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~~GA 177~~ 2  
IN THE PRIVY COUNCIL

Judgment  
4  
1964  
No. 35 of 1962

ON APPEAL FROM THE FIJI COURT OF APPEAL

UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES  
22 JUN 1965  
25 RUSSELL SQUARE  
LONDON, W.C.1.

B E T W E E N

NATHANIEL STUART CHALMERS (Defendant) Appellant

78521

- and -

THE FIJI KISAN SANGH (Plaintiff) Respondent

R E C O R D   O F   P R O C E E D I N G S

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

Solicitors for the Appellant.

RANGER, BURTON & FROST,  
Stafford House,  
Norfolk Street,  
London, W.C.2.

Solicitors for the Respondent.

IN THE PRIVY COUNCILNo. 35 of 1962ON APPEAL FROM THE FIJI COURT OF APPEALB E T W E E NNATHANIEL STUART CHALMERS (Defendant) Appellant

- and -

THE FIJI KISAN SANGH (Plaintiff) RespondentRECORD OF PROCEEDINGSINDEX OF REFERENCE

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DOCUMENTS TRANSMITTED  
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Description of Document	Date
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ON APPEAL FROM THE FIJI COURT OF APPEAL

B E T W E E N

NARHANIEL STUART CHALMERS (Defendant) Appellant

- and -

THE FIJI KISAN SANGH (Plaintiff) Respondent

No.1

WRIT

IN THE SUPREME COURT OF FIJI

No. 54 of 1959

In the Supreme Court

10

BETWEEN THE FIJI KISAN SANGH

Plaintiff

No. 1

- and -

Writ

NATHANIEL STUART CHALMERS

Defendant

7th April, 1959

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

To NATHANIEL STUART CHALMERS of Lautoka,  
Solicitor

20 WE COMMAND you, That within eight days after the service of this Writ on you inclusive of the day of such service you do cause an appearance to be entered for you in an action at the suit of The Fiji Kisan Sangh a duly registered Industrial Union with registered office at Lautoka and take notice that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

WITNESS the Honourable CLIFFORD JAMES HAMMETT acting Chief Justice of our Supreme Court, at Suva, this 7th day of April 1959

30 MUNRO, WARREN, LEYS & KERMODE

per:

R. G. Kermode  
Solicitors for the Plaintiff.

L.S.

N.B. - This writ is to be served within twelve

In the Supreme Court

No.1

Writ

7th April, 1959  
- continued.

calendar months from the date thereof, or, if renewed, within six calendar months from the date of the last renewal including the day of such date, and not afterwards.

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

ENDORSEMENT OF CLAIM.

The Plaintiff's claim against the defendant is firstly for an account and repayment of all moneys improperly drawn by him from the plaintiffs Building Fund account with the Bank of New South Wales, Lautoka between the 19th day of February, 1954 and the 5th day of April, 1957 and SECONDLY for the return of the Rover 90 motor car Registered No. 7821.

10

No.2

Statement of Claim

1st May, 1959

No. 2

STATEMENT OF CLAIM

IN THE SUPREME COURT OF FIJI

No. 54 of 1959

BETWEEN: THE FIJI KISAN SANGH

Plaintiff

- and -

20

NATHANIEL STUART CHALMERS

Defendant

WRIT filed the 7th day of April, 1959.

STATEMENT OF CLAIM

1. THE Plaintiff is a duly registered industrial Union under the provisions of the Industrial Associations Ordinance.
2. THE Defendant was at all material times up to about the month of March, 1959, the President of The Fiji Kisan Sangh.
3. AT all material times the Plaintiff had with the Bank of New South Wales Lautoka an account styled "Kisan Sangh Building Fund Account".

30

4. BETWEEN the 19th day of February, 1954, and the 18th day of April, 1957, the said Kisan Sangh Building Fund account was a trust account operated on solely by the Defendant as sole Trustee.

