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1963

IN THE PRIVY COUNCIL

No. 4 of 1962

ON APPEAL  
FROM THE FIJI COURT OF APPEAL

B E T W E E N

NATHANIEL STUART CHAIMERS (Plaintiff) Appellant

- and -

LAWRENCE PARDOE (Defendant) Respondent

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RECORD OF PROCEEDINGS

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UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES

19 JUN 1964

25 RUSSELL SQUARE  
LONDON, W.C.1.

74086

T.L. WILSON & CO.,  
6, Westminster Palace Gardens,  
London, S.W.1.  
Solicitors for the Appellant.

IN THE PRIVY COUNCILNo. 4 of 1962ON APPEALFROM THE FIJI COURT OF APPEALB E T W E E NNATHANIEL STUART CHALMERS (Plaintiff) Appellant

- and -

LAWRENCE PARDOE (Defendant) RespondentRECORD OF PROCEEDINGSINDEX OF REFERENCE

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DOCUMENTS TRANSMITTED BUT NOT REPRODUCED

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Order extending time for removal of Caveat	8th April 1958
Affidavit of Donald Malcolm Noel McFarlane	9th April 1958
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IN THE PRIVY COUNCIL

No. 4 of 1962

ON APPEAL

FROM THE FIJI COURT OF APPEAL

B E T W E E N

NATHANIEL STUART CHALMERS (Plaintiff) Appellant

- and -

LAWRENCE PARDOE (Defendant) Respondent

RECORD OF PROCEEDINGS

No. 1.

STATEMENT OF CLAIM

(No.220 of 1958)

IN THE SUPREME COURT OF FIJI

ACTION NUMBER  
220 of 1958

BETWEEN:- LAWRENCE PARDOE

Plaintiff

- and -

NATHANIEL STUART CHALMERS

Defendant

STATEMENT OF CLAIM

The Plaintiff says :-

1. He is and has been at all material times the registered lessee of all that land known as Gusun-uereloa in the District of Conua in the province of Nadroga comprising 57 acres and 2 roods and being the whole of the land comprised in Native Lease Number 7235 (hereinafter referred to as "the said land")

2. The Native Land Trust Board is the lessor of the said lease and has not insofar as the Defendant is concerned consented in any manner whatsoever under the provisions of Section 12 of the Native Land Trust Ordinance or any other provision thereof to the use or occupation by the Defendant of the said land or any part thereof whether pursuant to sub-lease transfer or otherwise in any manner whatsoever.

3. The Defendant is on part of the said land has remained wrongfully thereon despite repeated demands made upon him to leave the said land,

WHEREFOR the Plaintiff claims

In the  
Supreme Court.

No. 1.

Statement of  
Claim.  
(No.220 of 1958)  
11th July, 1958.

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In the  
Supreme Court

No. 1.  
Statement of  
Claim.  
(No.220 of 1958)  
11th July, 1958  
- continued.

- (a) a declaration that the Defendant is in wrongful occupation of the said land or any part thereof as a trespasser
- (b) an injunction restraining the Defendant his servants or agents or any persons claiming by through or under him from trespassing entering or remaining on the said land or any part thereof
- (c) special and general damages

Particulars of Special Damages

10

To increase of rent by Native Land Trust Board from 1957 to 1990 at £10.5.0 per year (i.e. for 33 years) £338. 5. 0

- (d) Costs.

DELIVERED this 11th day of July, 1958.

(Sgd.) K.C. RAMRAKHA  
Solicitor for the Plaintiff.

---

No. 2.  
Defence.  
(No.220 of 1958)  
28th July, 1958.

No. 2.

DEFENCE

20

(No.220 of 1958)

IN THE SUPREME COURT OF FIJI

No.220 of 1958

BETWEEN:- LAWRENCE PARDOE

Plaintiff

- and -

NATHANIEL STUART CHALMERS

Defendant

D E F E N C E

The Defendant says:-

- 1. That the Defendant admits paragraph (1) of the Statement of Claim.
- 2. That the Defendant denies each and every allegation contained in paragraphs (2) and (3) of the Statement of Claim.

30

DELIVERED this 28th day of July, 1958.

KOYA & CO.,  
per: (Sgd.) S.M.KOYA  
Solicitors for the Defendant.

---

3.

No. 3.

REPLY

(No. 220 of 1958)

IN THE SUPREME COURT OF FIJI

No.220 of 1958

BETWEEN:- LAWRENCE PARDOE

Plaintiff

- and -

NATHANIEL STUART CHALMERS

Defendant

R E P L Y

The Plaintiff says:-

10

1. He joins issue with the Defendant on his Defence except insofar as the same consists of admissions.

20

2. He says the Defendant ought not to be admitted to deny paragraph 2 of the Statement of Claim as the matters contained in paragraph 2 aforesaid were an issue in civil action number 132 of 1958 in the Supreme Court of Fiji in which the Plaintiff was the Respondent and the Defendant the Applicant and the Honourable Mr. Justice Hammett who dealt with the matter in chambers found that no consent of the Native Lands Trust Board was ever obtained as is alleged in paragraph 2 aforesaid, and the said judgment still remains in full force and effect.

DELIVERED this 2nd day of October, 1958.

(Sgd.) K.C. RAMRAKHA  
Solicitor for the Plaintiff.

In the  
Supreme Court

No. 3.

Reply (No.220  
of 1958)

2nd October,  
1958.

No. 4.

AMENDED STATEMENT OF CLAIM

(No.221 of 1958)

30

IN THE SUPREME COURT OF FIJI

No.221 of 1958

BETWEEN:- NATHANIEL STUART CHALMERS of  
Sigatoka, Retired Solicitor

Plaintiff

- and -

LAWRENCE PARDOE of Sigatoka,  
Landlord

Defendant

AMENDED STATEMENT OF CLAIM

The Plaintiff says :-

No. 4.

Amended  
Statement of  
Claim (No.221  
of 1958).

22nd October,  
1958.

In the  
Supreme Court

No. 4.

Amended  
Statement of  
Claim (No.221  
of 1958).

22nd October,  
1958

- continued.

1. That at all material times the Defendant was and is the registered proprietor of Native Lease No.7235 known as "GUSUNAWERELOA" containing 57 acres 2 roods 0 perches situate in the District of Nadroga in the Colony of Fiji.

2. That sometime prior to December, 1956, the Defendant permitted the Plaintiff to enter into, occupy and use a portion of his land described in paragraph (1) hereof as to an area of approximately 1 acre 1 rood 4.8 perches and to build cottages and other buildings thereon (hereinafter called "the said piece of land") for residential purposes. 10

3. That at all material times the Defendant intended at some future time (a) to give to the Plaintiff a sub-lease of the said piece of land or in the alternative (b) to surrender up to the Native Land Trust Board the said piece of land to enable the said Board to give to the Plaintiff a separate lease in respect thereof.

4. That with the full knowledge and consent of the Defendant and in contemplation of the Defendant complying with his undertaking referred to in the paragraph 3 hereof the Plaintiff went into occupation of the said piece of land and expended money thereon, namely:- 20

Erected six (6) buildings including one dwellinghouse at an approximate cost of £2500.0.0

Employed labour: (a) To clear the said piece of land (b) To level the same to make it suitable for residential purposes and (c) To lay down coral paths and roads at a cost of 30

100.0.0

£2600.0.0

5. That the Defendant has evicted the Plaintiff from the said piece of land and the Plaintiff has in consequence been deprived of the use and enjoyment of all the buildings erected by the Plaintiff thereon and has suffered loss. 40

WHEREFORE the Plaintiff claims as follows :-

(a) The sum of £2600.0.0.

(b) a declaration that the Plaintiff has an equitable charge or lien over the Defendant's land comprised in Native Lease No. 7235 to the extent of the sum of £2600.0.0 until payment.

- (c) the costs of this action.
- (d) Such further or other relief as to this Honourable Court may seem meet.

DELIVERED the 22nd day of October, 1958.

KOYA & CO.,  
per: (Sgd:) S.M.KOYA  
Solicitors for the Plaintiff.

---

In the  
Supreme Court.

No. 4.

Amended  
Statement of  
Claim (No.221  
of 1958).

22nd October,  
1958  
- continued.

No. 5.

DEFENCE AND COUNTERCLAIM

(No.221 of 1958)

IN THE SUPREME COURT OF FIJI

No.221 of 1958

BETWEEN:- NATHANIEL STUART CHALMERS of  
Sigatoka, Retired Solicitor Plaintiff

- and -

LAWRENCE PARDOE of Sigatoka,  
Landlord Defendant

DEFENCE AND COUNTERCLAIM

D E F E N C E

In answer to the Plaintiff's claim the Defendant says as follows:-

1. He admits paragraph 1 of the Statement of Claim.
2. Save as hereinafter admitted, he denies each and every allegation contained in paragraphs 2, 3, 4 and 5 of the Statement of Claim and says -

(a) The Plaintiff did approach him sometime prior to December, 1956 and requested that he be allowed to enter into use and occupy a small area of land of the Defendant's native lease for residential purposes to which suggestion the Defendant agreed.

(b) The Plaintiff himself was a friend and legal adviser of the Defendant and acted for the Defendant as his Solicitor in respect of the matters contained in paragraph 2(a) hereof and undertook to obtain all the necessary consents to effectuate the same and legalise the same.

No. 5.

Defence and  
Counterclaim.  
(No.221 of  
1958).

8th December,  
1958.

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In the  
Supreme Court

No. 5.

Defence and  
Counterclaim  
(No.221 of  
1958).

8th December,  
1958

- continued.

- (c) The Plaintiff did not obtain the necessary consents required in that he failed to obtain the consents of the Native Land Trust Board, the Sigatoka Rural Authority and the Sub-division of Land Board, and by reason thereof, the Plaintiff while acting as the Defendant's Solicitor failed in his duty and was guilty of negligence.
- (d) The Plaintiff did thereafter enter into occupation upon his the Plaintiff's assurance to the Defendant that the entire transaction had been legalised and erected a number of buildings on the said land at a total cost of about £100.0.0, and remained in possession thereof and at the same time fenced the said property. The Defendant says that the houses and the fence were and are affixed to the soil and are fixtures in law and consequently the property of the Defendant as owner of the native lease and not of the Plaintiff as alleged. 10
- (e) The Defendant was at all times an innocent party to the transaction and acted at all times in good faith and without notice of the illegality resulting from the Plaintiff's failure to obtain the necessary consents as aforesaid and immediately upon receiving notice of the illegality called upon the Plaintiff to quit the said native lease which the Plaintiff refused or neglected to do. 30
- (f) That in any event, the transaction between the parties was illegal and the Plaintiff's claim is bad in law.
- (g) That as a result, the Defendant was placed in jeopardy of losing his native lease and thereby incurred trouble and loss of time.
- (h) In or about the month of June, 1958 the Plaintiff removed from the Defendant's native lease one building and fencing wired affixed to soil and of the total value of about £100.0.0. 40



In the  
Supreme Court

on paragraph (2) (b), (c), (d), (e), (f), (g) and  
(h) of the Defence.

No. 6.

DEFENCE TO COUNTERCLAIM

Reply (No.221  
of 1958)

13th December,  
1958

- continued.

2. The Plaintiff denies each and every allegation  
contained in paragraph (2) (b), (c), (d), (e), (f)  
(g) and (h) of the Defence and Counterclaim.

DELIVERED the 13th day of December, 1958.

KOYA & CO.,

per: (Sgd:) S.M.KOYA

Solicitors for the Plaintiff.

No.6A.

No. 6A.

Order on Motion  
for Injunction.

ORDER ON MOTION FOR INJUNCTION

8th January,  
1960.

IN THE SUPREME COURT OF FIJI

ACTION NO. 220 of 1958

BETWEEN:- LAWRENCE PARDOE Plaintiff

- and -

NATHANIEL STUART CHALMERS Defendant

- and - ACTION NO.221 of 1958

BETWEEN:- NATHANIEL STUART CHALMERS Plaintiff

- and -

LAWRENCE PARDOE Defendant

BEFORE HIS LORDSHIP THE ACTING PUISNE JUDGE,  
KNOX-MAWER, ESQUIRE

FRIDAY THE 8th DAY OF JANUARY, 1960.

---

In the  
Supreme Court

---

No.6A.

Order on Motion  
for Injunction.

8th January,  
1960

- continued.

UPON MOTION for injunction this day made unto  
this Court by MR. SIDDIQ MOIDIN KOYA of Counsel  
for the Plaintiff NATHANIEL STUART CHALMERS in  
Action No. 221 of 1958 and UPON HEARING MR. KARAM  
CHAND RAMRAKHA of Counsel for the Defendant  
LAWRENCE PARDOE in said Action No. 221 of 1958  
10 AND UPON READING the Affidavit of the Plaintiff  
sworn on the 12th day of December, 1959 and filed  
herein IT IS ORDERED that the Defendant his  
servants and agents and each and every of them be  
and are hereby restrained to transfer, assign,  
mortgage, sub-lease, or otherwise to dispose of  
6 cottages including one dwellinghouse referred to  
in the Statement of Claim and erected by the  
Plaintiff NATHANIEL STUART CHALMERS on the De-  
fendant's Native Lease No. 7235 known as "GUSUNA-  
20 WERELOA" situate at Korotogo, Sigatoka AND IT  
IS FURTHER ORDERED that the cost of this appli-  
cation be costs in the cause.

L.S.

(Sgd:) G. YATES,

REGISTRAR.

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In the  
Supreme Court

No. 7.

COURT NOTES

No. 7.  
Court Notes.  
24th August,  
1960.

Before the Honourable Mr. Justice Knox-Mawer.

Wednesday, 24th August, 1960, at 9.30 a.m.

Mr. K.C. Ramrakha for Pardoe.

Mr. S.M. Koya for Chalmers.

Agreed.

KOYA: Claim of Chalmers is in equity. Pardoe is registered proprietor of lease. Sometime prior to 1956 Pardoe and Chalmers good friends. Pardoe permitted Chalmers to occupy a portion of land. Simply a friendly act. No contract in law. On faith of friendship Chalmers undertook to build cottages on land. No fraud alleged here by Pardoe. Sometime later question of purchase arose. Chalmers asked to leave. Had to leave buildings. At Common Law buildings belonged to owner of land. But in equity Lewin on Trusts 15th Edn. p.663 5<sup>th</sup> E.R. p.563. Why did not Pardoe carry out friendly undertaking?

10

COURT: How did it go wrong?

Pardoe changed his mind.

20

After a quarrel?

This is in  
issue.

If Pardoe had not changed his mind then no difficulty with N.L.T.B. would have arisen.

COURT: Can there be an equitable charge in a native lease? Might there nevertheless be an equitable right to reimbursement?

KOYA: Is it a fair and just thing for Defendant to retain buildings. Would it be conscionable? That is ground of claim. I say that Pardoe's pleadings do not plead clearly or specifically the relief sought now - negligence as a Solicitor. Counterclaim quasi contract. Conversion, injunction, valuation.

30

Exhibited by consent - Lease Exhibit (1)  
Correspondence Exhibit (2)  
Application etc. Exhibit (3)

K.M.



PLAINTIFF'S EVIDENCE

No. 8.

NATHANIAL STUART CHALMERS.NATHANIAL STUART CHALMERS, affirmed, Solicitor.

10 Before coming to live on Mr. Pardoe's property at Sigatoka we had been friends for some years. On 14th June, 1956, I started clearing the land. To build cottages for residential purposes. I sold out my property at Vuda to The Shell Oil Coy. and I was interested in getting another place upon which to build. I went to stay with a friend at Korotonga, Sigatoka. I got into contract, through him, with the owner of a freehold. I was offered 3 or 4 sites there. At that time Mr. Pardoe owned this leasehold at Sigatoka 7235. He frequently called to see me when I was staying with this friend at Sigatoka. Mr. Pardoe invited me to go and stay with him and suggested I should build on his land and not at Korotonga. I spent about a

20 week or so there with him. And the only area that appealed to me was a small area near the seaside which was entirely cut off from the main lease by the Queens Road. He told me that I could build on that land. He showed me the boundaries.

30 Prior to that he had shown me another site but I didn't like it. With his advice and assistance I started to clear the land and build there. He gave me an assurance that his lease was a building lease. So in June 1956 I started to clear the land. I built two fairly large buildings and then a wash-house and bathroom with timber and outside lavatory. Then later on an engine shed with lean to garage and workshop, and a large Fijian bure with a timber frame and timber floor. And I fenced the property. During this time Mr. Pardoe was living in a house half a mile from where I was building. We were on the best of terms. When this arrangement was made with Mr. Pardoe the idea was that I would either

40 get a sub-lease or he would surrender up a portion of the lease to the N.L.T.B. and the Board would re-lease it to me.

Mr. Pardoe gave me the greatest assistance. After the buildings were erected I continued to live there for a year or more. I was eventually asked by his Solicitor to vacate. But before that it came as a surprise to me when Mr. Pardoe took £60 from money belonging to me and called upon me to pay £30, making £100 in all. I'm sorry I mean

In the  
Supreme CourtPlaintiff's  
Evidence.

No. 8.

Nathanial  
Stuart Chalmers.24th August,  
1960.

Examination.

In the  
Supreme Court  
Plaintiff's  
Evidence.

No. 8.

Nathaniel  
Stuart  
Chalmers.

24th August,  
1960.

Examination  
- continued.

£70. It is referred to in the correspondence. I cannot remember exactly. (Shown piece of paper). Yes, this refreshes my memory - it was £70. This piece of paper was given by Mr. Pardoe to me.

Paper Exhibit, Exhibit 4.

K.M.

This is in Mr. Pardoe's writing, and written in my presence. There was £600, his share in a plant or a process called AEROCEN. The £750 represents my money which I had allowed to stand to his credit. It happened like this. I owned a lease at Vuda. There was an adjoining lease belonging to Mr. Bossley and he offered it for sale for £300. I suggested to Mr. Pardoe that we buy that lease jointly. We jointly bought the lease. I paid £150 and Pardoe paid £150 with the object of immediately reselling it. The lease was transferred into Mr. Pardoe's name. The reason was that there was a condition that the two properties had to be sold together. If the lease was in my name it would not give such a good opportunity for negotiation. In fact the offer was made for a £1000. And approved by the Native Lands Trust Board. But Mr. Pardoe stuck out for £1500. The lease was sold for £1500. The money went into the hands of Mr. Pardoe. £750 was my share. He asked that my share should stay in his bank account to keep down the interest on his overdraft. I had received £4,500 in cash for my adjoining property and was not in need of funds so I agreed to this. Later I asked him if he would let me have the £750 and he said he had taken the whole amount himself for his own use. And he gave me this account on the paper, Exhibit 4. I had purchased for £600 a third share in Aerocen, a firm owning a plant making concrete houses. Mr. Pardoe had imported the plant and used it. He kept a share and Mr. Ajodhya Prasad had the third share. At the time when he gave me this chit Exhibit 4 - I had not agreed to take the second share from Mr. Pardoe but Mr. Pardoe took it out. He said, "I've taken the £600 I've got in Aerocen out of this money so you can have my share". And that is the item Aerocen on the chit Exhibit 4.

The £60 is the price of an old Prefect car. It was sold for £60 by Mr. Pardoe to Eddie Pratap a carpenter who was working for me at the time. I never recovered it from Eddie Pratap. The £20 he deducted from a "wind charger" an electricity generator, which in fact I never had. That left

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£70 over. That £70 he said he was keeping being the purchase price of the land. Then he gave me a receipt for £60 regarding the car. Receipt Exhibited Exhibit 5. By land he meant the land I was occupying. It was part payment. I should say for goodwill of the land. I don't really know what it was for.

In the  
Supreme Court

Plaintiff's  
Evidence.

No. 8.

COURT: Were you paying for a licence to occupy?

Nathaniel  
Stuart  
Chalmers.

24th August,  
1960.

Examination  
- continued.

10 There was never an agreement so I don't know what he took it for. I later gave him a cheque for £30, Exhibit 6, to make it up to £100. He said if I paid another £30 he would transfer the land to me. And he handed me a document. This is it. Exhibit 7. (Copy letter 11 of Exhibit 2). So I gave him this cheque, Exhibit 6, dated January 14th 1957. With the cheque Exhibit 6 I wrote this letter, Exhibit 8. After Mr. Pardoe sent me Exhibit 7, relations became strained. Mr. Pardoe was looking after a lot of my personal chattels until I got settled in. When I wanted them he refused to let me have them. It was fairly soon after I received Exhibit 7. I wrote this letter 12 in the bundle Exhibit 2. Relations had become strained.

