of 3^s/- per
 acre per cultivatable land, h/3^d per acre for
 all hill land. If any of the said hill land
 be brought under cultivation, the rental charged
 will be 3^s/- per acre for such land. Commencing
 from the date of commencement of such cultivation.

80 Acres flat land at 3^s/- per acre

20 60 Acres hill land at -/3^d " "

Total 140 Acres.

The description & plan attached hereto were
 signed by the Directors of the C.S.R. Co. Ltd.
 for purpose of identification.

REGISTERED ON 5 December 1901 AT 30'0 afternoon

SEE REGISTER OF C.L. Sub-Leases Book 1 Folio 35

C.L. IV/343
 88

(Sgd) W.S. Dods.

30 (Registrar of Titles Office Stamp)

(C.S.R.Co. Ltd. Stamp)

Crown sub Lease Registered 28 May 1963 at 12
 0'0 noon

Register Crown Sub Leases Book 1 Folio 50 C.S.R.
 to Henry Marks & Co. Ltd. leasing to them two
 roods of the land for 8½ years from 1 July 1901
 @ £1 yearly.

Exhibits
Exhibit N
Lease,
Commissioner
of Lands to
Colonial
Sugar Refining
Co. Ltd.
13th November,
1901
(Continued)

Extension registered 14th Sept. 1910 at 12
o/c noon.
Register of Cr. S/Leases Book 1 Folio 87 F.
Commissioner of Lands to Colonial Sugar
Refining Co. Ltd. extending this S/Lease for
40 yrs from 1st Jan. 1910.

(Sgd) W.S. Dods.

(Description and Plan omitted)

EXHIBIT O

LEASE, COMMISSIONER OF LANDS TO
COLONIAL SUGAR REFINING CO. LTD.

Exhibits

Exhibit O
Lease,
Commissioner
of Lands to
Colonial
Sugar
Refining
Co. Ltd.
13th November
1901

TO ALL TO WHOM THESE PRESENTS SHALL COME

I EDWARD PERCY SIMPSON Notary Public by Royal Authority duly admitted and sworn, dwelling and practising in the City of Sydney in the State of New South Wales DO HEREBY CERTIFY that on the day of the date hereof personally came and appeared before me EDWARD WILLIAM KNOX the attesting witness to the annexed instrument and declared that he personally knew Henry Edward Kater Frederick Close Griffiths and Henry Normand MacLaurin Directors of The Colonial Sugar Refining Company Limited the persons signing the same and who, affixed the Seal of the said Company to the annexed instrument and whose signatures thereto he has attested and that the names purporting to be the signatures of the said Henry Edward Kater Frederick Close Griffiths and Henry Normand MacLaurin are in their own proper handwriting and that the said seal of the said Colonial Sugar Refining Company Limited was duly affixed to the annexed instrument in accordance with the constitution of the said Company

IN FAITH AND TESTIMONY WHEREOF
I have hereunto set my hand and
Seal of Office

DATED in Sydney aforesaid the
fifteenth day of November in
the year of our Lord One
thousand nine hundred and one

(Sgd) E.P. Simpson
Notary Public
Sydney

10

20

30

Exhibits

Exhibit O
Lease,
Commissioner
of Lands to
Colonial
Sugar
Refining
Co. Ltd.
13th November
1901
(Continued)

(a) Crown Lease (Sub).

THE COMMISSIONER OF LANDS of Fiji on behalf
of the Crown hereby Leases to The
Colonial Sugar Refining Company Ltd.
of Fiji.

ALL that piece of Land containing Five hundred
& ninety six acres be the same a little
more or less situate at Vuda, and known
as Block A and being The whole of the land
comprised in Register Crown Leases Lease
Book IV folio 87 and the boundaries of
88

10

which said piece of land are as follows;
that is to say:-

See descriptions and plan attached
herein and conditions overleaf.

to be held by him the said Colonial Sugar
Refining Company Ltd. as tenant for the
term of Ten years computed from the First
day of January 1900 at a yearly rental
of £73.9.0. payable to the Commissioner
of Lands at his office in Suva as
follows; that is to say:- By two equal
half-yearly payments on the 30th day
of June and the 31st day of December in
every year. Subject to the covenants
and powers implied in leases under "The
Real Property Ordinance 1876" and subject
also to the following covenants and
provisoes; that is to say:-