In the Supreme  
Court

-----  
No.2

5. THAT between the said 19th day of February, 1954, and the 19th day of April, 1957, on the said Building Account the Defendant drew the cheques full particulars whereof which exceed three folios are shown on the attached list delivered herewith.

Statement of  
Claim

1st May, 1959  
- continued.

10

6. THE Defendant has been requested by the Plaintiff to furnish an account of all moneys drawn by him from the said Building Fund Account but he had refused or neglected so to do and still so refuses or neglects to do so.

7. THE cheques listed in Part A of the said List were properly drawn and paid on account of the Plaintiff by the Defendant.

20 8. THE Plaintiff states that the said cheques listed under Part B and totalling the sum of £3,752.15. 5 were improperly drawn by the Defendant and the proceeds thereof applied by the Defendant for his own use or in payment of accounts not incurred authorised or approved by the Plaintiff.

30 9. IN or about the year 1954 the Plaintiff presented to the Defendant as President and for use as the President's Car a Rover 90 motor vehicle Registered Number 7821.

10. THE presentation of this said vehicle was to the Defendant's knowledge not a gift to him personally but by virtue of his office.

11. THE Defendant did not pay any Gift Duty on the value of the vehicle to the Commissioner of Death and Gift Duties nor did he at any time advise the Plaintiff so to do.

10 12. THE Defendant has ceased to be the President of the Fiji Kisan Sangh and still retains the said vehicle which he claims was a personal gift to him.

13. RETURN of the said vehicle has been demanded by the Plaintiff WHEREFOR the Plaintiff claims:



In the Supreme Court

No.2

Statement of Claim

1st May, 1959

- continued.

1. THE sum of £3,752.15. 5 improperly drawn by the Defendant out of the said Building Fund Account or such lesser sum as the Defendant is found to give improperly withdrawn or misappropriated from the said account.

2. THE return of the Rover 90 motor car registered Number 7821.

3. COSTS.

4. SUCH further or other relief as to this Honourable Court seems meet.

10

DELIVERED the 1st day of May, 1959.

MUNRO, WARREN, LEYS & KERMODE

per: R. G. Kermode

Solicitors for the Plaintiff.

IN THE SUPREME COURT OF FIJI

No. 54 of 1959

BETWEEN: THE FIJI KISAN SANGH

Plaintiff

- and -

NATHANIEL STUART CHALMERS

Defendant

LIST OF CHEQUES DRAWN BY THE DEFENDANT FROM THE KISAN SANGH BUILDING FUND ACCOUNT REFERRED TO IN PARAGRAPH 5 OF THE STATEMENT OF CLAIM.

20

PART A

Date Pd. by Bank	Particulars as per Bank Statement	Details Recorded by Defendant on cheques drawn by him	Amount
------------------	-----------------------------------	---	--------