20

From January onwards we were both in correspondence with the N.L.T.B. At no time did I act as Solicitor for Mr. Pardoe. I never acted for him in any way. I could not act on my own behalf and for another at the same time.

30 Q: Defendant says you wrongfully removed a fence to value of £100?

A: I removed certain fences and some fowl houses not attached to the soil after receiving letter from his Solicitors that I should vacate the land.

Q: Mr. Pardoe's rent has been increased to £10 per year?

A: I know nothing about that except in a letter in the file. I never acted in any way.

40 Subsequently Mr. Pardoe came there with a Magistrate, Mr. Mortimer, and a Police Inspector and said I could not shift anything off the property. It is mine so I took out the letter his Solicitors had sent to me by Grahame & Co., and showed him the letter. He took the letter, read it, shoved it down his shirt front and walked out saying Macfarlane had double-crossed him and he would get another lawyer. I refer to letter 32 of Exhibit 2. This letter isn't the letter I handed to Mr.

In the  
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Plaintiff's  
Evidence.

No. 8.

Nathaniel  
Stuart  
Chalmers.

24th August,  
1960.

Examination  
- continued.

Pardoe but it is a letter from his Solicitor to my  
Solicitor at the time.

K.M.

KOYA: I want this put in anyway. Exhibit 9.

COURT: Where is the letter?

KOYA: I will make inquiries and produce it if it  
can be found.

K.M.

After the visit by Mr. Pardoe and the Inspec-  
tor I was badly assaulted and that was one of the  
reasons why I got out very quickly. I don't know  
who assaulted me. But because of that and because  
I had received a letter ejecting me I went. All  
that I can say is in the correspondence. I am  
simply claiming the money I have spent on the land.

10

K.M.

KOYA: We have agreed not to lead evidence as to  
the value of the improvements either as to the  
actual cost to Mr. Chalmers or the present market  
value, but to reserve this issue for determination  
should this become necessary, when the other issues  
in this case, have been resolved by the Court.

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Adjourned to 2.30 p.m.

R. Knox-Mawer, Ag.J.

2.30 p.m.

Koya  
Ramrakha

N.S.CHALMERS, Examination-in-Chief resumed -

I asked Mr. Kermode about a sub-lease in writ-  
ing. I haven't my letter but I produce Mr.Kermode's  
reply. Letter put in Exhibit 10.

K.M.

Cross-  
Examination.

Cross-Examination: I have been a Solicitor over  
35 years. I have practised in Fiji save for ten  
years 1930-1940. I had certain knowledge of Native  
Lands. The N.L.T.Bd. office rented a room in my  
office. This lease was a lease issued by the  
Governor in Council to Alfred Walker. Bossley's  
lease was a native lease. My half interest in his  
lease was a joint purchase, nothing to do with the  
N.L.T.B. I didn't tell the N.L.T.B. of the joint  
interest I had at the time. It was purely a verbal  
agreement. I don't remember telling the N.L.T.B.  
that I had this interest.

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Q: Why didn't you tell them?

A: Because it was an arrangement between myself and Defendant that if we bought it we would sell it at a profit.

I would never have consulted the N.L.T.B. because it was purely a verbal arrangement provided for by law.

10 I claim that it was legitimate to have an equitable interest in the lease without the consent of the N.L.T.B. My half interest was an equitable interest binding between myself and Pardoe. Not binding the N.L.T.B. I had no interest in the land at all just an interested right with Mr. Pardoe. When Mr. Pardoe purchased the lease he gave his own £300 cheque. I gave Mr. Pardoe my cheque for £150 to Mr. Karmode and he made out the cheque for £300. Reference to page 6 of Exhibit 2.

20 My share was between Mr. Pardoe and myself. I had one lease in my name and Shell wanted Bossley's lease as well. I knew we could make a profit by selling both together. It gave a better bargaining value not to have my name on the other lease. We could use the land for Aerocen, that was another reason.

Q: I suggest that you had one lease in Vuda and Mr. Pardoe the other. You had no interest in the other?

A: Pardoe knew nothing of it until I suggested we bought it together.

30 He did not get it for Aerocen. I had enough land myself. Shell wanted my lease. Shell wanted Bossley's too. So I wanted to get in control of Bossley's lease. And I brought in Pardoe to get Bossley's and then make a profit. Both I and Pardoe wanted ways and means for refencing.

I had to force Bossley not to go back on his deal. I didn't consult my brother on the law. He did not advise me that Government could compel the sale. I formed that opinion myself.

Referred to p.6 of Exhibit 2.

40 Before Pardoe bought Walker's land he suggested we go 50-50 in purchasing the lease from Walker. Later when he had bought the lease he said if you like to have a portion I'll get you a sub-lease or surrender a portion for you to get a direct lease. This was long before I started to build. He said he would give me up to 2 acres for me to build on. He put that in writing on 21st December, 1956.

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Cross-  
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- continued.

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Cross-  
Examination  
- continued.

By Court.

Cross-  
Examination.

(Letter 10). I didn't consider I should have to get the permission of the N.L.T.B. before I started building. Mr. Pardoe did not tell me he could not sublet before permission was obtained.

I asked him for the lease. He said it was with Mrs. Bernard or Mr. Scott and he would get it. If I had any doubt he brought me a piece of paper which he handed to me. (This is it, Exhibit 11). It explained that this lease is a residential lease. When I received that piece of paper I considered I could put any building on it. I still consider that I could. Mr. Pardoe didn't say you must get the consent of the Board before you start building. If he had made any such suggestion I wouldn't have spent a penny.

I was quite satisfied that there were no restrictions on building.

Examination COURT: I know that Mr. Pardoe would have to go to the N.L.T.B. before I could get an interest in the land.

Cross-Examination: I believed I could build without infringing his position with the Board. I still think so. In my opinion, upon the information available, there was no restriction to my building on the land, but only a restriction to my getting a title to the land.

Before actually building the cottages I didn't believe I had to get the consent of the N.L.T.B.

K.M.

Page 18 of Exhibit 2 put to witness.

K.M.

I was fully alive to the question that if I was going to build on land leased to me I would first of all have to get a lease.

Mr. Pardoe didn't tell me to legalise everything before I built. The question as regards the land was left open. I never said Mr. Pardoe had nothing to fear. Pardoe didn't let me build when he believed that you were legalising the whole matter.

Q: In 1955 when you lodged Exhibit 3 who was acting for Mr. Pardoe?

A: Mrs. Bernard. She was acting for him in connection with this lease. If it had been up to me I would have finalised the matter. I've never been

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employed by Pardoe as his Solicitor. I've given legal advice to him as a friend.

Q: You acted for him in connection with the Bossley lease?

A: By Cromptons.

Q: Your town agents?

A: No. I'd ceased to practise. Only a few small items perhaps.

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Q: In July 1955 you were briefed in a murder trial?

A: I can't remember the date.

I acted jointly for myself and Mr.Pardoe in connection with this lease.

Referred to page 1 of Exhibit 2.

Examination COURT: I was not being paid any fee for effecting this transfer. I was interested in the property myself having contributed half the purchase price.

20

Cross-Examination: I was supposed to get a half share in the Bossley lease. When I went on Pardoe's land at Sigatoka to build there was no question of my paying him anything.

Examination COURT: I had made £600 clear profit for Mr. Pardoe and this was a paid pro quo. I was merely to pay the costs involved in arranging a sub-lease or a surrender to the N.L.T.B. and lease to me, and whatever rent the Board might demand.

Adjourned to 9.30 a.m. on 25.8.60.

R. Knox-Mawer, Ag.J.

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THURSDAY 25th AUGUST, 1960.  
Mr.K.C.Ramrakha for Pardoe.  
Mr. S.M. Koya for Chalmers.

Cross-Examination of Chalmers resumed:-

I did all the favours for him. Paragraph 2 of my statement of claim is correct. That is admitted in the pleadings. I didn't know his boundaries. He showed me several sites. We agreed on a site.

Witness shown Exhibit 1.

K.M.

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On the seaward side of Queens Road is a part of the lease. Cut by a creek.

In the Supreme Court

Plaintiff's Evidence.

No. 8.

Nathaniel Stuart Chalmers.

24th August, 1960.

Cross-Examination - continued.

By Court.

Cross-Examination.

By Court.

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1960.

Cross-  
Examination  
- continued.

Q: It separates the foreshore into 2 lots?

A: The plan is here.

I was to get this portion here (marked with red). The trouble didn't arise when I tried to get the whole coastal strip from Mr. Pardoe. What Mr. Pardoe pointed out for me was more than I wanted. The foreshore strip was useless as far as I was concerned. I was quite satisfied with the piece of land he pointed out. I fenced in part of it. Having built and fenced it I was in occupation until about May 1958. The writ for trespass was issued 14th June. I was in occupation for two or three weeks after.

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I had no intention of returning to this property until this case is settled. I have now no intention of returning at all. At the time you issued the writ I intended to go back. I was furious at the time and I did say I would set fire to the buildings. I certainly do not intend to set fire to the buildings. There is no insinuation against Mr. Pardoe about the assault. It was an isolated spot.

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Q: You agreed to pay Mr. Pardoe £100?

A: He took £70 and I paid him £30 afterwards.

The letter to the N.L.T.B. of December (10 of Exhibit 2) if you treat it as an agreement, we both signed it. I acquiesced in the payment of £100 to Mr. Pardoe. I entered a caveat, later removed by order of the Court. (Exhibit 12). I swore in my affidavit in Exhibit 12 that there was an agreement to pay £100. At that time I expected Mr. Pardoe to do all that was necessary to further getting me a sub-lease. I didn't raise an equitable lien because it didn't arise. There was then no question of my being dispossessed. It was not me who said I would pay Mr. Pardoe £100. There was never any discussion of payment. Mr. Pardoe says in his letter there was no payment. (No.8 of Exhibit 2). I didn't raise this question when Pardoe and I and Gatward were sitting drinking.

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I didn't have anything to do with that document. (Page 10 of Exhibit 2). I was concerned that it was written. My opinion was that it would solve the matters in question.

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This letter was handed to me and I signed it. I didn't have anything to do with its preparation. I didn't type it. I wouldn't have used the word

"transfer", because a transfer of a portion of the lease is impossible.

Q: You typed this letter of 29th December, 1956? (11 of Exhibit 2).

A: I didn't.

Q: You kept on badgering Pardoe about the £750?

A: I never discussed it until nearly a year later when I asked him to give me my £750.

10 A year later after when I left Vuda. I was not constantly inebriated at the time. I was not an absolute nuisance at the time. When the question of the £100 was raised Ian Gatward was there.

Q: Pardoe turned round to Gatward and said: "This man must be mad because I have given him the property for nothing except expenses"?

A: No, definitely false.

Q: You insisted upon paying him £100? A: No.

20 Q: When Ian Gatward was there the N.L.T.B. was, you know, querying your occupation and Mr. Pardoe's breach of lease?

A: I don't know if that was the time when Mr. Pardoe had received a letter from the N.L.T.B. alleging a breach because of my occupation. As far as I remember I had not then received a copy of that letter. At the time the £100 agreement was paid there was no allegation of any breach that I knew of at that time.

Q: This conversation was on 29th December, 1956?

30 A: It may have been. As far as I know that question had not arisen then. I am not lying but I am not saying that my memory is accurate as to things that happened so long ago.

Referred to page 6 of Exhibit 2.

K.M.

I rely more on the written words in the correspondence than on my memory.

Q: At the time you wrote it you knew the Board had written to Mr. Pardoe a letter alleging a breach by your allegation?

A: I want to see this letter.

40 RAMRAKHA: I will get a copy of the letter.

Q: Before you wrote that letter Mr. Pardoe called in to see you in a perturbed state?

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Cross-  
Examination  
- continued.

A: I remember ringing him up after getting a letter from the N.L.T.B. to which was attached a copy of a letter addressed to Mr. Pardoe asking him what he was going to do about the matter. He told me on the phone then that he was not going to get me a lease. At the time as far as my memory goes the surveying of his land I don't remember.

Referred to page 9 of Exhibit 2.

K.M.

I had written to the Board explaining my position from my own personal point of view. Mr. Mortimer and Mr. Pardoe came to my house. It was earlier than June 3rd. In May 1958.

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Q: Pardoe said, "Don't remove any of the buildings until you get permission from the N.L.T.B."?

A: He said I was a trespasser and must not remove anything off the land, and he was going to Suva to take action against me. He said nothing about the N.L.T.B. I had a number of letters from lawyers asking me to vacate the land.

Q: You said to Mr. Pardoe that Grahame & Co. had given me permission to remove the buildings?

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A: No. I just handed him the letter in the presence of Mr. Mortimer and the Inspector. I didn't make that representation. I did not know what they had come for. Mr. Pardoe took them. They were sent back to me. Letter put to witness dated 29th May, 1958. Exhibit 13.

K.M.

I saw this letter. I did intend to shift the buildings on to an adjoining piece of land if I could get a lease of it. Or alternatively to shift the buildings to Nadi where I was interested in a piece of freehold. The nature of the buildings is such that they could be removed in sections. I knew I had no lease. I thought it was about time I got something in return for my £100. Some title to the land.

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Q: You came in with Pardoe and purchased a photostat copy in 1956?

A: No, I made no search at least until Mr. Pardoe gave me the letter in connection with the £30. (Page 11 of Exhibit 2). I bought the photostat copy in early 1957. I began building on 14th June 1956.

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Q: You paid for a photostat copy on 21st September, 1956?

A: Not true.

I obtained the copy some months after I had started building on the land.

K.M.

Letter exhibited 14 by consent from N.L.T.B. 22.11.56.

K.M.

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Stuart  
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Cross-  
Examination  
- continued.

10 Chalmers Cross-Examined: I have seen that letter. I rely entirely on page 6 of Exhibit 2. I have no reason to suppose that Exhibit 14 is not the letter I refer to as the letter page 6 of Exhibit 2. Clauses 7 and 8 of the lease relate to building. Clauses 7 and 8 are perfectly clear. Mr. Pardoe showed me this letter before November 18th, 1956. He was very worried. He told me he was going to Suva. He discussed it with N.L.T.B. I was aware that the Board was querying the buildings. That is why I wrote the letter on page 6. Therefore at the time when the arrangement was made I knew the Board was querying it I didn't make any offer of £100 at that or any time. There was no question of payment.

20 Q: You did all the documentary work in this matter?

A: I acted for myself only. I was not acting for him or advising him. I didn't suggest he should see any lawyer.

30 COURT: I started the buildings in June 1956 and I finished 23/10/56. Except for the main bure. The receipt for the photostat copies of the lease and transfer is dated 21st September, 1956. I knew about the clauses 7 and 8 at that time. My opinion as a lawyer was that clause 13 abrogated clause 7. You could not imagine a lease of 57 acres of land being limited to the residence of the lessee. That is the view I took in law. I searched it round about the time I made application for a photostat copy. My view as a lawyer was that a stranger had every right to build on the land without consent of the Board provided the lessee agreed. I lodged the application, Exhibit 3, on 28.12.55.

40 Q: Before you submitted the plan you searched the lease with Mr. Pardoe, in Suva?

A: I had no interest in the lease at the time. I was very foolish not to have searched. And seeing what instructions there were I didn't realise that consent was necessary. If I had know there was going to be any difficulty I would not have

By Court.

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No. 8.

Nathaniel Stuart  
Chalmers.

25th August,  
1960.

Cross-  
Examination  
- continued.

Re-Examination.

built. I thought that the consent would be obtained. I did not think that building on the land needed any consent. I knew I would have to get consent to any dealing with the land. I must have seen the land before I sent in Exhibit 3.

Before December, 1955, Walker did not show me the original lease in presence of Mr.Pardoe. I've paid all by cheques.

K.M.

Re-Examined: Shown Exhibit 14.

This is the letter referred to on page 6 of Exhibit 2. 10

Before that I had received no notice from N.L.T.B. of any illegality in the building. I've received no letter from N.L.T.B. to the effect that I was in illegal occupation. The Board refused to deal with me. Later the Board said I could remove them. In the caveat proceedings I was trying to enforce a contract. I then considered there was privity of contract between us. But that was what I presumed then. I'm no longer pursuing that remedy. I was bit at sea regarding equitable rights. I'm not suing for the £100. I don't know what steps if any he took to rectify the matter. I mean to apply for a subdivision or to surrender to the Board. The dispute which gave rise to the tone of my letter was over the £750. It was over the chit of paper which I mentioned. It was worsened later over the dispute over my private possessions. We had a dispute over that £750. I wrote him the letter later. Things became strained from the date when the £750 was involved. I think that would be around August 1958. I was in occupation when those receipts were given. 20 30

I went into the buildings 3 or 4 months after the commencement of building. I cannot remember dates as regards this business. I am almost certain these documents were handed to me when I was in the house. They might have been at Mr.Edward's house. I wrote for a survey of the land. Mr.Pardoe didn't co-operate with me in 1957. 40

Plaintiff's evidence concluded.

K.M.

DEFENDANT'S EVIDENCE

No. 9.

LAWRENCE PARDOE

LAWRENCE PARDOE, sworn on Bible, in English.  
Defendant. Living in Sigatoka. Retired Civil Ser-  
vant.

10 I bought a lease in Lautoka from Bossley. I  
paid £300 for it. To my knowledge Mr. Chalmers had  
no interest in the lease. He had no interest in  
the lease when I bought it. I sold it for £1500.

20 Mr. Chalmers acted as my Solicitor in con-  
nection with its transfer. And the purchase was  
all arranged by Mr. Chalmers. I haven't paid him  
any fees. Because we mutually helped each other -  
I helped him in engineering matters. At the time  
we sold the Bossley lease Mr. Chalmers sold his  
adjoining lease. I purchased in December 1955 Mr.  
Walker's lease 7235. Before I purchased the lease  
I had been twice to Mr. Walker. Mr. Walker had a  
30 number of documents. I didn't go into them. I  
took one to be the lease. Mr. Chalmers came up  
with me to see the property. As a favour. I'm  
pretty sure he saw the documents. He understood  
these better than me. After I sold the lease Mr.  
Chalmers came and occupied a site. Mr. Chalmers  
has marked this in red on Exhibit 1. The other  
strip is a foreshore strip. I told him I wanted  
the other strip for myself and I was going to lease  
my other place to Mr. Foreman. Before I let him  
start building, the arrangement was quite distinct.  
That he had to pay all expenses entailed, survey  
fees, and a reclose of my area. There was no con-  
versation about the N.L.T.B. and the law. I trust-  
ed Mr. Chalmers to know that. I expressed no  
opinion. I only said he could build provided he  
got the necessary consent and permission. The lo-  
cal Authority and the Native Land Trust Board.  
There was a lapse of time between that.

40 I never showed him the slip of paper from Mr.  
Walker and said it was a building lease.

Q: Before Mr. Chalmers put in the application to  
build, did he see the lease?

A: We were trying to get them back from Maurice  
Scott. I didn't have these papers with me in  
Nadroga. Not till a later date. Mr. Chalmers saw  
it before I purchased the place. I assume he saw  
it because he went up to arrange all about it.

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Lawrence Pardoe.

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Examination.

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Lawrence Pardoe.

25th August,  
1960.

Examination  
- continued.

(Original lease Exhibit 1b). I saw Mr. Walker with Exhibit 1(b) when Mr. Chalmers and I visited him before the purchase, because I remember I looked at the plan. About the time when Mr. Chalmers sent in the application to build Exhibit 3 to the best of my recollection, I came with Mr. Chalmers to ask Mr. Woodward to see the lease. He saw the lease and so did I.

Examined COURT: That would be round about the end of 1955 or the beginning of 1956.