20

30

PROVIDED NEVERTHELESS that it
shall at all times be Lawful for The
Lessor to resume without compensation any
part of the said Lands which it may be
deemed necessary to resume for making
Roads Canals Bridges Towing paths or
other works of Public utility or
convenience: SO NEVERTHELESS that the
Lands so to be resumed shall not exceed one-
twentieth part of the whole of the Lands
hereby leased and that no such resumption
shall be made of any land upon which any

40

building may have been erected or which may be in use as gardens or otherwise for the more convenient occupation of any such buildings.

And provided further and it is expressly declared that this lease is a Protected Lease under the provisions of Ordinance No. IV of 1888.

10 And we do hereby reserve to Us Our Heirs and successors all Precious Metals or Coals upon or under the said Lands with full liberty at all times to search dig for and carry away such Metals and Coals and for that purpose to enter upon the said lands or any part thereof.

(Sgd) Geo. Moore
Commissioner of Lands.

The Colonial Sugar Refining Company Ltd. of Fiji hereby accepts this lease.

20 Dated this 13th day of November

(Sgd) H.E. Kater.
" F.C. Griffiths
" H.N. MacLaurin

30 The Signature Geo Moore was made in my presence and I verily believe that such signature is of the proper handwriting of George Moore who at present holds the office of Commissioner of Lands of Fiji) (Sgd) C.H.H. Muir Solicitor Suva

CONDITIONS

Option of Renewals of lease allowed for the whole of the land herein described, for terms of five years up to fifty years in all.

Annual Rental to be at the rate of ^s 3/- per acre for cultivated land and -/3d per acre for all hill

Exhibits

Exhibit O
Lease,
Commissioner
of Lands to
Colonial
Sugar
Refining
Co. Ltd.
13th November
1901
(Continued)

Exhibits
Exhibit O
Lease,
Commissioner
of Lands to
Colonial
Sugar
Refining
Co. Ltd.
13th November
1901
(Continued)

land. If any of the said hill land be brought under cultivation the rental charged will be 3^s/- per acre for such land, commencing from the date of commencement of such cultivation.

	480 Acres flat land at 3 ^s /- per acre.
	116 Acres hill land at -/3 ^d per acre.
<u>Total</u>	596 Acres.

The description and plan attached hereto were signed by the Directions of the C.S.R. Co. Ltd. for the purpose of identification. 10

REGISTERED ON 5 December 1901 AT 3 0'C
afternoon
C.L.
SEE REGISTER OF Sub Leases BOOK 1 FOLIO 38
C.L. IV 373
88

(Sgd) W.S. Dods.

(Registrar of Titles Office Stamp) 20

.....registered Sept. 14th 1910 at 12 o/c noon. Register of Cr. S/Leases Book 1 Folio 87 F Commissioner of Lands to Colonial Sugar Refining Co. Ltd. extending this S/Lease for 40 yrs 1st Jan. 1910.

(Sgd) W.S. Dods

.....surrender reg. 15th Dec. 1919 @ 12 o/c Register of Surrenders Bk. 1 Fo. 61 C.S.R. Co. Ltd. to Commr of Lands..... surrendering his lease or affecting an area of 1a. 1r. 12.8 p. of his land and rent reduced by 4/- p.a. 30

(Descriptions and Plan omitted).