1954 Sep. 17	Cheque 811	M.S. Dean	129. 0. 0
-----------------	------------	-----------	-----------

	Date Pd. by Bank	Particulars as per Bank Statement	Details Recorded by Defendant on cheques drawn by him	Amount	In the Supreme Court <hr/> No.2 <hr/> Statement of Claim 1st May, 1959 - continued.
	1955				
	Jan. 17	Cheque 118	The Kisan Sangh for District Association Weighbridge a/c	508. 0. 0	
	June 14	-	Weighbridge a/c (transfer)	152. 0. 0.	
10	Aug. 11	Cheque 14	The C.S.R. Penang refund to 107 Bhagoti and 1081 Shiu Nath	7. 3. 5	
		17	Cheque 15 Lautoka Town Council Buildg. fee	17.10. 0	
	Sep. 26	Cheque 23	Ralph Marlow	500. 0. 0	
	Oct. 24	Cheque 28	Ralph Marlow	200. 0. 0	
	Nov. 11	Cheque 178	Refund Gift money re Brij-Mohan	5. 5. 4	
20		21	Cheque 30 Ralph Marlow	50. 0. 0	
	1956				
	March 22	Cheque 201	Fiji Builders	1500. 0. 0.	
	April 4	Cheque 202	Fiji Builders	49.16. 2	
		25	Cheque 683 Fiji Builders	1000. 0. 0	
	May 5	Cheque 203	Fiji Builders Lautoka	1500. 0. 0	
	June 27	Cheque 310	Fiji Builders	2000. 0. 0	
		30	Cheque 684 Ajudhya Prasad	150. 0. 0	
30	July 11	Cheque 205	Fiji Builders	1000. 0. 0	
		21	Cheque 208 Fiji Builders	500. 0. 0	
	Aug. 27	Cheque 685	Stamp Duty on Assignment	200. 0. 0	
	Nov. 9	Cheque 687	Fiji Builders	800. 0. 0	
	1957				
	Jan. 24	Cheque 692	Fiji Builders	700. 0. 0.	
		8	Cheque 220 Lautoka Town Council	25. 6. 3	
	Feb. 16	Cheque 222	Fiji Builders	1000. 0. 0	
40	March 4	Cheque 772	Kisan Sangh Weighbridge a/c	450. 0. 0	
				<hr/> £12,444. 1. 2 <hr/>	

PART B

In the Supreme Court	Date Pd. by Bank	Particulars as per Bank Statement	Details Recorded by Defendant on cheques drawn by him	Amount	
No.2					
Statement of Claim					
1st May, 1959					
- continued					
	1954				
	Feb. 24	Cheque 556	Burns Philp (ss) Co.Ltd.	150. 0. 0	
	March 5	Cheque 557	Fiji Airways	7. 5. 0	
	13	Cheque 558	Fiji Airways	7. 5. 0	
	16	Cheque 559	Garrick Hotel	6. 0. 6	10
	Nov. 22	Cheque 858	Setiriki for Yangona money re land Kisan Sangh	5. 0. 0	
	Dec. 16	Cheque 87	Setiriki	125. 0. 0	
	21	Cheque 89	Setiriki	52. 0. 0	
	1955				
	Feb. 1	Cheque 1	Deposit Government Savings Bank	500. 0. 0	
	11	Cheque 2	Setiriki of Namoli	40. 0. 0	20
	22	Cheque 3	B/D for equivalent £60 "P" to Co-operative Wholesale Society Ltd. Manchester U.K.	60. 0. 0	
	March 2	Cheque 4	B/D Co-op Society Ltd. U.K.	559. 7. 6	
	15	Cheque 5	N.S. Chalmers	4. 2. 6	
	April 4	Cheque 6	B/D Co-op Society Ltd. U.K.	447.10. 2	30
	26	Cheque 7	Setiriki Nisuki	62. 0. 0	
	May 2	Cheque 8	No. 008	2. 2. 0	
	July 6	Cheque 11	Williams & Gosling Ltd.	3. 0. 3	
	18	Cheque 12	No. 012	32.14.11	
	21	Cheque 13	No. 013 Orde. C.S.R. Receipt		
	Oct. 29	Cheque 507	No. 119 Lautoka Lautoka Town Board	7.16.10	
	Aug. 29	Cheque 17	Re Cost of landing Cement	25. 0. 0	40
	Sept. 3	Cheque 16	Oceania Printing Suva	30. 0. 0	
	6	Cheque 18	Setiriki Nisuki	2.17. 0	
	9	Cheque 20	Burns Philp (ss) Co.Ltd. Lautoka	7.15. 0	
		Cheque 552	Framing Plans Kisan Sangh Buildings	11. 2. 0	
	13	Cheque 21	Setiriki Nisuki	3. 0. 0	50
	17	Cheque 22	Setiriki Nisuki	14. 2. 0	
				21.10. 0	