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Examination-in-Chief: Mr. Chalmers began to build on my property in the middle of the year. At the time he began to build I didn't realise he had not got the consent of the N.L.T.B. I believed he was looking after both our interests. It was understood between us. He was acting for me in an advisory capacity and in partnership. He was acting as my Solicitor really. He started building. And fenced the area. I never advised him to fence in the whole of the foreshore. His arrangement with regard to his site was to get all the necessary consent and permission. I didn't want to be worried by it. He could get anything - a sublease or surrender which was perfectly correct. I left it entirely in his hands. On 22nd November, 1956, I received a letter from the N.L.T.B. alleging a breach by me. Exhibit 14. At the time I got this letter it is possible I went to see Mr. Chalmers. I can't be sure. I went to see the N.L.T.B. If he was in residence at the time I might have. I came in to see Mr. Foster. I did speak to Mr. Chalmers about it but prior to Exhibit 14 arriving he told me that everything was settled and the rental was £5 per year. When he began building I believed everything was in order. This was not the first letter Exhibit 14. There was an earlier one about a resurvey. That worried me. I went then to the N.L.T.B. to find out what was going wrong. I must have asked Mr. Chalmers about Exhibit 14. He wrote out letters to send to the N.L.T.B. I signed the letters. This is one - page 10 of Exhibit 2.

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Q: Who typed this out?

A: This was typed by Mr. Chalmers himself. There was no demand for the £750 re the Bossley lease. That is a different matter. He made that demand after I had bought the Bossley lease. I mean sold the Bossley lease. I bought Mr. Walker's lease before I sold the Bossley lease. A few months after

I bought the Bossley lease he kept on to me about the £750.

Transfer put in Exhibit 15.

K.M.

The date of transfer was not the date of purchase. There was a big hold up. When I bought Walker's lease I think Bossley's lease had not been sold. Mr. Chalmers said that £150 of money he had paid me was half share in £300 but we had never agreed to it. Mr. Chalmers paid me a sum of £350. Later he suggested it was for half of Bossley's lease. And he kept saying I owed him half the sale price of Bossley's lease. That was after the sale of Bossley's lease. He kept on bullying me. He wasn't living on my lease at the time. While he was building he was staying fourteen days with me, fourteen days with Bruce Edwards. Just after the actual sale of the Vuda Point properties. In connection with that I signed page 11 of Exhibit 2. Mr. Chalmers typed this page 11 of Exhibit 2.

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Shown chit Exhibit 4.

K.M.

I gave him this towards the end of 1956. Ian Gatward was present. Before I gave him this chit there was talk of payment for the building site. We walked into Mr. Chalmers' house. He brought us a drink each. Then he came back in a temper and picked both glasses up before we could drink it. I said to Ian, "What's gone wrong with the man. He must have gone crazy". Ian said, "What's wrong, Nat?" He came round in a temper saying I still owed him £750 saying I had not squared the matter up.

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As Mr. Chalmers previously owed me money which I had practically given up hope of ever getting I put down the amounts to cover the £750. It was about two days before Xmas. He brought up the same day the matter of the land. He offered me £100 for the land. I turned to Gatward and said "He still must be crazy because I gave him the land for nothing". I made the amount up to £750. It came to £30 less. The date on this receipt, Exhibit 5, is correct. This Exhibit 5 was given to Mr. Chalmers but in fact he never paid me £60. So I added this £60 to my figure on Exhibit 4. In a lot of the deals I had with Mr. Chalmers he got me to sign the document first. Mr. Chalmers bought the car for his carpenter. Regarding the wind-charger - it got burnt out. It was put in the

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Examination  
- continued.

back of my landrover. I had it repaired for Mr. Chalmers. When Mr. Chalmers brother came to stay, he was so pleased with the windcharger, he told Mr. Chalmers about it and Chalmers demanded its return. He agreed to pay £40 for the repairs I had done and to take it back. It must have been £20. Everything was fairly well up to 4th January. I got a letter on the 4th January. Then on 14th January I got three other insulting letters from him. I think page 12 Exhibit 2 was received on the 4th January. Then on 14th January I received Exhibit 8. Enclosing £30. The real reason for the quarrel was when he suggested having the other section of frontage. I gathered he was stealing that piece of land, and taking the whole of the foreshore (page 22 of Exhibit 2).

Relations between myself and Mr. Chalmers were getting strained during the last two months of 1956. Despite the strained relations I was still prepared to see the thing through with the N.L.T.B. He sued me in July 1957 for the return of these personal belongings. I obtained judgment on May 1958. His claim was dismissed for want of prosecution. I was still prepared to go ahead with the N.L.T.B. until the receipt of this letter page 22 of Exhibit 2 dated January 11th, 1958, when I saw that he was trying to get the whole of the front. So I came up to Suva to see Mr. Foster and showed him this letter and on account of this and other letters written to Mr. Chalmers from Mr. Munro I had to dispense with Mr. Munro's services because he wasn't working for me. The N.L.T.B. insisted that I get an eviction order against Mr. Chalmers. All my instructions were from the N.L.T.B. In May 1957, (page 16 of Exhibit 2 paragraph 2) I had received this letter.

In January 1958 they asked me to evict Mr. Chalmers. At that time no finality had been reached and Mr. Chalmers was attempting to increase his area. I wanted to do exactly what the Board asked. The buildings had been put in without their consent. The N.L.T.B. said the buildings can't be removed without theirs and my consent. Mr. Foster said this. I instructed Grahame & Co., to evict Mr. Chalmers. About the end of May, Mr. Chalmers removed one building and a fence. The value of the building was about £100. I can't see from my house. It is only by chance that I heard about it. I went to see Mr. Foster. He said you have to stop him so I saw the D.O. Mortimer and Inspector Nair.

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They agreed to insist that Mr. Chalmers should not remove the property until the matter was settled. Mr. Chalmers invited me in. Nobody threatened him. Mr. Mortimer was the spokesman. Mr. Mortimer said he should desist and settle it in Court. Mr. Chalmers said, "But I have Mr. Pardoe's lawyers' consent to remove the buildings". I said he should produce the evidence. There were three letters. Mr. Chalmers gave me two to look at. The top one from Mr. Gray said, "enclosed is a copy of Mr. Macfarlane's ruling - he doesn't see why you shouldn't remove the buildings". In short the letters conveyed to me that they had given permission for him to remove. It was a double-cross. I said so. I took the letters. And posted them back. I dispensed with the services of Grahame & Co. All the buildings are intact. And in their original condition. I have a watchman there. Some things have value there. I pay £10 per month to the watchman. He does other work for me. He works in the daytime. As a result of this my rent has been more than doubled from £9.10.0 to £20 per year w.e.f. 1958. I've suffered the cost of the litigation. I came in by my own vehicle. I have incurred terrific expenses over this period. Going on since I got into trouble with the N.L.T.B.

K.M.

Adjourned to 11.30 a.m.

R.Knox-Mawer, Ag.J.  
25.8.60.In the  
Supreme CourtDefendant's  
Evidence.

No. 9.

Lawrence Pardoe.

25th August,  
1960.Examination  
- continued.

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11.30 a.m.

LAWRENCE PARDOE, on Oath,

Examination-in-Chief resumed:

I have had to come in to Suva to see my lawyers at least once a week since November, 1957. For 2 or 3 days each time. Each trip cost roughly £10.

K.M.

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Cross-Examination: I was in Suva interviewing my lawyers. I would indubitably spend 2 days interviewing lawyers. I can't always get an appointment and get them the day after. Before November, 1956, I wasn't visiting Suva regularly. Cromptons would have acted as my lawyers in 1956. I remember 22nd November, 1956. Because prior to that I left everything to Mr. Chalmers. That would be the date when Ian Gatward was at Chalmers. It was the day before Christmas Day. I was perfectly happy until Ian Gatward's visit. I used not to come

Cross-  
Examination.

In the  
Supreme Court

Defendant's  
Evidence.

No. 9.

Lawrence Pardoe.  
25th August,  
1960

Cross-  
Examination  
- continued.

By Court.

regularly to Cromptons when I sold property to Narain Construction.

On 29th November, 1956, I wrote the letter page 8 of Exhibit 2. That was the first letter I wrote to the N.L.T.B.

Q: If Mr. Chalmers had been acting as your Solicitor why didn't you mention it to the Board?

A: They knew that Mr. Chalmers was acting for me. I didn't type it out. I signed it. Mr. Foreman wrote it for me.

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Paragraph 4 of page 8 put to witness.

A: Mr. Chalmers was not actually acting but he was my advisor as a lawyer. I had instructed Cromptons. Prior to this Mr. Chalmers had written all my letters. When I got the letter from the N.L.T.B. I went and got Mr. Foreman to type this letter.

COURT: Mr. Chalmers prepared documents for me in this matter. He typed certain things out and I signed. I've no copies of them. I signed anything he put to me. I considered him the right advisor to me. Documents sent on to N.L.T.B. That is my belief. Before November 1956, I never came to Suva to interview Solicitors. Mr. Chalmers ceased acting for me in November, 1956. I received £1,500 for the sale of Bossley's lease to Shell Co., at Vuda. Half of that price was £750. I've seen the chit, Exhibit 4. That £750 was all the time what Mr. Chalmers was bellyaching about. He said it was his half share. I gave him an account to quiten him. He owed me a lot more than that. I deducted £600 my share in Aerocen. And £60 for the Ford. And £20 for windcharger repaired. There was £70 lying to his credit. In 1957 I received £30 from Mr. Chalmers.

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Q: Did that cheque have anything to do with the sublease?

A: Nothing. That chit was to satisfy Mr. Chalmers when he was inebriated beyond recovery. We were not on speaking terms when he sent £30. I was glad to get hold of £30. He owed me a lot of money. Mr. Chalmers was forcing these ideas on me. The £30 was for this mythical supposition. The £30 was for a final balance. It could have meant anything at all. I didn't name anything for the land.

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Referred to page 5 of Exhibit 2.

K.M.

This was a diabolical letter. I had it out privately with him. I had to keep things going to get anything out of him. I paid the legal costs re Bossley to Cromptons. I'm positive. Shown receipt. Exhibit 16. These were not my lawyers.

He tried to get £25 from me. I'm not sure what Exhibit 16 represents. If you have the cheque then I wouldn't deny that I received a cheque for £150. But not for Bossley's lease. Mr. Chalmers paid the rent for Bossley's lease. Receipt put in Exhibit 17.

K.M.

I've never seen this document (shown a document) before. It is in Mr. Chalmer's handwriting. Mr. Chalmers could have paid Bossley's rent but he never mentioned it to me.

Q: You were good friends. He had made money for you. So you allowed him to build on your lease?

A: No, he owed me money. I had no chance of getting it unless I allowed him to build. He had never rendered me an account. £1,800 was owed. He doesn't owe it me now. According to his letter £30 finalised everything. I was prepared to let everything drop. From then onwards if he hadn't caused me all this trouble I would have done so. If he had left me alone. And tried to be friendly. He has never rendered an account. I was still reasonably good friends. I thought he would do some things for me. He owed me a part of £1,800. He had made some payments. I received this letter from Clive Chalmers in April, 1957.

Exhibit 18.

K.M.

Q: This asked you if you had any claim against Mr. Chalmers?

A: I didn't put this forward because my then lawyer, Mr. Gray, was away from the Colony.

I've never put in a claim for the balance of £1,500. That receipt for £60 was signed by me. Exhibit 5. I didn't type it. There was another receipt signed by me for £600 on the same date. I didn't type that receipt. At the earlier proceedings you said you did. I didn't type it. It may have been on my typewriter.

R.K.M.

Adjourned to 2.30 p.m.

K.M.

In the  
Supreme Court

Defendant's  
Evidence.

No. 9.

Lawrence Pardoe.

25th August,  
1960.

Cross-  
Examination  
- continued.

In the  
Supreme Court

2.30 p.m.  
Counsel as before.

Defendant's  
Evidence.

No. 9.

Lawrence Pardoe.  
25th August,  
1960.

Cross-  
Examination  
- continued.

PARDOE Cross-Examination resumed:

This receipt Exhibit 19 I didn't type. In the lower Court I said I did but I might have been rattled. At the time I thought it was true. No, I say it wasn't true. I didn't actually type Exhibit 19. I received this cheque for £150. Cheque tendered Exhibit 20. I must have cashed it in Lautoka. It was part payment in Aerocen. The balance of Aerocen was £300 odd. He owed me £1200 at the time. That made it £1050. I received the cheque. The complete amount was £1,800. My share in Aerocen was £600. I think I received £200 from Adjodhya Prasad. It is possible. Adjodhya didn't acquire a share. I eventually collected £460 from Mr. Chalmers. In respect of Adjodhya's share. Mr. Chalmers had one third share too. The £600 was for the sale of my share. I received £300 for his original share. I don't know exactly.

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Cheque put in Exhibit 21.

Yes, I received this. On signing the partnership agreement. I don't know if he paid any of the balance. I'm not sure. In August 1955 I received £500. Cheque Exhibit 22. It could be for Aerocen. On 11th April, 1956, I received a cheque for £100. That was for timber. Not for Aerocen. I gave him a receipt saying the partnership was dissolved.

Q: In all you received £1,400 - £800 in cash and £600 from Bossley's.

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A: No.

It could be this cheque butt for £92 was for timber.

Cheque butt Exhibit 23 (a) and (b)

K.M.

He built six cottages. They cost about £1,000. I was prepared to surrender as soon as he could make the arrangement. Anything he could arrange with the N.L.T.B.

Witness is referred to letter page 8 of Exhibit 2.

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K.M.

I was in fear of losing whole property. This letter was to save it. The position was as stated in the last paragraph. He had already built.

Q: Between December, 1956, and November, 1957, there was correspondence between myself and N.L.T.B. and Mr. Chalmers and N.L.T.B.?

A: Yes.

Witness referred to page 19 of Exhibit 2.

Q: The N.L.T.B. was quite happy then to waive any breach?

A: Incorrect.

On the gist of this letter of 19th November, 1957, I went in to see the Board. The Board still wanted Mr. Chalmers to be ejected. On their instructions. I did nothing but what the N.L.T.B. wished me to. Under no consideration were the buildings to be removed.

Q: Did you say if I divided the buildings, won't I have to pay the increased rent?

A: No. They just increased the rent.

Letter page 28 of Exhibit 2 put to witness.

K.M.

Q: Board say it has no say in the matter of these buildings?

A: This is first time I have seen this.

My instructions were to get him evicted. I would have let him stay. The Secretary of the N.L.T.B. By Mr. Foster. This makes another opening altogether. It could be. The Board was prepared to let me have a second house. On two conditions (a) increase of rent, (b) consent of Local Authority - (page 19 Exhibit 2). I hadn't built any other house. It wasn't referring to Mr. Chalmers building. They did increase the rent. I paid the Board the extra money. Whatever breach there was on the lease was waived, after payment of the increase. Mr. Munro agreed that the application for subdivision should be from me. It was then that I came across the clause about the additional frontage. That the vital part. Mr. Munro connived with Mr. Chalmers. Before I discovered this part that made me change my mind, it was for me to apply.

I don't admit anything written by Munro about the duty of making application being on me. I told Munro he wasn't to write to Mr. Chalmers but to arrange with the N.L.T.B. Also Mr. Macfarlane. If they gave Mr. Chalmers authority to dismantle, my lawyers were acting outside instructions. I got a letter from the N.L.T.B. just prior to bringing Mr. Mortimer and the police officer to Mr. Chalmers'

In the  
Supreme Court

Defendant's  
Evidence.

No. 9.

Lawrence Pardoe.

25th August,  
1960.

Cross-  
Examination  
- continued.

In the  
Supreme Court

Defendant's  
Evidence.

No. 9.

Lawrence Pardoe.

25th August,  
1960.

Cross-  
Examination  
- continued.

dwelling. When Mr. Chalmers started to remove his things. As far as I was concerned the buildings belonged to the N.L.T.B. They told me so. And could not be removed without their permission. Mr. Chalmers never got their permission. But the Board said if the buildings were removed it would jeopardise my lease.

Q: Has Mr. Chalmers ever removed a fence belonging to you? A: No.

Q: You say he removed fencing valued at £100? 10

A: Yes.

Q: Why do you claim it?

A: I claim that is the property of the N.L.T.B.

It is to reimburse me for the extra rent. I am not claiming it as my property.

Q: Why not give him the chance of demolishing his property?

A: It didn't arise. I was never given the opportunity. I couldn't give it without the consent of the Board. If I had the chance, correct by law, I would have given it. If he had asked me for permission to remove I would likely have given him. 20

Q: In your claim you say the buildings belong to me? A: That is what my lawyer says.

I imagine the N.L.T.B. is to be blamed for not allowing Chalmers to take away the buildings. I only did what the N.L.T.B. told me.

Referred to letter 39.

K.M.

By Court.

COURT: When I saw this letter page 22 of Exhibit 2, when going through the letters with Mr. Munro at that time, I came in and saw the N.L.T.B. I dismissed Mr. Munro and got in Mr. Macfarlane. I didn't tell the Board I didn't want to go on with it. The Board said I should get him evicted. 30

COURT: You told the Board you had changed your mind:

WITNESS: No. There was a lapse of time.

Cross-  
Examination

Cross-Examined: Q: How do you say by the letter page 22 of Exhibit 2 that Mr. Chalmers was claiming the extra piece of land? 40

A: I saw a lot of letters. I got the whole lot in one pile. Much later than January 1958. Between January and May, 1958. The wrong that he

did at that time was to put in a caveat. It is not a friendly action. He was under a misapprehension that I was going to sell the land. I was not thinking of selling the land. By the time he came with Mr. Mortimer the caveat matter was all over.

KOYA: The caveat was lodged on 4th November, 1957.

K.M.

Adjourned to 9.30 a.m. on 29.8.60.

R. Knox-Mawer, Ag.J.  
26.8.60.

In the  
Supreme Court

Defendant's  
Evidence.

No. 9.

Lawrence Pardoe.

25th August,  
1960.

10 MONDAY, 29th August, 1960 at 9.30 a.m.

Mr. K.C. Ramrakha for Pardoe.  
Mr. S.M. Koya for Chalmers.

LAWRENCE PARDOE, on oath -  
Cross-Examination resumed:

Copy of caveat 4th November, 1957. Exhibit 24.

K.M.

Cross-  
Examination  
- continued.

29th August,  
1960.

Cross-  
Examination  
resumed.

Q: When did N.L.T.B. decide to impose additional rent?

A: I must look at letters. I agree by letter page 19 of Exhibit 2, the N.L.T.B. allowed a second dwellinghouse. Not Mr. Chalmers house. I had a second building. I didn't specifically apply for permission for it. They increased the rent.

20

Q: Not for Chalmers building? For your building?

A: I don't say that. It was for Mr. Chalmers building.

Q: They did give a consent for Mr. Chalmers building?  
A: It is possible.

Q: As far as you and Board were concerned it was closed by this letter?

30

A: I disagree. Mr. Foster will give evidence.

My conduct was to do what the Board wanted.

Q: But you had got their consent so that didn't arise. What was your reason after that for ordering him to leave?

A: I was instructed to ask him to leave by the N.L.T.B. because he was an undesirable occupant in the circumstances. Having got rid of him the lease was no longer in jeopardy. I'd sooner Mr. Chalmers didn't enter my property today. I won't allow Mr.

In the  
Supreme Court

Defendant's  
Evidence.

No. 9.

Lawrence Pardoe.

29th August,  
1960.

Cross-  
Examination  
- continued.

Chalmers to come on. I have never been in a position to allow him to take the buildings down. If he had gone about it in a proper way. If he had got permission from me in a gentlemanly manner I would not have stopped him. I would today. I must. Because the N.L.T.B. has to be consulted. The N.L.T.B. has to agree. In November 1958, you asked permission of the N.L.T.B. to let the premises to casual visitors. I would have kept the rent. I haven't been able to let them because they are unfurnished and it is impossible to let them. They are a source of nuisance to me because I've got to maintain someone to look after them. I'm not going to sue him for the money he owes me. I don't want any more to do with him. I didn't apply to Land Board for consent. 10

Q: Why not after N.L.T.B. had consented by letter of 19th November, 1957?