EXHIBIT B
AGREEMENT, SABHAPATI AND
MANADAN

Exhibits
 Exhibit B
 Agreement,
 Sabhapati and
 Manadan
 23rd May 1957

9268
 FIJI
 FIVE
 SHILLINGS
 10.6.57

- 10 AGREEMENT made the 23rd day of May
 1957 BETWEEN SABHAPATI father's name Raghawan
 of Saweni Lautoka in the Colony of Fiji
 Cultivator (hereinafter called the Owner) of
 the one part and MANADAN father's name
 Raghawan of Saweni aforesaid Cultivator
 (hereinafter called the Farmer) of the other
 part WHEREAS the Owner is the lessee of that
 piece of land comprising 10 acres more or
 less leased by him from the Colonial Sugar
 Refining Company Limited and known as Farm No.
 20 581 Saweni AND WHEREAS the Owner has agreed
 with the Farmer to farm the said land upon the
 terms and conditions hereinafter set forth
 NOW THIS AGREEMENT WITNESSETH:
1. THE Owner will employ the farmer to farm
 and the farmer will farm the said land to the
 best of his skill and ability.
 2. THIS agreement shall enure until all moneys
 owing by the Owner to Murtuza Hussain Shah are
 fully paid.
 - 30 3. THE farmer will at all times during the
 currency of this Agreement cultivate and farm
 in sugar cane in good and husbandlike manner
 and according to the most approved system
 of Agriculture practiced in the Saweni district
 all such parts of the land as are suitable
 therefor or which may be for the time being
 included in any contract for the time being
 held by the Owner from the Colonial Sugar Refining
 Company Limited for the sale and/or purchase of
 40 sugar cane and shall in due course of cultivation
 harvest the same.
 4. THE Farmer will at his own cost provide all
 farm implements and stock for the proper farming

Exhibits
 Exhibit B
 Agreement,
 Sabhapati and
 Manadan
 23rd May 1957
 (Continued)

of the said land and will pay a one-half share of all other expenses including harvesting incurred in or incidental to the farming of the said land.

4.A UPON payment of all moneys owing or hereafter to become owing by the owner to Murtuza Hussain Shah the owner will apply for and use his best endeavours to obtain the consent of the Colonial Sugar Refining Company Limited to the transfer of one half interest in the said Farm No. 581 to the Farmer.

10

5. THE farmer will at all times obey the lawful directions of the Overseer of the Colonial Sugar Refining Company Limited for the time being having oversight of the district in which the land is situated as regards planting and harvesting of sugar cane and/or management of the said land.

6. ALL sugar cane grown on the said land shall be sold to the Colonial Sugar Refining Company Limited in the name of the Owner and shall be paid by the Colonial Sugar Refining Company Limited into the Bank account of the solicitor of the parties Mr. K.A. Stuart and it is hereby agreed that production of this agreement shall be sufficient authority for such payment.

20

7. THE farmer will at all times keep observe and perform all and singular the terms conditions and agreement of any agreement made between the Owner and the Colonial Sugar Refining Company Limited whether relating to the leasing of the said Farm No. 581 or the sale and/or purchase of sugar cane or otherwise howsoever and the Farmer hereby agrees to hold and keep the Owner free and clear of any loss or damage arising from the breach of any such agreement by the Farmer.

30

8. ALL moneys received from the growing of sugar cane on the said land will be divided after payment thereof of all expenses of and incidental to the growing and harvesting of the said sugar cane between the parties in equal shares and all moneys receivable by the owner shall be applied in reduction of the owner's indebtedness to Murtuza Hussain Shah now standing at £550.

40

9. THE Owner shall from time to time order and procure from the Colonial Sugar Refining Company Limited all such supplies and necessaries for the cultivation of the said land as the Farmer may reasonably require and the cost of all such supplies and necessaries shall be borne by the parties in equal shares.

Exhibits
Exhibit B
Agreement,
Sabhapati and
Manadan
23rd May 1957
(Continued)

10

IN WITNESS whereof the parties have hereunto subscribed their names the day and year hereinbefore written.

SIGNED by the said SABHAPATI) X SABHAPATI
in the presence of:) His left thumb mark

(sgd) M.S. Dean
Solicitor's Clerk, Lautoka.

SIGNED by the said MANADAN) X MANADAN
in the presence of:) His left thumb mark

(sgd) M.S. Dean
Solicitor's Clerk, Lautoka.



Exhibits

EXHIBIT A

Exhibit A
Letter of
Administration
of Sabhapati
2nd September
1959

LETTERS OF ADMINISTRATION OF
SABHAPATI

IN THE SUPREME COURT OF FIJI.

Probate Jurisdiction

No. 6622

In the Estate of SABHAPATI son of
Raghawan Gounden late of Saweni
Lautoka in the Colony of Fiji
Cultivator deceased.