Date Pd. by Bank	Particulars as per Bank Statement	Details Recorded by Defendant on cheques drawn by him	Amount	In the Supreme Court
				No.2
				Statement of Claim
				1st May, 1959 - continued
	Sept. 22	Cheque 24	N.S. Chalmers	3. 0. 0
	24	Cheque 27	Setiriki Nisuki	12. 0. 0
	Oct. 8	Cheque 26	N.S. Chalmers to replace his chq.No.766524	12. 0. 0
10	Nov. 9	Cheque 25	N.S. Chalmers	7. 0. 0
		Cheque 29	Burns Philp (ss) Co.Ltd.	6. 3. 4
	Dec. 9	Cheque 681	R.V. Patel	15. 3. 8
	1956			
	Feb. 7	Cheque 254	Bank New South Wales	161.10. 3
	24	Cheque -	Co-operative W'sale Soc.Ltd.	1. 2. 5
20	March 7	Cheque 682	Burns Philp (ss) Co.Ltd.	8. 4
	July 2	Cheque 204	Robert Tasei driver & owner	7. 0. 0
	Aug. 8	Cheque 209	Native Land Trust Board	610. 0. 0
	13	Cheque 210	Cash	6. 0. 0
		Cheque 211	Fiji Times & Herald Ltd.	5. 3. 7
	Oct. 5	Cheque 213	N.S. Chalmers	2. 5. 0
30	1956			
	Oct. 17	Cheque 214	N.S. Chalmers	3.18. 0
	Nov. 9	Cheque 686	Millers Ltd.	24. 6. 7
	15	Cheque 688	Fiji Times & Herald	1.12. 6
	26	Cheque 217	N.S. Chalmers	6. 0. 0
		Cheque 215	N.S. Chalmers	3. 0. 0
		Cheque 218	Costs re: Broadcasting and Adjournment of Meeting	1. 0. 0
40		Cheque 216	N.S. Chalmers	10. 0. 0
	Dec. 10	Cheque 689	Atlas Assurance Co.Ltd.	2. 0. 0
	11	Cheque 690	Fiji Times & Herald	13. 0
	27	Cheque 219	1957 Reg.Rover 90 Reg.No.7821	9. 0. 0
		Cheque 691	N.S. Chalmers	16. 4. 0
50	1957			
	March 4	Cheque 770	Kisan Sangh Weighbridge a/c	333.13. 9

In the Supreme Court	Date Pd. by Bank	Particulars as per Bank Statement	Details Recorded by Defendant on cheques drawn by him	Amount
No.2				
Statement of Claim	March 5	Cheque 771	Millers Ltd.	72. 0. 0
	6	Cheque 223	Fiji Broadcasting Commission	1. 0. 6
1st May, 1959	12	Cheque 221	N.S.Chalmers	14. 0. 0
- continued	13	Cheque 225	Fiji Times & Herald	1.10.11
	April 5	Cheque 227	Mustopher Richmond	60. 0. 0
	17	Cheque 711	Car 90	157. 8.11
				<u>£3,752.15. 5</u>

No.3

Statement of Defence

19th May, 1959

No. 3

STATEMENT OF DEFENCEIN THE SUPREME COURT OF FIJINo. 54 of 1959BETWEEN: THE FIJI KISAN SANGH Plaintiff

- and -

NATHANIEL STUART CHALMERS DefendantSTATEMENT OF DEFENCE

20

The Defendant says:-

1. THAT the Defendant admits paragraph (1) of the Statement of Claim.

2. THAT the Defendant admits that he was at all material times the President of the Fiji Kisan Sangh (hereinafter called "the Plaintiff Association") and says that he still holds the office of President of the Plaintiff Association. Save as herein expressly admitted the Defendant denies each and every allegation contained in paragraph (2) of the Statement of Claim.

30

3. THAT the Defendant denies each and every allegation contained in paragraph (3) of the

Statement of Claim but says that as Trustee for the several donors of a fund known as "KISAN SANGH BUILDING FUND" the Defendant opened an account styled "KISAN SANGH BUILDING ACCOUNT" with the Bank of New South Wales, Lautoka and operated same from its inception until about the 18th day of April, 1957.