A: Mr. Foster can say. I don't claim the buildings. I would sooner be without them. I can never assert ownership. I put up the Trespasser Notice with the N.L.T.B. After November, 1957, I had to ask Mr. Chalmers to vacate. He removed a fence. 20

I was instructed by the N.L.T.B. that he was not to remove. If the N.L.T.B. agree it is entirely in their hands. I want some compensation for extra rent. I definitely didn't know the N.L.T.B. had no objection to Mr. Chalmers being there. I have a caretaker there. I have never received a penny from the premises. My lease is no longer in jeopardy. It would be if the buildings were to be removed. He was trying to steal another piece of land from me as the caveat proves. The figures given on Exhibit 24 Area are 1 acre 1 rood 4.8 perches. Yet the area I had agreed was  $\frac{5}{4}$  acre - see the letter on the back. The 1 acre 1 rood 4.8 perches includes the other area. When the letter dated December 21st 1956 was signed we had had no survey. We thought it was  $\frac{5}{4}$  acre to 1 acre. He was stealing what was above  $\frac{3}{4}$  acre. 30 40

KOYA: So he tried to steal another area?

(Referred to page 22 of Exhibit 2)

I have never had it surveyed, so I don't know what the area is.

COURT: I agree that if the area he was actually occupying was 1 acre 1 rood 4.8 perches - it could be - then my point about the caveat is not valid.

I first read the condition in the lease when I got my lease returned from Maurice Scott. Soon after receiving letter No.8.

K.M.

Re-Examination: Mr. Chalmers tried to take the buildings on May 1958 giving me no warning whatsoever. I had incurred terrific expenses. He didn't offer to pay me at any time. I paid Bossley's transfer costs. I received a receipt. But I could not find it. I found a note from Cromptons. This is it. Exhibit 25.

10

K.M.

If N.L.T.B. consent I agree to Mr. Chalmers taking away the buildings. Conditionally. I would like to be compensated for any expenses. I have no use for the buildings.

K.M.

In the  
Supreme Court

Defendant's  
Evidence.

No. 9.

Lawrence Pardoe.  
29th August,  
1960.

Cross-  
Examination  
- continued.  
Re-Examination.

No. 10.

THOMAS EDWARD FOSTER

THOMAS EDWARD FOSTER, sworn on Bible in English.  
Manager, N.L.T.B.

No.10.

Thomas Edward  
Foster.

29th August,  
1960.

Examination.

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I am familiar with the situation that Mr. Chalmers has built cottages on Native Leave 7235. The first time the Board became aware of this was on 1st August, 1956. From some information, I sent the file for report because I had heard that lessee was building other cottages. This was always a residential lease. Nobody had written for prior permission. The Board had not given consent for this action. The Board has never given Mr. Chalmers consent to build the cottages. Mr. Chalmers had never any permission to build on any part of the land. This lease was issued to Walker. The Board wishes to control any building of beach cottages. The first letter we sent to Mr. Pardoe was letter of 22nd November, 1956. Exhibit 14. There was a series of letters. In the end Pardoe's rent was increased. After the buildings were put up Pardoe saw me on several occasions. The Board did not threaten Pardoe. They merely informed him of the situation, of the Board's rights in the matter. As far as I can recall the position was explained - our privity of contract was with Mr. Pardoe and not with Mr. Chalmers. And we didn't require him. The Board has not given Mr. Chalmers permission to

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In the  
Supreme Court

Defendant's  
Evidence.

No.10.

Thomas Edward  
Foster.

29th August,  
1960.

Examination  
- continued.

occupy the land. It could only deal with Mr. Pardoe and not with Mr. Chalmers until there was any surrender. It was not my practice to advise Mr. Pardoe what he should do with Mr. Chalmers. I could merely explain his position. That the Board had approved permission to build another residence and that the Board would consider a surrender of a tenancy to anyone if it was put through in a proper manner. I can't say if the Board would have approved or not. I could only state the correct procedure. I could not guarantee the action of the Board. I should think Mr. Pardoe probably did discuss the question of ejection proceedings. I could not say whether he asked me whether he should take them. The Board has not stated to whom the buildings belong. The Board expressed the view that the Board had no objection to the removal of the buildings provided that anybody who removed them could prove ownership to the Board. 10

COURT: If Mr. Pardoe doesn't want the buildings the Board doesn't want them, irrespective of the question of ownership. 20

K.M.

Mr. Pardoe informed me that the buildings were being removed.

Q: Mr. Pardoe came to see you on 29th May, 1958?

A: I've no record. It is more than likely he came in during that month. Mr. Pardoe must notify the Board before he removed any buildings. K.M.

Cross-  
Examination.

Cross-Examined: The Board could not instruct Mr. Pardoe to forbid Mr. Chalmers. It could only insist that Mr. Pardoe was the only lessee as far as Board was concerned. 30

Q: If Mr. Pardoe had allowed Mr. Chalmers to take the buildings away, would you object?

A: The Board recognised that Mr. Pardoe could remove them so he could let anyone else move them. Clause 11. Property on property of lessee. He must give notice under Proviso C to the Board. The N.L.T.B. hasn't authorised any erection of notices. We don't mind which dwellings Mr. Pardoe has on his land. He has permission to have two buildings. That is all. He can put any second building up. We don't know anything of its identity. It is an open permission to have a second residence there. Letter page 10 Exhibit 2 is the only one we had from Mr. Pardoe. That was the only positive action by Mr. Pardoe. 40

Q: He could have obtained a sublease or surrender from the Board.

A: I could see no grounds upon which Board could object. But it is always up to the Board.

Q: When did Mr.Pardoe apply for a second dwelling?

A: There is a letter on 18th June, 1957. Mr. Pardoe wanted to regularise position. The Board approved in terms of memorandum of 11th October, 1957 - second dwelling: rent increased. There was a letter to same effect on page 19 of Exhibit 2 to Mr. Pardoe of same date from the Board. There is a note that Mr. Pardoe withdrew from everything on 22nd January, 1958. If the Board had not been approached to grant this permission it could not have increased the rent. As far as buildings went the irregularity was all forgiven by the consent of page 19 Exhibit 2.

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As a friend of Mr. Pardoe we had no objection to Mr. Chalmers presence. Putting up buildings was one matter. Disposing of land was another.

20

K.M.

In the  
Supreme Court

Defendant's  
Evidence.

No.10.

Thomas Edward  
Foster.

29th August,  
1960.

Cross-  
Examination  
- continued.

No. 11.

ASSISTANT SUPERINTENDENT NAIR.

ASSISTANT SUPERINTENDENT NAIR, sworn on Ramayan, in English.

On 29.5.58 I was stationed at Nadroga. I know Mr. Chalmers at Korotonga. I accompanied the D.O. with Mr. Pardoe to Mr. Chalmers place. Mr. Pardoe came separately in his landrover. We went inside his compound and he invited us in. Mr. Chalmers said he was demolishing the houses for removal. Either Mr. Pardoe or the D.O. asked Mr. Chalmers if he had permission from the N.L.T.B. Mr. Chalmers said yes. He produced some documents. Sighted by Mr. Pardoe and the D.O. Kept by Mr. Pardoe. Mr. Chalmers said "You're a witness to this". There was no threat to Mr. Chalmers. After the D.O. spoke Mr. Chalmers said he would stop demolishing. The time was between 9 and 11.

30

K.M.

No.11.

Assistant  
Superintendent  
Nair.

29th August,  
1960.

Examination.

In the  
Supreme Court  
Defendant's  
Evidence.

Cross-Examination: Whole object was to see  
buildings were not demolished. If I hadn't gone  
Mr. Chalmers would have proceeded with it. I  
can't remember if Mr. Pardoe said, "my lawyer has  
double-crossed me".

K.M.

No.11.

Mr. Pardoe's case concluded.

K.M.

Assistant  
Superintendent  
Nair.

Ramrakha addresses.

29th August,  
1960  
- continued.

Koya addresses.

Judgment reserved.

Cross-  
Examination.

R. KNOX-MAWER  
29.8.60.

10

No.12.

No. 12.

Judgment.

JUDGMENT

30th September,  
1960.

IN THE SUPREME COURT OF FIJI

Civil Jurisdiction

Action No. 220 of 1958

BETWEEN:- LAWRENCE PARDOE Plaintiff

- and -

NATHANIEL STUART CHALMERS Defendant

J U D G M E N T

20

These cross suits have had a lengthy hearing  
in which the two parties have been examined and  
cross examined with meticulous care. I have re-  
served delivery of this judgment for some weeks  
during which time I have devoted much effort in an  
attempt to do more than arrive at the barest find-  
ing of fact. However, I have still found it im-  
possible to achieve more than this.

There are several factors which have contri-  
buted to this result. On the one hand, the rela-  
tionship and dealings between the two parties was  
impossibly confused and complicated in the first  
place. Moreover, such documentary evidence relat-  
ing to their dealing as there is, has in general,  
served more to add to the confusion than otherwise.  
Again the passage of time has seriously clouded the

30

recollection of both protagonists, as is evidenced by the contradictions made manifest by the record.

10 In the outcome therefore the only conclusions of fact which can be reached are that in 1956 Mr. Chalmers erected certain buildings upon land in Conua district, Nadroga Province, held by Mr. Pardoe under Native Lease Number 7235. Relations between the parties have generally been rather uneasy, and the fact that these proceedings have not been settled demonstrates the mutual hostility which has developed. Certainly at no time has Mr. Chal-

20 Mr. Chalmers' action is in equity. Conceding that at common law he can have no claim in respect of these buildings, because of the maxim "that which is built upon the land goes with the land", he nevertheless asserts a claim in equity. In his pleadings he frames this claim as an equitable charge or lien over Mr. Pardoe's land to the extent of £2,600. The law in support of his claim is conveniently summarised in an article "Equitable Charge in favour of Person Building on Land of Another" by E.C. Adams, appearing in the New Zealand Law Journal Vol. XXXIV. No.4 at page 60 et seq. However, Mr. Chalmers has not been able to discharge the onus of establishing the necessary facts to found a claim in equity upon these principles. His suit must accordingly be dismissed.

30 Mr. Pardoe seeks several grounds of relief. He claims damages in negligence alleging that Mr. Chalmers when advising him professionally negligently involved him in loss. He seeks damages in quasi-contract, and damages for conversion. Again, I cannot find that Mr. Pardoe has discharged the onus of establishing the necessary facts to support these or any claims. Nor is it necessary for the Court to consider whether an injunction could or should be granted because Mr. Chalmers has long since left the area in question and I am satisfied that there is no possibility of his ever purporting to return. Mr. Pardoe's cross suit is also dismissed. Each party must bear his own costs.

40 In so far however as Mr. Pardoe has clearly stated on oath that the buildings are a source of nuisance and expense to him, Mr. Chalmers must be permitted to remove them forthwith. When this has

In the  
Supreme Court

No.12.

Judgment.

30th September,  
1960

- continued.

In the  
Supreme Court

No.12.

Judgment.

30th September,  
1960

- continued.

been done this judgment may be brought to the notice of the Native Lands Trust Board. Since it was the erection of these additional buildings upon Mr. Pardoe's land which led to the increase of rent, their removal, must in my view, in fairness, lead to a reduction of Mr. Pardoe's rent to the figure at which it previously stood.

(Sgd:) R.KNOX-MAWER,  
Acting Puisne Judge.

SUVA.  
30th September, 1960.

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In the Fiji  
Court of Appeal

No.13.

Notice and  
Grounds of  
Appeal.

21st October,  
1960.

No. 13.

NOTICE AND GROUNDS OF APPEAL

IN THE FIJI COURT OF APPEAL

BETWEEN:- LAWRENCE PARDOE Plaintiff

- and -

NATHANIEL STUART CHALMERS Defendant

Action No.220/1958

- and -

BETWEEN:- NATHANIEL STUART CHALMERS Plaintiff

- and -

LAWRENCE PARDOE Defendant

Action No.221/1958

(CONSOLIDATED BY ORDER THE 2nd DAY OF MARCH, 1960)

Appeal No. of 1960

20

NOTICE OF APPEAL

TAKE NOTICE that the Court of Appeal will be moved at the expiration of Fourteen (14) days from the service upon you of this Notice by Counsel for the above named, NATHANIEL STUART CHALMERS for an ORDER that the Judgment given at the Supreme Court, Suva, on the 30th day of September, 1960, on the trial of this consolidated action before the Acting Puisne Judge, the Honourable Mr. Justice Knox-Mawer be varied and set aside to the extent mentioned hereunder:

30

- (a) That the Judgment in so far as it relates to action No.220/1958 be varied and an order be

made that the Plaintiff pay to the Defendant his costs in the said action.

In the Fiji Court of Appeal

(b) That the Judgment in so far as it relates to action No.221/1958 be set aside and Judgment entered for the Plaintiff in accordance with paragraphs (b) and (c) of his prayer in the Statement of Claim AND FURTHER that the said action be remitted to the Supreme Court to determine what amount the Defendant should pay to the Plaintiff in the said action by way of reimbursement for the money expended by the Plaintiff on the Defendant's lease AND FOR AN ORDER that the Defendant LAWRENCE PARDOE pay the costs on the Counterclaim and of this appeal AND FURTHER TAKE NOTICE that the grounds of Appeal are:-

No.13.  
Notice and Grounds of Appeal.  
21st October, 1960  
- continued.

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1. That the Learned trial Judge misdirected himself in law and in fact in refusing the Defendant NATHANIEL STUART CHALMERS costs in Action No.220/1958, inasmuch as the Plaintiff LAWRENCE PARDOE did not show a cause of action either in law or equity nor did he substantiate his claim in any way.

2. That the Plaintiff NATHANIEL STUART CHALMERS was claiming relief in equity in Action No.221/1958 and except as to the amount of moneys expended by him on the Defendant's lease, the Plaintiff established his case on the facts and in law and the learned trial Judge misdirected himself in not evaluating the oral evidence adduced by the Plaintiff and the Defendant, and the evidence disclosed in the pleadings and correspondence in the said action.

3. That the learned trial Judge erred in not allowing the Plaintiff NATHANIEL STUART CHALMERS his costs on the Counterclaim in Action No.221/1958, inasmuch as the Defendant LAWRENCE PARDOE failed to establish his claim as set out in his Counterclaim AND FURTHER TAKE NOTICE that the said NATHANIEL STUART CHALMERS complains as to part only of the findings of the learned trial Judge on the claim in Action No.220/1958 namely, that the Defendant was not entitled to any costs on such claim and also his findings that the Plaintiff had not discharged the onus of proof in Action No.221/1958 and that he the Plaintiff

In the Fiji  
Court of Appeal

No.13.

Notice and  
Grounds of  
Appeal.

21st October,  
1960

- continued.

was not entitled to any costs on the claim  
and Counterclaim in this action.

DATED the 21st day of October, 1960.

KOYA & CO.,  
per: (Sgd:) S.M.KOYA

Solicitors for the above-named  
NATHANIEL STUART CHALMERS.

To the above-named Lawrence Pardoe  
or his Solicitor,  
K.C. Ramrakha, Esq., SUVA.

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No.14.

Notice and  
Grounds of  
Cross-Appeal.

24th November,  
1960.

No. 14.

NOTICE AND GROUNDS OF CROSS-APPEAL

IN THE FIJI COURT OF APPEAL

CIVIL APPEAL

CIVIL JURISDICTION

No.17 of 1960

ACTION NO.220 of 1958

BETWEEN:- LAWRENCE PARDOE

Plaintiff

- and -

NATHANIEL STUART CHALMERS

Defendant

- and -

BETWEEN:- NATHANIEL STUART CHALMERS

Plaintiff

- and -

LAWRENCE PARDOE

Defendant

20

(CONSOLIDATED BY ORDER DATED THE 2nd MARCH, 1960)

NOTICE OF CROSS-APPEAL

TAKE NOTICE that the Court of Appeal will be  
moved at the expiration of Eight (8) days from  
the service upon you of this Notice by Counsel for  
the above-named, LAWRENCE PARDOE for an ORDER that  
the Judgment given at the Supreme Court, Suva, on  
the 30th day of September, 1960 on the trial of  
the consolidated action before the Acting Puisne  
Judge, the Honourable Mr. Justice Knox-Mawer be  
varied and set aside to the extent mentioned here-  
under.

30

(a) That the Judgment insofar as it relates to  
Action Number 220/1958 be varied and judgment  
be entered for Lawrence Pardoe with costs on

the said claim or alternatively an order for costs be made in the said action;

- (b) That the Judgment insofar as it relates to Action No.221/1958 be set aside to the extent that judgment be entered for LAWRENCE PARDOE on the counterclaim with costs

AND FURTHER TAKE NOTICE that the grounds of appeal are as follows:-

- 10 1. That the learned trial Judge misdirected himself in law and in fact in not holding that LAWRENCE PARDOE was entitled to an order for injunction with costs in Action Number 220 of 1958 inasmuch as NATHANIEL STUART CHALMERS did not disclose any defence to the said action;
- 20 2. That the learned trial Judge misdirected himself in law and in fact in not allowing LAWRENCE PARDOE'S counterclaim in Action No.221 of 1958 inasmuch as NATHANIEL STUART CHALMERS acted as a legal adviser for LAWRENCE PARDOE in connection with the matter of his building on the lease and damage and loss resulted to LAWRENCE PARDOE as a result of Chalmers failure to legalise the matter
- 30 3. That the learned trial Judge erred in law and in fact in stating that NATHANIEL STUART CHALMERS be permitted to remove the buildings in question or alternatively, the learned trial Judge erred in law and in fact in permitting any such removal without putting LAWRENCE PARDOE in his original position by compensating him as to his costs and damage;
4. That the learned trial Judge erred in law in not allowing LAWRENCE PARDOE costs on the claim in Action Number 221 of 1958 inasmuch as NATHANIEL STUART CHALMERS failed entirely to prove his case

AND FURTHER TAKE NOTICE that Lawrence Pardoe complains as to part of the Judgment only.

DATED this 24th day of November, 1960.

(Sgd:) K.C. RAMRAKHA  
Solicitor for LAWRENCE PARDOE.

In the Fiji  
Court of Appeal

No.14.

Notice and  
Grounds of  
Cross-Appeal.

24th November,  
1960

- continued.



The learned trial Judge, in the course of his judgment, emphasised the confusing and conflicting nature of the evidence and the difficulty he encountered in the matter of finding the facts. For the purpose of the determination of these appeals, however, the proved and admitted facts can be contained within a small compass.

In the Fiji  
Court of Appeal

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No.15.

Judgment.

5th May, 1961

- continued.

10 At all material times the Respondent was the lessee of certain lands in the Conua District, held under Lease 7235 from the Native Land Trust Board under the provisions of the Native Land Trust Ordinance, Cap.104. While the relations between the parties were friendly, the Respondent permitted the Appellant to erect certain buildings on the land comprised in the lease. There was some discussion between the parties as to obtaining the consent of the Native Land Trust Board, and at one time there was a proposal that the Respondent should surrender a portion of his leasehold land and that the Appellant would obtain a new lease of the surrendered portion from the Board. The Board was aware that the buildings had been erected and on this account increased the rental payable by the Respondent. At no time, however, was an application made to the Native Land Trust Board for consent to the erection of the buildings by the Appellant nor to his occupation of a portion of the leasehold land.

20

30 The first question for determination on the Appeal is the legality of the arrangement entered into between the Appellant and the Respondent as a result of which the Appellant erected the buildings in question on the Respondent's leasehold land. This requires a consideration of the provisions of the Native Land Trust Board Ordinance, Cap. 104. The two sections which were discussed in the course of the argument at the hearing of the appeal were Sections 12 and 27. These read:-

40 "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

In the Fiji  
Court of Appeal

No.15.  
Judgment.  
5th May, 1961  
- continued.

or other unlawful alienation or dealing effected without such consent shall be null and void."

"27. Any person who is found to be in unlawful occupation of any native land shall be liable to immediate eviction and to a fine of fifty pounds or to imprisonment for six months or to both such fine and imprisonment."

Counsel for the Appellant conceded that if the arrangements between the parties constitute an illegal transaction then the Appellant is not entitled to the equitable relief which he claims. 10

Section 12 is very wide in its scope. It provides in effect that no dealing of any sort with the land, without the prior consent of the Board, is lawful. On this aspect of the appeal Counsel for the Appellant made two main submissions to the Court:

- (a) That the arrangement or transaction entered into between the parties was not a "dealing with" land; 20
- (b) That even if it were held that the transaction was illegal as against the Board it was good between the parties.