10

Sworn at
£378.11.3

BE IT KNOWN that on the 2nd day of September,
1959 letters of administration of all the estate
which by law devolves to and vests in the personal
representative of SABHAPATI (son of Raghawan Gounden)
late of Saweni, Lautoka in the Colony of Fiji
Cultivator deceased who died on the 19th day
of November 1958 at Lautoka aforesaid intestate
were granted by His Majesty's Supreme Court of
Fiji to KULAMMA (daughter of Vedisa Naicken) of
Saweni, Lautoka in the Colony of Fiji the lawful
widow and relict of the said deceased she having
been first sworn well and faithfully to administer
the same.

20

(sgd) F.G. Forster
(F.G. Forster)
Acting Registrar.

(Seal)

EXTRACTED by Stuart & Co.
Solicitors,
LAUTOKA FIJI.

30

EXHIBIT CExhibitsASSIGNMENT, KULAMMA TO MANADAN

Assignment
Kulamma to
Manadan
15th November
1960

15939
FIJI
TWO
POUNDS
30.11.60

STAMP DUTY TO COVER £1000

TO THE COLONIAL SUGAR REFINING COMPANY
LIMITED LAUTOKA, MILL.

10
FIJI
TEN
SHILLINGS
30.11.60

FOR VALUABLE CONSIDERATION I KULAMMA
(daughter of Vedisa Naicken) of Saweni
Lautoka in the Western District in the
Colony of Fiji Widow do hereby TRANSFER
ASSIGN AND SET OVER unto MANNADHAN
Father's name Raghawan Gounden of Saweni
Lautoka aforesaid Cultivator all my right
title estate and interest in the sugar cane
now growing and/or to be hereafter grown
on the land hereunder described and all
improvements erected thereon and in all
moneys payable or to become payable to me
in respect of sugar cane already supplied
and/or to be hereafter supplied or such
improvements as aforesaid or otherwise
howsoever derived from the said land.

20
A.M.P.

(C.S.R.
Co. Office
Stamp)

DESCRIPTION OF LAND

30
A.M.P.

ALL that piece of land situated at
Saweni Lautoka aforesaid
containing 10 acres more or less
held by the said Kulamma from the
Colonial Sugar Refining Company
Limited under Tenancy Agreement and
more particularly known as FARM
NO. 581 SAWENI.

DATED at LAUTOKA this 15th
day of November, 1960.

X KULAMMA
By her left thumb mark

18789

ASSIGNOR

40
FIJI
TWO
POUNDS
6.11.61

I hereby certify that the foregoing Assignment
was read over and explained to the said
Assignor in the Hindustani language and she

Exhibits
Assignment
Kulamma to
Manadan
15th November
1960
(Continued)

appeared fully to understand the meaning and effect thereof before she executed the same in my presence.

Sgd. A.M. Prashad
Solicitor's Clerk, LAUTOKA

I MANNADHAN Father's name Raghawan Gounden the Assignee named hereby request and authorise the Colonial Sugar Refining Company Limited to pay all moneys becoming due and payable to me hereunder to the Bank account of my solicitors Messrs. Stuart & Co. of Lautoka and I declare that the receipt of the said Bank shall constitute a complete and effectual discharge to the said Company.

FIJI 10
TEN
SHILLINGS
6.11.61

Sgd. Manadhan.

Witness: (Sgd) A.M. Prashad

Solicitor's Clerk, LAUTOKA.

(C.S.R. Co. Office Stamp)

IN THE PRIVY COUNCIL

No. 7 of 1966

ON APPEAL FROM THE FIJI COURT OF APPEAL

B E T W E E N:

KULAMMA D/O VEDISA NAICKEN as
Administratrix of the Estate
of Sabhapati s/o Raghawan
(Plaintiff)

Appellant

- and -

MANADAN S/O RAGHAWAN GOUNDEN
(Defendant)

Respondent

RECORD OF PROCEEDINGS

T.L. WILSON & CO.,
6 Westminster Palace Gardens,
London, S.W.1.

Solicitors for the Appellant.

CHARLES RUSSELL & CO.
37 Norfolk Street,
London, W.C.2.

Solicitors for the Responder