We cannot subscribe to the doctrine set out in the second of these submissions. We do not understand the phrase used by Counsel "illegal as against the Board, but legal as between the parties". A transaction which is illegal is contrary to law, and accordingly, has no validity whatever, even between the parties. 30

As to the first submission, Counsel contends that the evidence disclosed merely a "friendly arrangement" between the parties which did not in any sense constitute "alienating or dealing with" the land. This is the crux of the matter. Even if it were found that the Native Land Trust Board had tacitly consented to the erection of the buildings by its action in increasing the rent on that account - and there is no such finding - the consent, to make the transaction lawful, must be the prior consent. Section 12 is quite clear on this point. If the consent of the Board is not first had and obtained, the alienation or dealing with the land is unlawful. 40

Counsel for the Appellant submits that the

Lessee, under a lease from the Native Land Trust Board, can do anything he wishes, without bringing his action within the ambit of Section 12, provided that he does not create an interest in the land. He further contends that permitting an act which may give rise to an equitable charge over the land is not creating or disposing of an interest in the land. This contention, in our view, is untenable.

In the Fiji  
Court of Appeal

No.15.

Judgment.

5th May, 1961

- continued.

10 The "friendly arrangement" entered into between the Respondent and the Appellant amounted to granting the Appellant permission to treat a certain portion of the land comprised in the lease as if the Appellant were in fact the Lessee. Under this arrangement the Respondent gave the Appellant possession of part of the land. He granted to the Appellant permission to enjoy exclusive occupation of that portion of the land, and to erect such buildings thereon as he wished. Such an arrangement could we think be considered an "alienation",  
20 as was argued in *Kuppan v. Unni*, 4 F.L.R., 188. Whether or not it was an alienation it can, we think, hardly be contended that it did not amount to a dealing in land within the meaning of Section 12. It is true that the "friendly arrangement" did not amount to a formal sublease of a portion of the land or to a formal transfer of the lessee's interest in part of the land comprised in the lease. The least possible legal effect which in our opinion could be given to this arrangement  
30 would be to describe it as a licence to occupy coupled with possession, granted by the lessee to the Appellant. In our opinion, the granting of such a licence and possession constitutes a dealing with the land so as to come within the provisions of Section 12, Cap.104. The consent of the Native Land Trust Board was admittedly not obtained prior to this dealing, which thus becomes unlawful and acquires all the attributes of illegality. An equitable charge cannot be brought into being by  
40 an unlawful transaction, and the Appellant's claim to such a charge must therefore fail.

With the exception of the matter of costs, that disposes of the appeal.

The cross-appeal as has been stated, was at the hearing, limited to the question of the order permitting the Appellant, Chalmers, to remove the buildings erected by him on the leasehold lands of the Respondent, Pardoe. The trial Judge made the order because of the evidence of the Respondent

In the Fiji  
Court of Appeal

No.15.

Judgment.

5th May, 1961

- continued.

Pardoe that the buildings were a source of nuisance and expense to him. This evidence, as Counsel points out, may have furnished a good moral ground for making the order, but we cannot find any legal ground for it. The right to remove the buildings is not claimed by the Appellant, Chalmers. Neither in his pleadings nor in his evidence does he ask for an order permitting him to remove the buildings. As, therefore, this matter was not put in issue between the parties, we think that the learned trial Judge was not entitled to make the order which he in fact made. 10

With regard to the question of costs, these were in the discretion of the court below and this Court will not interfere with the exercise of that discretion unless it can be shown that it was exercised upon a wrong principle. We are not satisfied by the arguments put forward at the hearing of the appeal that in making the order for costs, the trial Judge acted upon a wrong principle, and both appeal and cross-appeal in so far as they concern the question of costs will be dismissed. 20

In the result, the appeal of the Appellant, Nathaniel Stuart Chalmers, is dismissed. The cross-appeal of the Respondent, Lawrence Pardoe, is allowed in part by setting aside the order made by the learned trial Judge permitting the Appellant, Chalmers (Respondent on cross-appeal) forthwith to remove the buildings erected by Appellant on the leasehold land of the Respondent. 30

With regard to costs in this Court, as the Appellant has failed and the Respondent has succeeded in part, we allow the Respondent 35 guineas costs on the appeal and cross-appeal, together with disbursements.

(Sgd:) C.J. HAMMETT,  
President.

(Sgd:) C.C. MARSACK,  
Judge of Appeal.

(Sgd:) JAMES P. TRAINOR,  
Judge of Appeal. 40

SUVA,  
5th May, 1961.

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No. 16.

ORDER.

In the Fiji  
Court of Appeal

No.16.

Order.

5th May, 1961.

IN THE FIJI COURT OF APPEAL

CIVIL JURISDICTION

CIVIL APPEAL NO. 17 of 1960

BETWEEN:- LAWRENCE PARDOE Respondent (Plaintiff)

- and -

NATHANIEL STUART  
CHALMERS Appellant (Defendant)

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- and -

BETWEEN:- NATHANIEL STUART  
CHALMERS Appellant (Plaintiff)

- and -

LAWRENCE PARDOE Respondent (Defendant)

CONSOLIDATED BY ORDER DATED THE 2nd day of MARCH,  
1960.

FRIDAY THE 5th DAY OF MAY, 1961.

20

UPON READING the Notice of Motion on behalf of  
the above-named Appellant NATHANIEL STUART CHALMERS  
dated the 21st October, 1960 and the Notice on be-  
half of the above-named Respondent LAWRENCE PARDOE  
dated the day of November, 1960 of his inten-  
tion to contend that the Judgment herein should be  
varied and the Judgment hereinafter mentioned AND  
UPON READING the Judge's Notes herein AND UPON  
HEARING MR.SIDDIQ MOIDIN KOYA of Counsel for the  
Appellant and MR. RONALD GRAHAM KERMODE of Counsel  
for the Respondent AND MATURE DELIBERATION there-  
upon and IT IS ORDERED that this Appeal be dis-  
missed AND IT IS FURTHER ORDERED that the Order  
made by the trial Judge in the Court below permit-  
ting the Appellant forthwith to remove the build-  
ings erected by him on the Respondent's leasehold  
land comprised in Native Lease No.7235 and situate  
at Sigatoka BE SET ASIDE AND that the Appellant do  
pay to the Respondent the sum of £36.15.0 being  
costs on the Appeal and Cross-appeal together with  
the disbursements herein.

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BY THE COURT

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(SEAL)

Sgd: G. YATES.  
REGISTRAR.

In the Fiji  
Court of Appeal

No. 17.

No.17.

Order granting  
Leave to Appeal  
to the Privy  
Council.

2nd June, 1961.

ORDER GRANTING LEAVE TO APPEAL TO THE PRIVY  
COUNCIL

IN THE FIJI COURT OF APPEAL  
CIVIL JURISDICTION

CIVIL APPEAL NO. 17/1960.

BETWEEN:- LAWRENCE PARDOE Respondent (Plaintiff)

- and -

NATHANIEL STUART  
CHALMERS

Appellant (Defendant)

10

- and -

BETWEEN:- NATHANIEL STUART  
CHALMERS

Appellant (Plaintiff)

- and -

LAWRENCE PARDOE Respondent (Defendant)

ACTION NO.221 of 1958

CONSOLIDATED BY ORDER OF THE SUPREME COURT ON  
2nd MARCH, 1958.

FRIDAY THE 2nd day of JUNE, 1961, BEFORE HIS LORD-  
SHIP THE ACTING PUISNE JUDGE, MR. JUSTICE KNOX -  
MAWER IN CHAMBERS, SITTING AS A JUDGE OF THE FIJI  
COURT OF APPEAL.

20

UPON MOTION this day made unto the Court by  
Counsel for the above-named Appellant for leave to  
Appeal to Her Majesty in Privy Council from the  
Judgment of this Honourable Court given and dated  
the 5th day of May, 1961 dismissing the Appeal  
lodged by the Appellant and allowing the Cross-  
Appeal lodged by the Respondent herein of which  
the Appellant gave Notice of Motion dated the 24th  
day of May, 1961 AND UPON HEARING MR.SIDDIQ MOIDIN  
KOYA of Counsel for the Appellant and MR. RONALD  
GRAHAME KERMODE of Counsel for the Respondent  
IT IS ORDERED BY CONSENT that the Appellant do  
have leave and leave is hereby granted to the  
Appellant to enter and prosecute his Appeal before  
the Privy Council against the Judgment of this  
Honourable Court dated the 5th day of May, 1961  
UPON depositing in the Registry of this Honourable  
Court a Bond duly executed by him for the sum of  
TWO HUNDRED POUNDS (£200.0.0) as security for costs

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in respect of costs for the prosecution of the intended Appeal AND IT IS DIRECTED that the Registrar of this Honourable Court do transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the Record proper to be laid before the Privy Council on the hearing of the Appeal upon payment by the Appellant the usual fees for the same.

BY THE COURT

Sgd: G. YATES.  
REGISTRAR.

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In the Fiji  
Court of Appeal

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No.17.

Order granting  
Leave to Appeal  
to the Privy  
Council.

2nd June, 1961  
- continued.

Exhibits

E X H I B I T S

"2"

(1 & 2)  
Letter,  
N.S. Chalmers  
to L.Pardoe.

28th July,  
1955.

"2" (1 & 2) - LETTER, N.S.CHALMERS TO L.PARDOE

CONFIDENTIAL

P.O.Box 187 Lautoka.  
28th July, 1955.

Dear Lorrie,

Yesterday a Shell representative with his assistant (I think both from Melbourne) and Albert Waddingham came out here and asked me where Bossley's lot was. They were interested. I told them the lot had been sold to you. They may contact you if they decide to put up tanks out there. They discussed at length possible sites for tanks and will send out people to find out the lift from sea level to different parts of the property. If they do contact you I suggest you advise them that I am acting for you and contact me if they are interested.

10

Strange to say there has been a long delay in getting the transfer put through and I am just wondering why? Bossley works for B.P's who are the Shell agents. I wrote Ellis & Co., asking them to let me have the lease so that I could prepare the transfer and get you to sign the same but they wrote me that they had sent your cheque to Suva and they were waiting to be advised whether it was cleared (i.e. paid). I hope the Bank paid out on the cheque which I am sure it would do. This is the only excuse for the delay and once the cheque is paid Bossley cannot get out of the sale. We may be able to do a deal with Shell if they are really interested and not just snooping about. Although they have bulk supplies at Lautoka it is almost impossible to get a tanker to unload there as the whole harbour is so shallow and it seems doubtful even if the proposed wharf is constructed whether a tanker will be able to call at Lautoka as they, when loaded, draw a great deal of water. So far as question of purchase etc. has been mentioned to me, I am pushing ahead with the sample building and it is working out O.K. You might ask friend Jim if he will sell us the hessian we paid for! at least Ajodhya Prasad, Basil and myself.

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I have had some interesting correspondence (personal) with Mr. Fyfe, Secretary of the Board of Health. The Board is intensely interested in our venture and are anxious to know when our demonstration buildings is completed.

They are giving me a free hand in matters of design etc. but before doing business with us and the Government in general will want to have the building tested by an Engineer as to its structural strength. I agree with that view as we have only what the makers claim as regards that.

10 Yesterday the Manager of the C.S.R. called out here to see me. He told me Mr. Elliot was coming by air today and would be here at 4-30 p.m. to see me. He is very much interested in the sample building as the C.S.R. has agreed to spend its £40,000 share of the gift money from Britain on housing for its workers etc.

Just keeping you advised.

Yours truly,  
Sgd: NAT.

Exhibits

"2"  
(1 & 2)

Letter,  
N.S. Chalmers  
to L. Pardoe.  
28th July, 1955  
- continued.

"2" (3) - LETTER, N.S.CHALMERS TO L.PARDOE

P.O. Box 187,  
Lautoka, Fiji  
August 9th 1955

20 Dear Lorrie,

Thanks for your note, Shell definitely want your lease and mine (over ten acres) combined. When Bossley heard about Shell he wanted to go back on his contract for sale but as the money was paid he could do nothing. I have now got the transfer duly signed but as you may be here before very long I will hold it in the meantime for you to sign before me.

"2"  
(3)  
Letter,  
N.S.Chalmers  
to L. Pardoe.  
9th August,  
1955.

30 My brother Clive, a very eminent lawyer, who came here to defend a murder case and I am glad to say won his case - the two accused being held not guilty - returns to Auckland tomorrow. He says that he should make a definite offer to Shell for our lands etc. and give them a time limit of 14 days to accept or otherwise. Clive says that under the Crown Acquisition of Lands Ordinance the Governor has very wide powers. He can take over any land for any purpose which he thinks a Public Purpose and his decision is final. If we make the offer now and it is turned down then the Governor may not exercise his powers. We could easily say that the storage and supply of kerosene etc., is a public purpose.

40

Exhibits

"2"

(3)

Letter,  
N.S.Chalmers  
to L.Pardoe.

9th August,  
1955

- continued.

Today I am making an offer to Shell of £8000. Seven thousand for my land, building and improvements and £1000 for your lease (or I should say our lease) acquired from Bossley. I am fixing a condition that we have the right to remain here for one year. In the meantime I am negotiating with the Native Land Trust Board to let us have 4 blocks in the heart of Lautoka kept in reserve for my Fiji Kisan Sangh. I think you will agree that I have adopted the wisest course. As Ajodhya Prasad is in with us we will be able to make use of the Kisan Sangh Building (to cost about £25000) at Lautoka when it is completed - possibly in about a year.

10

Clive says definitely that, we, AERATED CONCRETE UTILIZATION COMPANY now must get the licence from Aerocem. It will be a condition in the use of the plant (patent rights) - this notwithstanding what Mrs. Bernard thinks. However, we should try and get exclusive rights.

20

This is a matter of great importance but I do not wish to do anything without your approval in the matter.

As our firm is now registered would you please push ahead with the printing of the Letter Heads and also get a rubber stamp made as follows :-

The Aerated Concrete Utilisation Co. (Reg.)  
P.O. Box 187 Lautoka Fiji.

This could be round in shape with the Box number etc. in the middle.

30

Clive leaves for Auckland by air in the morning.

All the best,

Yours truly,

Sgd: NAT.

"2"

(4)

Letter,  
N.S.Chalmers  
to L.Pardoe.

17th February,  
1956.

"2" (4) - LETTER, N.S.CHALMERS to L.PARDOE

Vuda.

17-2-56.

My dear Lorrie,

Clive has asked me to abandon the idea of building me a cottage at Sigatoka. He prefers to be at Vuda and in close touch with Lautoka by a good road. He will, if here, be able to pick up

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some good fees. In addition to that I have been advised that unless I erect the building on Bossley's Lease (which is in your name and we jointly own) by the end of 1956 we will forfeit the lease. As the lease is next to the V.O.C. WE MUST NOT FORFEIT THAT LEASE. IT IS A VERY VALUABLE PROPERTY. In fact I would advise you to sell out Walker's property and come to Vuda. Here you could expand on the property which has many excellent concrete foundations. Between us we have our ten acres of excellent flat land which we could put at least 6 acres into cane which would give a return of about £500 per annum. I am now forced to erect a building with internal dimensions of 800 sq.feet or we will lose the lease. This means a loss of £300 and I have since then paid the rent. I have contracted two building firms and the cost of the building will be about £2000 but I will find the money to save the lease. I know you like Walker's property but you must remember that all that land is very steep whereas at Vuda we have good flat land. At least 8 acres of excellent land. I have definitely decided not to build at Sigatoka. BECAUSE WE MUST BUILD HERE TO SAVE THE LEASE which is a very valuable one. You might sell out Walker's property to your neighbours but I think you should try and sell out I was sold in Suva Walker had been trying to sell out for a long time but got no offer. I leave the matter in your hands. Just one thing as I HAVE TO BUILD ON BOSSLEY'S lease will you get a truck and send me back all the timber. I will pay the cost. Stop some truck at the end of the road and ask them to deliver the timber to me. You and I could greatly develop this property even with poultry as we have a ready supply of rice meal coconut meal etc. My advice to you is to quit Sigatoka and come to Vuda and build a cheap cottage on one of the American concrete foundations. We are good friends (like brothers) and I feel that I can speak my mind to you but I definitely like Walker's House but do not like the situation. I also do not like the nature of the land. It would be alright for you with a Land Rover or a Tractor (Ferguson) but my last experience of getting up that hill with a powerful car was enough for me. I think a Ferguson or a Land Rover are the only answer. Some of the bends are far too short for a large car but what can be done?

I hope you will not take offence at what I write as you and I speak our minds freely. If you

Exhibits

"2"  
(4)

Letter,  
N.S.Chalmers  
to L.Pardoe.  
17th February,  
1956  
- continued.

Exhibits

"2"  
(4)

Letter,  
N.S.Chalmers  
to L.Pardoe.

17th February,  
1956

- continued.

have to run - around here and bring Russel fierman with you. I would be very pleased. I may not be here after the 20th April as I may be going to the League of Nations in the U.S.A.

Yours,  
Sgd: NAT.

P.S. I have Bossley's Lease here duly registered in your name.

"2"  
(5)

Letter,  
N.S.Chalmers  
to L.Pardoe.

27th March,  
1956.

"2"(5) - LETTER, N.S.CHALMERS TO L.PARDOE

N.S.Chalmers,  
Barrister & Solicitor.

P.O. Box 187,  
Lautoka Fiji.  
27-3-56.

10

Dear Lorrie,

The Shell representative called on me today he made an offer of £1000 for our lot (Bossley's) as the N.L.T.B. would not agree to a sale above that price, which I think is reasonable, as we have made no improvements on the land although I have spent £15 odd in labour cleaning up the site at the point. I agreed to accept that price. We bought the property for £300 but to date the outgoing costs rent transfer fees etc. come to £47. This means £347 to be divided between us and then the rest halved between us as profit. I have not worked out the figures but it should mean a profit to each of us at about £300 each. Shell would not agree to purchase without taking my lot so I have agreed to sell out to them for £4500. Whether they will buy or not I do not know. This means a total purchase price of £5,500 but Shell had a limit only of £5000 but I think they will buy. In any case they will buy your lot and we can share the proceeds. I am in a different position my buildings fencing etc. have been valued at £5000.

20

30

I am stipulating I live here for 12 months by that time my large Kisan Sangh building will be completed at Lautoka and I am to have rooms in that building with lighting and other amenities so actually I am not sorry to get out of here although as Basil said yesterday when the family called to see me it was a lovely spot.

40

Yours

"2"(6 & 7) - LETTER, N.S.CHALMERS TO NATIVE LAND TRUST BOARD.

Exhibits

"2"

(6 & 7)

The Secretary,  
The N.L.T.B. SUVA.

P.O. Nadroga

Nov.28th 1956

Dear Sir,

re Mr.L.Pardoe and N.L. 7235  
"GUSUNAWERELOA" Nadroga.

Letter,  
N.S.Chalmers to  
Native Land  
Trust Board.

28th November,  
1956.

10 Mr. Pardoe showed me a letter today from you re the above. He is going to Suva and will personally explain the position to you. These are briefly the facts. Mr. Pardoe owned a lease at Vuda acquired from Mr. Bossley. I also owned a lease there acquired by me from Mr.Kermode. I had built there and Mr. Pardoe intended to build there as we were jointly interested in "Aerocem" particulars of which are attached and we intended to exploit the Aerated Concrete process under world patents. However our plans were all upset as a result of the Shell Oil Co. wanting the land. Mr. Foster suggested that if we did not wish to sell out we could refuse but in reply I pointed out to him the powers vested in the Governor under the Acquisition of Lands Ordinance ... under this ordinance he could declare any purpose to be a public purpose and so 50 acres of my freehold at Vatia was taken over from me to provide a wharf and tanks for the goldmines. The Governor declaring it a public purpose and, perhaps, correctly so. In the same way they took from my client Ramnarain 40 acres of his freehold for the extension of a run-away at the Nadi Airport and although promising to take no more land from him I understand they intend taking the balance of his freehold 160 acres for a new run-away. Consequently I felt and advised Pardoe that we had to get out of Vuda. I visited the land yesterday. My house had been demolished and the whole area looked like nothing on earth with the great excavation work proceeding. Pardoe had decided to sell out his Suva property, and as I have said, build at Vuda. Luckily he bought the above lease from Walker (late retired Collector of Customs) so had a place to go to. I arranged with him that I acquire an undivided half-share in the lease. My idea was to join him in Walker's house. I did so. It is a fine little house with all modern conveniences (all concrete) but it is a very small house and I was faced with the problem of what to do with my furniture etc. Things were moving rapidly and Shell wanted me to get out as soon as

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30

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Exhibits

"2"

(6 &amp; 7)

Letter,  
N.S.Chalmers to  
Native Land  
Trust Board.

28th November,  
1956

- continued.

possible. The problem facing me where could I store all my personal property? I found the climb up the steep hill to Pardoe's house impossible. I nearly lost myself and the car in taking one of the steep bends when the Road was wet. Pardoe told me Walker never drove up the hill but let his car in a garage near the sea. He suggested I build there and as the matter was one of urgency I started and am still carrying on here on about 1 acre which is all the land available between the Queen's road and the sea. Under the circumstances I could see no advantage in buying a half share in the above lease. All I wanted was the small area I required plus (if I could get it) about one acre along the sea frontage adjoining the above lease and Navoto No which is all bush except for a small area on which Mr. Maurice Scott has a building. Actually Mr. Pardoe as he told, has never seen the lease. It has been with his Solicitor Mrs. Bernard. However, he told me the lease was a residential lease. My lease at Vuda was also a residential lease. Its terms required that I build a house of at least 800 sq.ft. I did this. Later I wanted to erect some more buildings for servants etc. and I have before me a letter signed by Mr. Foster that I could erect additional buildings with the approval of the Local Authority. My position is now this. I want to get a sub-lease of the small area occupied by me. It is difficult to contact a surveyor. However, I contacted Mr. Bygrave and asked him to get out a sketch plan (or plans for the area occupied by me. I intend then to submit these to the sub-division of Land Board and if approved then to the N.L.T.B.

As a Solicitor I cannot act directly with Mr. Pardoe so put the matter into the hands of Mr. Kermode at Lautoka (Munro, Warren, Lees and Kermode). However, it has been suggested that Mr. Pardoe let me have an area (5 acres I think) which does not involve the Sub-division of lands ord. I would mention all the land in this area is lying idle. I would also mention that when I called at the N.L.T.B. in B.P's Buildings I made mention of what I wanted. All I wanted was an Agreement for a sub-lease and was told there was not likely to be any objection to the same being approved by the Board. The buildings erected by me have all been passed and approved by the Rural Authority. I am prepared and anxious to do everything I can to regularise matters in connection with the lease but

I wish to say that I do not now wish to take an undivided half-share in the whole lease seeing I have at a cost of some £1800 (possibly more) built myself in here although I am so near the Queen's Road. I suffer much from the dust nuisance for the everlasting stream of motor traffic passing so close to me.

If you will advise me what I should do to regularise the matter I will certainly do so.

Yours faithfully,  
(N.S.CHALMERS)

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Exhibits

"2"  
(6 & 7)

Letter,  
N.S.Chalmers to  
Native Land  
Trust Board.

28th November,  
1956

- continued.

"2"(8) - LETTER, L.PARTOE TO NATIVE LANDS TRUST  
BOARD.

"2"  
(8)

The Secretary,  
Native Lands Trust Board,  
SUVA.

C/o Post Office,  
Nadroga,  
Nasigatoka.  
29-11-56.

Letter,  
L.Pardoe to  
Native Lands  
Trust Board.

Dear Sir,

29th November,  
1956.

I am in receipt of your letter dated 22-11-56 number 4/11/53.

20

I sincerely regret having to admit that to this day I am in total ignorance of the provisions of Clauses 7 and 8 of the lease to which you refer; in fact I am having to make enquiries as to which lawyer at present has it. I make the statement in all good faith.

When I agreed to purchase the property from the Vendor Mr.A.Walker, the documents were handed to a Solicitor to fix the details and I have not to this day sighted it.

30

Sometime ago Mr.N.S.Chalmers approached me regarding a place to stay. His house at Vuda has had to be sold. I told him that he could erect a place on my property but that I could not lease or subdivide. At the same time I mentioned that I had no objection to do so if he could arrange matters. In the meantime if he was prepared to pay the expenses he was free to erect a dwelling in which he could live.

40

When I received your letter I discussed the matter with him and he said that he was not permitted to act for himself in the matter and that he had instructed Messrs. Munro Warren Leys & Kermodé to act for him I duly appointed Messrs. Cromptons

Exhibits

"2"

(8)

Letter,  
L.Pardoe to  
Native Lands  
Trust Board.

29th November,  
1956

- continued.

to deal with them. I am unaware of any approaches having been made by his Solicitors in the matter.

Virtually the position is that he had my permission to reside there and no money has changed hands in the matter whatsoever, it is merely a place for him to stay. I sincerely hope that I have in no way violated any principle

Yours faithfully,

Sgd: L. PARDOE.

"2"

(9)

Letter,  
Native Land  
Trust Board to  
N.S. Chalmers.

5th December,  
1956.

"2"(9) - LETTER, NATIVE LAND TRUST BOARD TO  
N.S.CHALMERS.

10

4/11/153.

Mr.N.S.Chalmers,  
P.O. Nadroga,  
NADROGA.

Dear Sir,

NATIVE LAND TRUST BOARD,  
SUVA, FIJI.  
5th December, 1956

Re: Mr.L.Pardoe and N.L.  
Gusunawereloa, Nadroga

I have to acknowledge receipt of your letter of the 28th November.

20

This lease is registered in the name of Pardoe and it has been explained to him that any proposition he may care to put forward as lessee will be conveyed to the Native Land Trust Board for consideration.

The conditions of his lease have also been explained to him.

Yours faithfully,  
(Thomas E. Foster)

30

TEF:PLS.

MANAGER.

"2"

(10)

Letter, L.Pardoe  
to Native Land  
Trust Board.

21st December,  
1956.

"2"(10) - LETTER, L. PARDOE TO NATIVE LAND TRUST  
BOARD.

COPY

The Secretary,  
The Native Land Trust Board,  
SUVA.

Dear Sir,

P.O. Nadroga.  
December 21st, 1956

Re my lease of GUSUNAWERELOA registered in my name by virtue of Transfer No. 59999 dated the 6th December, 1955.

40

I agree to surrender up to the Board for the purpose of leasing to Nathaniel Stuart Chalmers, retired Solicitor, as a building lease that small portion of my lease bounded as follows:-

The Queens Road, the boundary of Navotu 2, a small creek of the same name as the lease and H.W. Mark. containing an approximate area of 3/4 to one acre. All costs connected with the matter will have to be paid by Mr.Chalmers which he has agreed to do.

I also intend at a later date to apply to the Board for permission to surrender up a portion of the lease and have a separate lease issued to me as a building lease.

Yours faithfully,  
(Sgd:) LAWRENCE PARDOE.

(Sgd:) N.S.Chalmers.

Exhibits

"2"

(10)

Letter, L.Pardoe  
to Native Land  
Trust Board.

21st December,  
1956

- continued.

"2"(11) - LETTER, L.PARDOE TO N.S.CHALMERS

29th December, 1956

20 Dear Nat,

Just a note to confirm our Agreement this afternoon on the position of our business affairs.

My transferring to you my entire interest in "Aerocem" makes us all square to date, with the single exception of Thirty pounds (£30) to be paid to me on completion of transfer of part of Gusunawereloa Lease.

Signed:

N.S. CHALMERS

L. PARDOE.

30 P.S. For the record, please endorse your agreement on copy and return.

"2"

(11)

Letter, L.Pardoe  
to N.S.Chalmers.

29th December,  
1956.

"2"(12) - LETTER, N.S.CHALMERS TO L.PARDOE

L.Pardoe, Esq.,

Dear Lorrie,

I was glad to sign the letter you handed me and so to know that I would free from you once and for all. You have forced me to take over the "Aerocem" plant because you were sitting on £750

"2"

(12)

Letter,  
N.S.Chalmers  
to L.Pardoe.

(Undated)

Exhibits

"2"

(12)

Letter,  
N.S.Chalmers  
to L.Pardoe.  
(Undated)  
- continued.

in your Bank account belonging to me. It was never agreed that I was to take over your share. Ayodhya Prasad and I were to take over a one third share each and you to retain the other share. As I did not want to take the matter to Court I decided to let the matter go at that even though I consider your actions to be very dishonest - especially when I had got for you £750 re the Bossley lease and had a fight to get that lease when Bossley heard the Shell were after it. From now onwards I will have no business dealings with you whatsoever and this especially refers to the Navua (Deuba) matter. That is definitely off as far as I am concerned and so in other dealings between us.

10

All I want now is the return to me of some personal property. These are listed by me as follows:- 4 rools 1" 3 ft wire netting

Wind electric Generator (Lucas)

You can keep the blade you made as I have two made at Lautoka. Both doubly varnished and have paid 12/- each for them. They were made before I left Vuda but I forgot about them until I went to Lautoka on the 29th ultimo. I had too much to think of in the uprooting of my house at Vuda.

20

One 12 G.S.B. Webbly-Scott Shot Gun.

My goats as taken from Vuda (Nancy and Nanci No.2 and the two kids).

One half of the fowls imported by me from Australia. They were 75 in all. But I am prepared to take one half of what you now have. My maize grinder.

30

All my brass posts purchased by me from the C.S.R. I am sending this letter by a servant of mine to start dismantling the wind charge. You will remember I offered the windcharger in exchange for old Walker's car but you said that was not the arrangement and so debited me £60 out of the £750. Incidentally you have not allowed me one penny interest on the use of this money which has kept down your overdraft interest at your bank. No it is a case of grab all. I was warned to have no dealings with you unless they were in writing and that is where I failed because I trusted you as a friend and an honest man. As soon as I get my personal possessions as above and Lewa tells me you have a cane chair and carpet belonging to me I will be happy.

40

Yours faithfully,  
Sgd: N.S. CHALMERS.

"2"(13) - LETTER, NATIVE LAND TRUST BOARD TO  
N.S.CHALMERS.

Exhibits

"2"  
(13)

Mr.N.S.Chalmers,  
P.O. Nadroga.  
Dear Sir,

NATIVE LAND TRUST BOARD,  
SUVA, FIJI.  
15th February, 1957

Letter, Native  
Land Trust  
Board to  
N.S.Chalmers.  
15th February,  
1957.

Re: Part of N.L.7235 GUSUNAWERELOA,  
Nadroga.

10 I have to acknowledge receipt of your letter  
concerning the above.

An application for consent to sub-divide has  
been received from Mr. Pardoe but his has not yet  
been considered by the Native Land Trust Board. In  
the meantime I would respectfully point out that  
you have no interest in N.L.7235 at all as far as  
the Board is concerned as no consent to surrender  
or transfer has ever been approved.

Yours faithfully,  
(Thomas E.Foster)  
Manager.

20 TEF:PLS

"2"(14) - LETTER, MANAGER, NATIVE LAND TRUST BOARD  
TO L. PARDOE

"2"  
(14)

COPY 20th February, 1957  
Lawrence Pardoe, Esq.,  
P.O.Sigatoka, NADROGA.  
Dear Sir,

Letter, Manager  
Native Land  
Trust Board to  
L.Pardoe.  
20th February,  
1957.

Re: Subdivision of Gusunawerehoa -  
N.S. Chalmers

30 I refer to your letter of the 21st December  
received in this office on the 8th January and  
would suggest that you have a properly surveyed  
plan of subdivision prepared and then submit it to  
the Native Land Trust Board for their consideration.  
After which it will have to be approved by the sub-  
division of Lands Board. If the Subdivision of  
Lands Board give their approval then I can see no  
objection to you surrendering the area in favour  
40 of a lease to N.S.Chalmers direct from the Native  
Land Trust Board.

Yours faithfully,  
(Sgd:) T.E. FOSTER,  
Manager.

Exhibits  
 "2"  
 (15)  
 Letter, Native  
 Land Trust  
 Board to  
 N.S. Chalmers.  
 10th May, 1957.

"2"(15) - LETTER, NATIVE LAND TRUST BOARD TO  
 N.S. CHALMERS.

4/11/153.

NATIVE LAND TRUST BOARD,  
 SUVA, FIJI.  
 10th May, 1957.

N.S.Chalmers, Esq.,  
 Nasigatoka, NADROGA.  
 Sir,

NATIVE LEASE 7235 - GUSUNAWERELOA

I refer to the correspondence ending with  
 your letter dated 22nd April, 1957, and I attach  
 for your information a copy addressed to the lessee,  
 Mr.L.Pardoe.

10

The lessee has breached the terms of his lease,  
 and the Native Land Trust Board is not prepared to  
 consider the matter until he has obtained the con-  
 sent of that Board and of the Subdivision of Land  
 Board (if such consent is necessary).

Yours faithfully,  
 (G.J.T.Hansen)  
 AG.MANAGER.

GJTH/ers/

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"2"  
 (16)  
 Letter, Native  
 Land Trust  
 Board to  
 L. Pardoe.  
 10th May, 1957.

"2"(16) - LETTER, NATIVE LAND TRUST BOARD TO  
 L. PARDOE

COPY  
 Mr.L.Pardoe,  
 Nasigatoka, NADROGA.  
 Sir,

10th May, 1957.

NATIVE LEASE 7235 - GUSUNAWERELOA

With reference to your letter dated 21st De-  
 cember, 1956, I am directed to inform you, without  
 prejudice to the Board's right -

30

- (a) that by permitting Mr. Chalmers to build on  
 and occupy a portion of the above lease you  
 have breached the provisions both of the  
 lease and of the Native Land Trust Ordinance;
- (b) that if you regularise the position by obtain-  
 ing all necessary consents the Native Land  
 Trust Board may be prepared, subject to re-  
 assessment of the rental to give favourable  
 consideration to a sublease to Mr. Chalmers  
 or to the issue of a separate lease to him on  
 surrender of an area by you, and

40

(c) that if you fail to regularise the position within a reasonable time, the Native Land Trust Board may consider cancellation of your lease for breach of conditions.

I shall be glad to receive further advice from you in due course.

Yours faithfully,  
(G.J.T.Hansen)  
AG.MANAGER.

Exhibits

"2"  
(16)

Letter, Native Land Trust Board to L.Pardoe.

10th May, 1957  
- continued.

10      "2"(17) - LETTER, N.S.CHALMERS TO NATIVE LAND TRUST BOARD

"2"  
(17)

The Secretary,  
The Native Land Trust Board,  
SUVA.      Address:  
P.O. Nadroga.  
August, 17th 1957.

Letter,  
N.S.Chalmers to  
Native Land  
Trust Board.

Dear Sir,

Re: Mr.L.Pardoe and yours to me  
of the 10th May last No. 4/11/153.

17th August,  
1957.

20      I refer to your letter above. As I have not heard from you further I thought I should contact you again.

I had reason to issue a writ against Mr.Pardoe for certain personal property he had uplifted at Vuda when I had to leave there and he promised to take care of them until I was settled again. Since then he had refused to deliver up to me my property. After issuing the writ he rang me up and told me I would not get a lease.

30      Since then he has returned most of my property taking the opportunity to do so when there was no one on the place except my Fijian house-girl.

When I paid him the £100 he said he would surrender up the land to the Board so the Board could give me a residential lease. He signed a document to that effect in the presence of Mr.Ian Gatward. Mr.Gatward later handed that document into your office.

40      It seems to me that it is now only necessary (to protect me) to have the land surveyed and to present him with a form of surrender to the Board of the land in respect of which I paid him the £100. It might be necessary to get the approval of the Board on the matter and possibly, the sub-division of Land Board.

Exhibits

"2"(17)

Letter,  
N.S.Chalmers to  
Native Land  
Trust Board.

17th August,  
1957

- continued.

I am anxious to have my position here made as secure as possible as I do not trust Pardoe now as far as I can see him.

I trust I will hear from you soon.

Yours faithfully,

Sgd: N.S. CHALMERS.

"2"(18)

Letter,  
Sigatoka Rural  
Local Authority  
to Messrs.  
Munro Warren  
Leys & Kermodé.

11th September,  
1957.

"2"(18) - LETTER, SIGATOKA RURAL LOCAL AUTHORITY  
TO MESSRS. MUNRO WARREN LEYS & KERMODE

B.C. 3/3.

11th September, 1957

10

Messrs.Munro, Warren, Leys & Kermodé,  
Barristers & Solicitors,  
P.O.Box 149, SUVA.

Gentlemen,

Mr.L.Pardoe's Native Lease 7235 -  
"Gusunawerehoa"

Our records show that the building plans as submitted by Mr.N.S.Chalmers were approved by the Local Authority and the buildings were later constructed.

20

With regard to the subdivision of the land, no record exists showing the approval of the Sub-division of Land Board.

A paragraph contained in the application and signed by Mr.Chalmers would perhaps be of help viz:

"One of the cottages will be for the use of my brother Mr.C.C.Chalmers of Auckland who wishes to avoid the N.Z. winters and the other for my own use or that of my relations or friends on holiday. I am arranging with Mr.Pardoe to give me an agreement for lease for the residue of the term of his lease for the area of ground required (about 2 acres) and then to get the approval of the N.L.T.B. to that Agreement.

30

This will be necessary for my own protection before actually starting on the building of these two holiday cottages.

In this application I wish to make it clear that I will comply with all requirements of the Local Authority concerned".

40

I am, Sir,  
Your obedient servant,

Martin

The Chairman, Sigatoka Rural Local Authority.

"2"(19) - LETTER, NATIVE LAND TRUST BOARD TO  
N.S.CHALMERS

Exhibits

4/11/153.

NATIVE LAND TRUST BOARD,  
SUVA, FIJI.

N.S.Chalmers, Esq.,  
Nasigatoka, NADROGA.

19th November, 1957

Sir,

Re: NATIVE LEASE 7235 - GUSUNAWERELOA

"2"  
(19)  
Letter, Native  
Land Trust  
Board to  
N.S. Chalmers.  
19th November,  
1957.

10 With reference to your letter dated the 17th  
August, 1957 I am to inform you that the Native  
Land Trust Board has now agreed that the lessee of  
the above lease, Mr.L.Pardoe should be authorised  
to erect a second dwellinghouse on the lease. This  
approval is subject to an increase in the rental  
from £9.15.0 per annum to £20 per annum and to the  
obtaining of all necessary consents from Local and  
Statutory Authorities, that is the Sub-division of  
Land Board.

Yours faithfully,  
(G.J.T.Hansen)  
Secretary.

20 GJTH/ip

"2"(20) - LETTER, N.S.CHALMERS TO NATIVE LAND  
TRUST BOARD

"2"  
(20)

The Secretary,  
The Native Land Trust Board,  
SUVA.

P.O. Nadroga.  
November 23rd 1957

Letter,  
N.S.Chalmers to  
Native Land  
Board.

Dear Sir,

23rd November,  
1957.

30 Re: N.L.7235...GUSUNAWERELOA and your  
letter of the 19th inst. (4/11/153)

I thank you for your letter herein referred  
to above. When I paid Mr.L.Pardoe the £100 he  
undertook to do what was necessary to secure for  
me from the Board a separate lease from the Board  
direct to me. I did not think the Board would  
raise any objections to granting me a lease of the  
small portion I occupy as the large area comprised  
in Mr.Paddoes lease is simply growing weeds and the  
area I occupy had to be cleared of scrub and rubbish.

40 In a letter written to me by Messrs. Munro  
Warren Leys and Kermode my attention was called to  
the memorandum signed by both of us and that Mr.  
Pardoe by letting me have this portion of his lease  
"had jeopardised his lease" and asked me to proceed

Exhibits

"2"  
(20)

Letter,  
N.S.Chalmers to  
Native Land  
Trust Board.

23rd November,  
1957

- continued.

as soon as possible, in having the Board's consent etc. granted to my having the land. Apparently this firm had not been advised by Mr. Pardoe that he had taken £100 from me out of money I had allowed to stand to his credit with his Bank to keep down the heavy interest payable on his Bank overdraft (some £4,000 odd).

I replied to that firm of Solicitors that as I was not the owner of the lease (7235) that the application to the Board should come from Mr. Pardoe. The letter from the firm to me was dated the 14th August, and my reply the 21st August. I received no reply to my letter.

10

The consent to the buildings was obtained from the Local Authority before building. The only consent now required would seem to be from the Sub-division of Land Board and the N.L.T.B. for the issue to me of a separate lease which Mr. Pardoe requested the Board to put into effect. In the meantime I acquired, subject to survey, about  $\frac{1}{2}$  an acre of freehold at Korotoga upon which to erect a shed for my launch which I keep there.

20

If you wish I will send you copies of the correspondence I have referred to above.

Yours faithfully,  
(N.S.Chalmers)

As I hear Mr. Pardoe was attempting to sell his lease I put a caveat on the lease on which was typed a copy of the memorandum signed by him and myself.

30

"2"  
(21)

Letter,  
N.S.Chalmers  
to Messrs.  
Tetzner &  
Bygrave.

11th January,  
1958.

"2"(21) - LETTER, N.S.CHALMERS TO MESSRS.TETZNER  
& BYGRAVE.

Messrs.Tetzner & Bygrave,  
Surveyors etc.,  
Victoria Parade, SUVA.

P.O. Nadroga,  
January 11th 1958

Dear Sirs,

I understand from Mr. Rayburn, Manager for M.H. Sigatoka that you have been carrying out some survey work for the firm. Unfortunately I did not know of this at the time as I have a small job I wish to have done. It would not warrant a special trip from Suva but Mr. Rayburn seems to think there may still be other work to do at Sigatoka.

40

The area is shown on the photostat copy of the plan ... starting from a peg on the Queens Rd. (continuation of boundary between Gusunawerelea) and Navoto 2 to a peg on the sea coast, thence along the H.W.M. to a continuation of the Gusunawerelea creek (which passes under a large culvert) back along the road to the point of commencement.

10 The first thing I have to do is to get the consent of the subdivision of Land Board. This means, I think, 3 sketch plans of the proposed subdivision. Perhaps it would be possible to prepare the sketch plans now from the data on the plan. The area has been worked out by the N.L.T.B. I think as 1 ac. 1 r. 4.8 perches.

I would be glad to hear from you on the matter.

Yours faithfully,  
(N.S.Chalmers)

"2" (22 & 23) - LETTER, N.S.CHALMERS TO MESSRS.  
MUNRO WARREN LEYS & KERMODE

20

Messrs.Munro, Warren,  
Ley & Kermode,  
Barristers & Solicitors,  
P.O.Box 149, SUVA.

P.O. Nadroga.  
January 11th 1958

Dear Sirs,

Re: L.Pardoe and myself and N.L.  
Gusunawerelea

I acknowledge with thanks the receipt of your letter herein of the 8th inst.

30

I will take steps to have the necessary sketch plans made (3) for submission to the Sub-division of Lands Board. At the same time I will have the area surveyed. Actually on the plan the lease the small area I occupy is shown as a separate lot on the sea-side of the Queens Road. The area has been worked out at 1 ac. 1 r. 4.8 perches. It has been suggested to me that the remaining small area on the sea-side of the Queens Road should be included in the area now actually occupied by me as it is not suitable for building or other purposes. I would mention that it is very difficult to get the services of a surveyor but I shall do my best to expedite the matter.

40

In the meantime I will try and get the sketch

Exhibits

"2"  
(21)

Letter,  
N.S.Chalmers  
to Messrs.  
Tetzner &  
Bygrave.

11th January,  
1958

- continued.

"2"  
(22 & 23)

Letter,  
N.S.Chalmers to  
Messrs. Munro  
Warren Ley &  
Kermode.

11th January,  
1958.

Exhibits

"2"  
(22 & 23)

Letter,  
N.S.Chalmers to  
Messrs. Munro  
Warren, Leys &  
Kermode.

11th January,  
1958

- continued.

plans (3) prepared so that the matter of obtaining the approval of the Subdivision of Land Board can be proceeded with.

With all due respect I think I cannot make the application for the subdivision. I think that application can only be made by the owner of the lease, Mr. Pardoe.

I consider it would be better for Mr. Pardoe to carry out the original agreement i.e. he surrender up to the N.L.T.B. the area occupied by me and the Board will then, I am sure, agree to give me a building lease of the area. This procedure would provide no grounds upon which the N.L.T.B. could reassess the rental on his lease as has been suggested by the Board. This could only be justified if he gave me a sub-lease and this was not the arrangement when he received from me the 2100.

10

You might consider these matters and advise me as soon as possible as I anticipate going to Auckland soon for a short vacation.

20

Yours faithfully,  
N.S.Chalmers  
(N.S.Chalmers)

P.S. Mr. Maurice Scott has a house along the coast about 6 chains from where I live and I understand has never got a lease or the approval of the subdivision of Land Board or the N.L.T.B. or the Local Authority so I am unable to understand all this fuss about Pardoe and myself. It seems to me that once approval is given to the subdivision all that will be necessary for Mr. Pardoe to do will be to execute a form of surrender. The Board has indicated it would agree to accept a surrender.

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"2"  
(24)

"2"(24) - LETTER, N.S.CHALMERS TO NATIVE LAND  
TRUST BOARD

Letter,  
N.S.Chalmers to  
Native Land  
Trust Board.

22nd January,  
1958.

The Secretary,  
The N.L.T.B., SUVA.

Dear Sir,

P.O. Nadroga.  
January 22nd 1958

Re: Yours of the 16th inst.  
4/11/153 in re N.L.7235

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I have had a letter from Munro, Warren, Leys & Kermode and we seem now to be making some progress.

I have instructed Messrs. Tetzner & Bygrave to make the necessary plans (sketch) of the subdivision to be dealt with by the subdivision land Board which in the case of this isolated area I am told will be merely a pro forma matter as no Roding or other problems are involved... such would be impossible as you will see from the plan.

10 The above named firm agree with me that Mr. Pardoe should make the application. Then when the plan of subdivision is approved the area will be surveyed and then surrendered up to your Board for leasing to me.

The matter of rent etc. will then be a matter between the Board and myself.

I am leaving the matter in the hands of the above-mentioned firm who seem to agree with my views.

20 I am anxious to have the matter finalised as I am leaving soon for the West Indies and the Caribbean sugar producing countries to investigate matters re prices being paid for sugarcane. The C.S. has advised me that the Government cannot take part in this matter and that it is a matter of negotiation between the Associations and the Company. Mr. Carver, when the last contract was being discussed offered me 52%. I refused and in the end got 60% and slightly more. I then had facts and figures to support my claim. Now I have a gun but no ammunition and we must negotiate the contract  
30 THIS YEAR. My Association and the Labasa Associations and the Maha Sangh have placed on my shoulders the grave responsibility of negotiating the new agreement. An agreement which is vital importance to the economy of the Colony and to your Board as a large land owing corporation.

It is for these reasons I will have to leave the matter of my lease in your hands and in the firm I have mentioned.

Yours faithfully,  
(N.S. CHALMERS)

Exhibits

"2"  
(24)

Letter,  
N.S. Chalmers to  
Native Land  
Trust Board.

22nd January,  
1958

- continued.

<u>Exhibits</u>	<u>"2"(25) - LETTER, K.C.RAMRAKHA TO MESSRS.KOYA &amp; CO.</u>	
"2" (25)	Messrs.Koya & Co., Solicitors and Barristers, LAUTOKA.	8th March, 1958
Letter, K.C.Ramrakha to Messrs. Koya & Co.  8th March, 1958.	Dear Sirs,	
	<u>Re: Chalmers v. Pardoe</u>	
	I enclose herewith defence and counterclaim in the above action.	
	I shall be pleased if you would be good enough to supply particulars in respect of your statement as follows -	10
	<ol style="list-style-type: none"> <li>1. the date or dates on which it is alleged that the Defendant evicted the Plaintiff from the Native lease</li> <li>2. the manner in which the Defendant evicted the Plaintiff</li> </ol>	
	It is noted from the tenor of your statement of claim that Mr. Chalmers has no intention of oc- cupying the property any more but that he wishes to obtain from Pardoe the value of improvements alleged to belong to him. If you would confirm this, then there would of course be no point in seeking an order for possession and you might con- sider consenting to injunction prayed for.	20
	Wishing you the compliments of the season.	
	Yours faithfully, K.C.R. K.C.Ramrakha.	
	_____	
"2" (26 & 27)	<u>"2"(26 &amp; 27) - LETTER, N.S.CHAIMERS TO H.A.L.MARQUARDT-GRAY</u>	30
Letter, N.S.Chalmers to H.A.L. Marquardt-Gray.  15th May, 1958.	H.A.L.Marquardt-Gray, LL.B., Barrister & Solicitor, Central Buildings, SUVA.	Nadroga. May 15th 1958
	<u>Re: Pardoe and myself and yours F/1979 of the 9th inst.</u>	
	I thank you for your letter referred to above. There are several ways in which this difficulty could be overcome with the Board and Pardoe and myself.	40
	1. Pardoe was given permission to have another	

dwelling on his land. According to Hansen this permission was to cover me in respect of the building I occupy. This means in effect as I see it the Board has agreed to this second dwelling on the lease; it increased the rent accordingly. There was no right to increase the rent without getting something to support that. That support was giving Pardoe the right to have another dwelling on his lease. For this reason it is difficult for me to see how the question of unlawful occupation IN SO FAR AS THE N.L.T.B. is concerned is involved.

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2. I have made an offer to purchase Pardoe's lease on terms that should be favourable to him. Full details of the terms and conditions of occupation would have to be gone into. On such a purchase the difficulties of my occupation here (permission having been given as above) would disappear. So far I have had no reply to that offer.
3. The original idea was that Pardoe and I would buy the lease from A. Walker as tenants in common. However I nearly lost my car and my life in trying to climb that steep hill and so dropped the idea it was then suggested I build where I am now. He misled me by showing me a note from Walker and telling me his lease was a "building lease" and buildings could be erected anywhere. I trusted him as, perhaps, I should not have done. We could go back to the original idea and I be given an undivided half share of the land on payment to him of half the original price he paid Walker. That an agreement be made between us and that he occupy the house on the hill (late Walker's) and I occupy the area I now have my buildings on. These matters would have to be approved by the N.L.T.B. but as no subdivision would be involved I cannot see any reasonable grounds for objection. I would pay the increased rent imposed on him by the Board in respect of my dwelling.

I cannot see how these reasonable propositions should be turned down either by the Board or Pardoe. Even if I do vacate the small area I occupy (according to Bygrave 1.4 acres, it would be of no use to him. He could not build on it or use it for agricultural purposes in terms of his lease. I

Exhibits

"2"

(26 &amp; 27)

Letter,  
N.S.Chalmers  
to H.A.L.  
Marquardt-Gray.

15th May, 1958  
- continued.

Exhibits

"2"

(26 &amp; 27)

Letter,  
N.S.Chalmers  
to H.A.L.  
Marquardt-Gray.  
15th May, 1958  
- continued.

would mention that the land adjoining the small area I occupy (Navotu 2) is owned by the Jafar Ali Estate. It is a very large area. I have inquired from Jafar Ali Jr. and they would be prepared to lease me any area I require as it is all in bush (as was this site before I started building) and not being made use of. I have written to the Board asking them if it would approve of a sub-lease of an area not coming within the jurisdiction of the Subdivision of the Land Board. If the Board agrees then I could draw up an Agreement for lease and have that put before the Board for approval.

10

I have thought of a possible 4th solution:-

4. That Pardoe buy my buildings (having regard to suggestion 1) and all heavy furniture at valuation .. or the buildings alone at valuation. I have numerous requests to rent these premises and he should have no difficulty in renting them at a good rental. A seaside place such as this is in great demand not only from Suva but from the Airport and Lautoka. Pardoe lives on the Hill and so is in a position to keep any eye on the place.

20

Mr. Barry Philp would consider buying all my buildings for removal and use of the materials but it would seem a shame to let them be pulled down.

I will await further word from you and the Board but in the meantime you might bring these suggestions of mine to Messrs. Grahame & Co.

Yours faithfully,  
(N.S.Chalmers)

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I would mention that our huge Kisan Sang building at Lautoka costing £34,000 is nearing completion. Three rooms have been set aside for my occupation as President. Fiji Buildings are the builders. Mr. Keither Marlow told me my rooms are completed and today I am sending through to Lautoka a lot of my things. I mention this because if I am forced to quit here and either sell my buildings for removal and as I wrote the Board if I cannot remove them then I will set fire to them. I would adopt the scorched earth idea we used in the war.

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"2"(28) - LETTER, NATIVE LAND TRUST BOARD TO  
H.A.L.MARQUARDT-GRAY

Exhibits

"2"  
(28)

4/11/153.

NATIVE LAND TRUST BOARD,  
SUVA, FIJI.

17th May, 1958

H.A.L.Marquardt-Gray, Esq.,  
Barrister & Solicitor, SUVA.

Sir,

Re: NATIVE LEASE 7235 N.S. CHALMERS

Letter, Native  
Land Trust  
Board to  
H.A.L.  
Marquardt-Gray.  
17th May, 1958.

10

I refer to your letter F/1979 dated 13th May, 1958. It is regretted that I cannot give agreement to the requests set out in the third last paragraph of your letter dated 14th April, 1958 as you will appreciate that in the absence of a specific agreement between Chalmers and Pardoe, the latter being the lessee, the Board is not in a position to give assurance of continued occupance nor may the Board agree to accept rent direct from Chalmers between whom and the Board there is no privity of contract. If, as in the second last paragraph, your client wishes to demolish his buildings, then the Board has no objection if the Board is in a position to give such consent. You will appreciate that the Board has no say in the matter of these buildings, which would appear to me to be owned by Pardoe.

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Yours faithfully,  
(G.J.T.Hansen)  
Secretary.

GJTH/mc.

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"2"(29) - LETTER, NATIVE LAND TRUST BOARD TO  
N.S.CHALMERS

"2"  
(29)

NATIVE LAND TRUST BOARD,  
SUVA, FIJI.

23rd May, 1958.

N.S.Chalmers, Esq.,  
P.O. Nadroga.

Dear Sir,

Re: Native Lease 7235

Letter, Native  
Land Trust  
Board to  
N.S.Chalmers.  
23rd May, 1958.

40

I refer to your letters to this office of the 3rd May and 18th May, also to your enclosure, copy letter to His Excellency, dated May, 16th.

The only reply I can give to these letters is to refer you to this office's letter to you of the 19th November, 1957 and again 16th January, 1958. You will appreciate that as you are not the

Exhibits

"2" (29)

Letter, Native  
Land Trust  
Board to  
N.S.Chalmers.

23rd May, 1958  
- continued.

registered lessee we cannot enter into negotiations  
with you concerning the subject lease.

Yours faithfully,  
(Thomas E. Foster)  
Manager.

TEF/ip.

"2" (30)

Letter,  
K.C.Ramrakha  
to N.S.Chalmers.  
29th May, 1958.

"2"(30) - LETTER, K.C.RAMRAKHA TO N.S.CHALMERS

N.S.Chalmers, Esq.,  
Solicitor,  
NADROGA.

29th May, 1958.

Dear Sir,

Re: L.Pardoe - Lease Number 7235

Mr. Pardoe has now instructed me to act in  
connection with the above matter.

My client is concerned with your continued  
unlawful occupation of his native lease Number 7235  
and has instructed me to the effect that efforts to  
legalise the position has failed and that his tenure  
of his lease will be jeopardised unless you leave  
the said lease at once. Furthermore, my client  
considers that the situation arose entirely as a  
result of your neglect and of your failure to ob-  
tain the initial consent of the Native Lands Trust  
Board at a time when matters were left in your hands  
as a Solicitor and the question of necessary con-  
sents was your concern. My client therefore con-  
siders that he can in addition to asking you to  
leave claim substantial damages from you what he  
has suffered.

My client therefore instructs me that you  
forthwith cease the trespass on his property and I  
therefore ask that you leave the land at once,  
leaving behind you intact the buildings and other  
erections on the said lease which are to be removed  
thereafter only at my client's discretion. My cli-  
ent further states that quite recently, you attempt-  
ed to remove the said structures with the assist-  
ance of Fijian labour (who at your request tres-  
passed on my client's lease) and that upon being  
asked to desist by the District Officer Mr.Mortimer  
and Mr.Nair, the Inspector of Police you promised  
that you will do so and settle your differences in  
a court of law. My client is further mindful of

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your threats to burn the property as a last resort and has instructed me to point out that this would constitute a criminal offence. Besides, this will serve no useful purpose.

I shall be grateful there, if by your immediate departure as requested, you will render any further action on the part of my client unnecessary.

Yours faithfully,  
(Sgd:) K.C.Ramrakha  
K.C.Ramrakha.

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Exhibits

"2"  
(30)

Letter,  
K.C.Ramrakha to  
N.S.Chalmers.

29th May, 1958  
- continued.

"2"(31) - LETTER, L.PARDOE TO MESSRS.GRAHAME & CO.

Messrs.Grahame & Co.,  
Solicitors,  
SUVA.

29th May, 1958.

Dear Sirs,

re N.S.Chalmers and Myself

This is to inform you that you are to cease acting the above matter in any manner whatsoever.

20

I therefore request and authorise you to hand over any papers belonging to me to my present Solicitor, Mr.K.C.Ramrakha and his receipt therefor shall be your discharge for the same.

Yours faithfully,  
(Sgd:) L. Pardoe,  
L.Pardoe.

"2"  
(31)

Letter,  
L.Pardoe to  
Messrs.Grahame  
& Co.

29th May, 1958.

"2"(32) - LETTER, N.S.CHALMERS TO L.PARDOE

Mr.L.Pardoe,  
c/o P.O. Nadroga.

P.O. Nadroga.  
June 3rd 1958

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Dear Sir,

In view that you came on to my premises bringing with you the Inspector of Police and the D.O. Mr. Mortimer and told me I was a trespasser I have given instructions for the issue against you of a writ for substantial damages. I am acting on the advice of Counsel in New Zealand. The action will be one in Equity. This will not have any connection with possible proceedings against you for perjury when you swore an Affidavit (not in the

"2"  
(32)

Letter,  
N.S.Chalmers to  
L.Pardoe.

3rd June, 1958.

Exhibits

"2"  
(32)

Letter,  
N.S.Chalmers  
to L.Pardoe.  
3rd June, 1958  
- continued.

Supreme Court) that you never received £100 from me for the land I occupy. That matter is in the hands of the police. My action will be a Civil Action based on the law of Equity. I will not remove any buildings until this action is heard. Acting on the instructions of your Counsel and/or Solicitor "to vacate the land as soon as possible" I started to do so, I showed the latter from my Solicitor Mr.Marquardt-Gray to which was attached a letter from Grahame & Co. This was handed to you to read. After reading it you put under your shirt saying in the presence of those you brought here and my man Naibuka "He has double crossed me and I will get another lawyer". I reported this at once to Grahame & Co.

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To date my letters which you shoved in your shirt have never been returned. WILL YOU PLEASE EXPLAIN WHY?

I had arranged with a building contractor RAMRATTAN to come and remove the buildings on to my 2 acres in the Nadi Airport. He came here on Friday but I had told him of my decision not to remove the buildings. He came all the way from Penang and I will have to pay the costs of his taxi. On Sunday Mr.Marlow (Fiji Builders Ltd.) called on me re the removal of my buildings and I had to tell him the same as I told Ramrattan. What his costs of coming here will be I do not know. He will have to return here to estimate the damage I have suffered. I estimate the damages at about £3000. It is clear that in Equity I can be awarded substantial damages.

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N.S.C.

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Yours faithfully,  
(Sgd:) N.S.Chalmers.

"2"  
(33)

Letter,  
N.S.Chalmers to  
K.C.Ramrakha.  
4th June, 1958.

"2"(33) - LETTER, N.S.CHALMERS TO K.C.RAMRAKHA

Mr.K.C.Ramrakha, LL.B.,  
Barrister & Solicitor,  
P.O.Box 228, SUVA.

P.O. Nadroga.  
June 4th 1958.

Dear Sir,

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Re: L.Pardoe and Myself and N.L.7235

My Solicitor was here today.

It seems impossible to deal with Mr. Pardoe or any Solicitor he employs. He employed Messrs.

Munro, Warren, Leys & Kermodie. This firm instructed me to have the necessary plans prepared. This was done. That the obligation was on Mr. Pardoe to apply to the N.L.T.B. and the Subdivision of Land Board, as lessee. That I could not make any such application. That Mr. Pardoe was anxious to regularise the matter as soon as possible. On top of that I get a letter from this firm advising me that Mr. Pardoe objected at the way the firm was handling the matter and that they were no longer acting for him and that he had employed Messrs. Deoki & Co.

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Then I get a letter from Grahame & Co., in which they instruct me, as his Solicitor, to vacate the land as soon as possible. When I start to do this he comes here with a Police Inspector and Magistrate (the D.O. Mr. Mortimer) and threatens me. I showed him Grahame & Co's letter. He tucked it under his shirt saying "McFarlane has double-crossed me" and then left with the others. He has now got you but I do not know who he will get next.

20

To clean up the matter I wish to make it clear I will remove no fixtures. My Solicitor who has gone to Suva has instructions to issue a writ in Equity at once against Mr. Pardoe claiming heavy damages.

As I have said the claim will be in equity in that he allowed me into possession, actually consented to my occupation, stood by and did nothing to get me title to the land and later got £100 from me for the land. In a sworn affidavit now in the Supreme Court, Suva, he denied this but there seems to be ample documentary evidence before the Court at Sigatoka that this affidavit was false and the police are making inquiries into this with a view to prosecution for perjury.

30

I am satisfied that it will be best to leave the whole matter re my possession here to be settled in the Action I am taking in the Supreme Court. I do not think I can take the matter further at the present time. I presume you will accept service.

40

Yours faithfully,  
(Sgd:) N.S. Chalmers.

Exhibits

"2"  
(33)

Letter,  
N.S.Chalmers to  
K.C.Ramrakha.

4th June, 1958  
- continued.

<u>Exhibits</u>	<u>"2"(34) - LETTER, N.S.CHALMERS TO L.PARDOE</u>	P.O. Nadroga. June 7th 1958.	
"2" (34)	Mr.L.Pardoe, NADROGA.		
Letter, N.S.Chalmers to L.Pardoe. 7th June, 1958.	Dear Sir,  THIS IS TO GIVE YOU NOTICE that I hereby with- draw my offer to purchase N.L.7235 GUSUNAWERELOA or any interest then whatsoever.  Yours faithfully, (Sgd:) N.S. Chalmers.		
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"2" (35)	<u>"2"(35) - LETTER, K.C.RAMRAKHA TO NATIVE LAND TRUST BOARD</u>	5th November, 1958	10
Letter, K.C.Ramrakha to Native Land Trust Board. 5th November, 1958.	P/62 4/11/153 The Manager, The Native Land Trust Board, Suva. Dear Sir,		
	<u>Re: Lawrence Pardoe</u>		
	I am instructed by the above-named to write to you and to ask that you might be good enough to consider granting my client permission to let pre- mises previously occupied by Mr.Chalmers on a casual basis to visitors.		20
	Yours faithfully, Sgd: K.C.Ramrakha.		
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"2" (36)	<u>"2"(36) - LETTER, NATIVE LAND TRUST BOARD TO K.C.RAMRAKHA</u>	NATIVE LAND TRUST BOARD, SUVA, FIJI 8th December, 1958	30
Letter, Native Land Trust Board to K.C.Ramrakha. 8th December, 1958.	4/11/153. K.C.Ramrakha, LL.B., Barrister & Solicitor, SUVA. Dear Sir,		
	<u>Re: LAWRENCE PARDOE</u>		
	I refer to your letter of the 5th November. Before submitting your proposition to the Native		

Land Trust Board, I would like more information as to your client's proposals.

Can you please give me some idea of the extent of the accommodation which will be let to visitors at any one time. In other words I would like to know what is the maximum number of persons, or perhaps, families that Mr.Pardoe wishes to accommodate in this venture of his.

Yours faithfully,  
(Sgd:) T.E. Foster,  
Manager.

T.E.F./rp.

Exhibits

"2"  
(36)

Letter, Native Land Trust Board to K.C.Ramrakha.

8th December, 1958

- continued.

10

"2"(37) - LETTER, K.C.RAMRAKHA TO NATIVE LAND TRUST BOARD.

"2"  
(37)

P/62  
4/11/153.

17th December, 1958

The Manager,  
The Native Lands Trust Board,  
SUVA.

Letter, K.C.Ramrakha to Native Land Trust Board.

17th December, 1958.

20 Dear Sir,

Re: Lawrence Pardoe

With reference to your letter dated the 8th December, 1958 it is understood that Mr.Pardoe has himself seen you regarding his proposals.

I confirm that the accommodation would be sufficient to house two small families at one time (say consisting of parents and two children (small) at one time but the families would have to share the kitchen. There would be accommodation therefore for four adults and say four children at any one time.

30

Yours faithfully,  
K.C.R.  
K.C. Ramrakha

Exhibits

"2"  
(38)

Letter,  
Messrs.Koya  
& Co., to  
Native Land  
Trust Board.  
27th May, 1959.

"2"(38) - LETTER, MESSRS. KOYA & CO., TO  
NATIVE LAND TRUST BOARD.

KOYA & CO. LAUTOKA.  
The Secretary, 27th May, 1959  
Native Land Trust Board,  
SUVA.  
Dear Sir,

Re: LAWRENCE PARDOE AND N.S.CHALMERS  
N.L. NO. 7235 10

Mr.L.Pardoe is claiming against our client  
Mr.N.S.Chalmers in the Supreme Court the sum of  
£338.5.0 as damages. The particulars of special  
damages as shown in the Statement of Claim is as  
follows:-

"To increase of rent by Native Land  
Trust Board from 1957 to 1990 at  
£10.5.0 per year (i.e. for 33  
years) ... .. £338.5.0"

Could you please let us know the reasons and 20  
circumstances surrounding the increased rent im-  
posed by your Board on the above Native Lease.

Yours faithfully,  
KOYA & CO.

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"2"  
(39)

Letter,  
Native Land  
Trust Board  
to Messrs.  
Koya & Co.  
10th June,  
1959.

"2"(39) - LETTER, NATIVE LAND TRUST BOARD TO  
MESSRS. KOYA & CO.

4/11/153. NATIVE LAND TRUST BOARD,  
SUVA, FIJI.  
Messrs.Koya & Co., 10th June, 1959  
Barristers & Solicitors,  
LAUTOKA. 30  
Gentlemen,

Re: Lawrence Pardoe & N.S.Chalmers  
N.L. 7235

I refer to your letter of the 27th May, and  
am to inform you that the lessee in this case has  
a lease which entitles him to erect one residence  
only. His rent was increased in 1957 when he  
applied for consent to have a second dwelling  
thereon. 40

Yours faithfully,  
(Thomas E.Foster)  
Manager.

TEF/rp.

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4. - ACCOUNT

£ 600  
 60  
 20  
£ 680

AEROCEM  
 Eddie Ford Prefect  
 Wind Charger

750  
680  
 70

Exhibits

4.  
 Account.  
 (Undated)

5. - RECEIPT

10

C/o Post Office,  
 NADROGA.  
 3.8.56.

5.  
 Receipt.  
 3rd August,  
 1956.

RECEIVED from N.S. CHALMERS the sum of  
 Sixty pounds being payment for purchase  
 of Ford Prefect Car Regd. No.141.

2d Stamp  
 L.Pardoe  
 3.8.56.

(Sgd:) L.PARDOE.

6. - CHEQUE.

20

No.549205

6.  
 Cheque.  
 14th January,  
 1957.

BANK OF NEW SOUTH WALES.

Lautoka, Fiji. January 14th, 1957

PAY L. PARDOE or BEARER THE SUM OF THIRTY  
 POUNDS ----- £30 --

PAID  
 28 JAN 1957.

NAT S.CHALMERS.

7. - LETTER, L.PARDOE TO N.S.CHALMERS

30 Dear Nat,

29th December, 1956

Just a note to confirm our Agreement this  
 afternoon on the position of our business affairs.

My transferring to you my entire interest in  
 "Aerocem" makes us all square to date, with the  
 single exception of Thirty pounds (£30) to be paid

7.  
 Letter,  
 L.Pardoe to  
 N.S.Chalmers.  
 29th December,  
 1956.

Exhibits

7.

Letter,  
L.Pardoe to  
N.S.Chalmers.  
29th December,  
1956  
- continued.

to me on completion of transfer of part of Gusunawereloa Lease.

Signed:

L.PARDOE (Sgd:)

N.S.CHALMERS (Sgd:)

P.S. For the record, please endorse your agreement on copy and return.

8.

Letter,  
N.S.Chalmers  
to L.Pardoe.  
14th December,  
1957.

8. - LETTER, N.S.CHALMERS TO L.PARDOE

C/o P.O. Nadroga.

C/o P.O.Nadroga.

L.Pardoe Esq.,  
Sigatoka.Dec.  
J.14th 1957.

10

Dear Sir,

This is to give you notice that I am issuing a writ in the Supreme Court against you for appropriating £750 which belonged to me and was placed to your credit with the Aus. and N.Z. Bank to keep down the interest on your overdraft and also to recover all my personal property which you agreed to take care for me when I had to pull out of Vuda and I got you £750 from the Shell Oil Co. This writ will be issued forthwith as you have refused to let me have possession of all my personal property and as I have said appropriated the £750 belonging to me in your bank account. I am prepared to scrub that even if I think your actions were dishonest as long as I get back all my personal property. You have received this personal property from me and I claim its immediate return. If you have any claim against me then give me at once details so that I can consider them when instructing Mr.Koya to issue the writ against you. Please let me have these at once as Mr.Koya will be here on Wednesday.

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Yours faithfully,

(Sgd:) N.S.CHALMERS.

Please also inform Mr. Terry that I would wish that he never came on to my property here. As regards the £30 owing you for the land I now enclose my cheque.

9. - LETTER, MESSRS. GRAHAME & CO. TO  
H.A.L. MARQUARDT-GRAY

Exhibits

9.

GRAHAME & CO.

Ref No.6467 Mc/jgs

H.A.L.Marquardt-Gray, Esq.,  
 Solicitor,  
 SUVA.

Central Chambers,  
 Suva, Fiji.

8th May, 1958.

Letter,  
 Messrs.Grahame  
 & Co., to  
 H.A.L.Marquardt-  
 Gray.

8th May, 1959.

Dear Sir,

L.Pardoe re N.S.Chalmers

10 As you know we act for Mr.L.Pardoe who has  
 consulted us in reference to his Native leasehold  
 at Sigatoka. On part of that lease Mr. Chalmers  
 built a dwellinghouse and other buildings without  
 the approval of the Native Land Trust Board. It  
 appears from enquiries that some time during 1955  
 or 1956, Mr. Chalmers erected these buildings, and  
 then, later an application was made to the Board.  
 It is correct that after the buildings were erected  
 an arrangement was made between our client and  
 20 Mr.Chalmers whereby our client agreed to surrender  
 up to the Board portion, described as a small  
 portion, along the Queen's Road bounded by a small  
 creek, and high water mark for the purpose of  
 leasing to Mr.Chalmers, as a building site. The  
 idea, apparently, was that Mr.Chalmers would take  
 a separate lease entirely of about three-quarters  
 to one acre, representing the compound on which he  
 had erected the buildings. This arrangement was  
 subject to the consent of the Board.

30 The Board has not consented to this arrange-  
 ment and indeed, will not agree to the surrender  
 of the lease, and the granting of an entirely new  
 lease for the small area to Mr. Chalmers. An en-  
 tirely separate suggestion was made by the Board  
 to Mr. Pardoe. It is clear that your client en-  
 tered into illegal occupation of the land on which  
 his buildings are erected, and is still in illegal  
 occupation, which is contrary to the terms of the  
 Native Land Trust Ordinance. We are instructed by  
 40 our client to ask your client to vacate the land  
 without delay, and would be glad if you would con-  
 vey to your client our client's request, and ask  
 him to make arrangements without delay for the  
 vacation of the land. You will appreciate, that  
 if your client does not comply with this request,  
 our client will have no alternative but to take ap-  
 propriate proceedings against Mr.Chalmers.

We shall be obliged for your early attention  
 to this letter.

Yours faithfully,  
 GRAHAME & CO.  
 Noel Macfarlane (Sgd:)

50

Exhibits

10.

Letter,  
Messrs. Munro,  
Warren Leys  
& Kermodé to  
N.S. Chalmers.  
9th August,  
1956.

10. - LETTER, MESSRS. MUNRO, WARREN, LEYS & KERMODE  
TO N.S. CHALMERS.

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MUNRO, WARREN, LEYS & KERMODE,  
RGK/taf  
N.S. Chalmers, Esq.,  
c/o Burns Philp (S.S.)  
Co., Ltd.,  
SIGATOKA.  
Dear Sir,

Vitogo Parade,  
Lautoka, Fiji.  
9th August, 1956.

Re: L. Pardoe

10

We thank you for your letter of the 25th ultimo. Would you kindly ask Mr. Pardoe to instruct us to act for him in connection with the proposed lease to yourself? There was only one matter we would refer to, and that is, we consider the sub-lease from Mr. Pardoe should be for the full term of the headlease less one day and not the full term as you suggest.

Yours faithfully,  
MUNRO, WARREN, LEYS & KERMODE,  
Per: R.G. Kermodé (Sgd:)

20

11.

Particulars  
of Lease 7235.

11. - PARTICULARS OF LEASE 7235.

Lease 7235 Gusunawerelo 57½ acres residential. The value of this land has been immensely increased by permanent improvements which cannot be removed on termination of the lease viz: - an all concrete dwellinghouse, and covered concrete water tank 14' x 14' x 6' - 7200 gallons. A motor road 525 yds. to house site. The rent should be a peppercorn.

30

13.

Letter, Messrs.  
Grahame & Co.,  
to H.A.L.  
Marquardt-Gray.  
29th May, 1958.

13. - LETTER, MESSRS. GRAHAME & CO., TO  
H.A.L. MARQUARDT-GRAY

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GRAHAME & CO. (Letterhead)  
H.A.L. Marquardt-Gray, Esq.,  
Solicitor,  
Central Chambers, SUVA.  
Dear Sir,

Central Chambers,  
Suva, Fiji.  
29th May, 1958.

L. Pardoe re N.S. Chalmers

We are informed by Mr. Pardoe, who spoke to

our Mr. McFarlane on the telephone this morning, that Mr. Chalmers is proceeding to remove the fences from the land. It may be that Mr. Chalmers intends to remove the improvements from the leasehold land. We refer to our letter of the 8th instant and your reply of the 9th instant.

10 Our client has instructed us to say that he will not allow your client to remove the fences or buildings from the land. If your client will not give us a written undertaking to this effect then our client will be compelled to proceed by way of an injunction to restrain your client.

We shall be obliged if you would get in touch with your client immediately by telephone or telegram as the matter is one of urgency.

Yours faithfully.

GRAHAME & CO.,  
K.C. Gajadhar.

Exhibits

13.

Letter, Messrs. Grahame & Co., to H.A.L. Marquardt-Gray. 29th May, 1958 - continued.

14. - LETTER, NATIVE LAND TRUST BOARD TO L. PARDOE.

20 COPY. Native Land Trust Board, Suva. 22nd November, 1956.

Mr. Lawrence Pardoe,  
C/o Post Office,  
Lawaqa, NADROGA.

Sir,

30 Inspection reports reveal that a second residence is in the course of construction on your lease. I would draw your attention to the terms thereof and in particular to clauses 7 and 8. May I have an explanation at an early date please.

Yours faithfully,  
(Sgd:) Thomas E. Foster,  
MANAGER & SECRETARY (Acting)

14.

Letter, Native Land Trust Board to L. Pardoe. 22nd November, 1956.

16. - RECEIPT

L. NO. 6452 ELLIS, MUNRO, WARREN & LEYS, Barristers & Solicitors, Lautoka, Fiji. 6th August 1955.

40 RECEIVED FROM MR. N. S. CHALMERS THE SUM OF FOUR POUNDS NINETEEN SHILLINGS AND FOUR PENCE BEING COSTS RE PURCHASE VUDA LAND BOSSLEY TO PARDOE.

£4.19.4  
2d Stamp  
6/8/55

ELLIS, MUNRO, WARREN & LEYS  
Per A. Corbett (Sgd:)

16.

Receipt. 6th August, 1955.

Exhibits

17.  
Receipt.  
21st February,  
1958.

17. - RECEIPT.

NATIVE LAND TRUST BOARD.      2d Stamp.      No.53317  
Station Suva  
Tikina Vuda  
Name of Property Lots 3 & 4 NAQERE  
Date 21/2/56      Amount £14.-s.-d.

RECEIVED FROM N.S.CHALMERS THE SUM OF FOURTEEN  
POUNDS being on account of rent on the above  
named lease.

Rents to 31.12.56

10

Lot 3 NAQERE      7. 0. 0

Lot 4 NAQERE      7. 0. 0

(Sgd:) S.PANAPASA

for and on behalf of  
THE NATIVE LAND TRUST BOARD.

18.

18. - LETTER, C.C.CHALMERS TO L.PARDOE

Letter,  
C.C.Chalmers  
to L.Pardoe.  
17th April,  
1957.

Registered  
Mr.L.Pardoe,  
Nadroga, P.O.

Nadroga, Sigatoka.

17th April, 1957.

Dear Sir,

My brother, Mr.N.S.Chalmers, has instructed  
me to attend to several of his more important af-  
fairs.

20

One outstanding matter between him and you  
relates to a quantity of his personal property  
which was left with you for temporary safe-keeping.  
On one occasion, after you had said in the presence  
of Mr.Gatward that my brother could remove his  
property, he sent his servant, Sevuloni, and some  
other Fijians, to your house for this purpose; but  
you ordered them away. On a later occasion, when  
Sevuloni was up at your house, he reported, on his  
return, that he was to tell my brother he could  
remove his property. My brother then wrote to  
you, giving you a list of his property, and re-  
quested that if you had any claim against him to  
advise him. No reply was received to this letter,  
so the inference is that you have no claim. In  
these circumstances, it is simply a matter of my  
brother sending up some labour, with a lorry, to  
remove what belongs to him. Before this is done,  
and to avoid any misunderstanding, please supply  
me with a brief list, in writing, of what, from

30

40



Exhibits25. - ACCOUNT.

25.  
Account  
1954 - 1957.

L. Pardoe  
SIGATOKA.

COPY.

In account with Gromptons, Solicitors,  
Suva, Fiji.

1954	By received from Chiridhar Maharaj		200. --	-	
	Paid you	200. --	-	-	
	Paid Search fee		1. --	-	
1955	Paid issuing summons A.J. Costello	3. 1. 9			10
	To our charges herein	2. 2. --			
	By received from Mr.A.J.Costello			8.10. --	
	To our charges re Agreement you and F.Archibald	3. 3. --			
	Paid you	5. --	-	-	
	Paid fine	2. --	-	-	
	By received from Ellis, Munro Warren & Leys - Settlement re Forster			1468.16. --	20
	Paid you	1468.16. --			
	Stamping and register- ing Transfer H.Bossley to you	3.17. --			
	To our charges re Transfer	8. 2. --			
	By cash received from you			11.19. 6	30
1956	Paid issuing summons L.Evans	19. --			
	To our charges herein	2. 2. --			
	Paid issuing J.D.S. Manik Chand	1.17. --			
	To our charges herein	5. 5. --			
	Paid issuing Fi Fa	6. --			
	Paid issuing C/Order	1.16. --			
	To our charges herein	1. 1. --			
	To our charges re Re- newal of Judgment	6. 6. --			40
	To our charges re J.D.S.Ramchankar	4. 4. --			
1957	Paid radio to you	8. 8			
	Paid issuing J.D.S.I.Evans	14. 6			
	To our charges herein	1. 1. --			
	To our charges re Terry Estate	4. 6. 8			
	Stamping and Transfer	2. 7. 6			
	By received			6.10. --	
				ard 1728.17. 1	1695.15. 6

(End of Exhibit torn)

IN THE PRIVY COUNCIL

No. 4 of 1962

ON APPEAL  
FROM THE FIJI COURT OF APPEAL

B E T W E E N

NATHANIEL STUART CHAIMERS (Plaintiff) Appellant

- and -

LAWRENCE PARDOE (Defendant) Respondent

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RECORD OF PROCEEDINGS

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T.L. WILSON & CO.,  
6, Westminster Palace Gardens,  
London, S.W.1.  
Solicitors for the Appellant.