In the Supreme  
Court

No. 3

Statement of  
Defence

19th May, 1959

- continued

4. THAT the Defendant admits paragraph (4) of the Statement of Claim.

10 5. THAT the Defendant admits paragraph (5) of the Statement of Claim.

6. THAT the Defendant denies each and every allegation contained in paragraph (6) of the Statement of Claim and says that he is not liable to account to the Plaintiff Association in respect of the cheques drawn on the said account but only to the donors of the said Fund.

20 7. THAT the Defendant says that all the cheques drawn by him and shown in part "A" of the list annexed to the Statement of Claim were properly drawn by him in accordance with the authority and wishes of the donors of the said Fund. The Defendant further says that the Plaintiff Association is not entitled in law to say that the cheques so drawn by the Defendant were properly drawn or not. Save as herein expressly admitted, the Defendant denies each and every allegation contained in paragraph (7) of the Statement of Claim.

30 8. THAT the Defendant says that all the cheques drawn by him and shown in part "B" of the list annexed to the Statement of Claim were properly drawn by him in accordance with the authority and wishes of the donors of the said Fund. The Defendant further says that the Plaintiff Association is not entitled in law to say that the cheques so drawn by the Defendant were improperly drawn or not. Save as herein expressly admitted, the Defendant denies each and every allegation contained in paragraph (8) of the Statement of Claim.

40 9. THAT the Defendant denies each and every allegation contained in paragraph (9) of the Statement of Claim.

10. THAT the Defendant denies each and every allegation contained in paragraph (10) of the Statement of Claim.

11. THAT the Defendant denies each and every allegation contained in paragraph (11) of the

In the Supreme  
Court

                      
No. 3

Statement of  
Defence

19th May, 1959

- continued

Statement of Claim and says that the said car was purchased through donations made by several persons (a large number of whom were the members of the Plaintiff Association) and the said car was handed to him as a gift from such donors to the Defendant for his personal use and enjoyment on the 18th day of December, 1954.

12. THAT the Defendant denies each and every allegation contained in paragraph (12) of the Statement of Claim.

10

13. THAT the Defendant denies each and every allegation contained in paragraph (13) of the Statement of Claim and says that even if such demand was made the Plaintiff Association was not duly authorised to make such demand.

14. THAT the Defendant says that this action has been instituted without the authority of the duly constituted Executive Committee or Central Board of the Plaintiff Association and that the persons who now purport to act as office-bearers of the Plaintiff Association were not duly elected in accordance with the Constitution of the Plaintiff Association. In the premises, therefore this action is not maintainable at law.

20

DELIVERED the 19th day of May, 1959.

KOYA & CO.

per S.M. Koya.

Solicitors for the Defendant.

\_\_\_\_\_

11.

No. 4

COURT NOTES.

In the Supreme  
Court

No. 4

Court Notes

11th August,  
1960.-

IN THE SUPREME COURT OF FIJI

Civil Jurisdiction

Action No. 54 of 1959.

IN COURT

Before the Hon. Mr. Justice Knox-Mawer  
On Thursday 11th August, 1960 at 9.30

BETWEEN:

10

THE FIJI KISAN SANGH

Plaintiff

- and -

NATHANIEL STUART CHALMERS

Defendant

Mr. Kermode for the Plaintiff.

Mr. Koya for the Defendant.

Kermode: I am not pressing the claim for the  
Rover. Issue is simply of the cheques.  
Preliminary point - is the defence raised  
in paragraph 14  
20 (a) action without authority of execu-  
tive committee.  
(b) persons not duly elected.

If there was no authority and answer in  
certain circumstances no evidence necessary.

Koya: Evidence is necessary. Statutory con-  
stitution - Industrial Association  
Ordinance plus internal constitution.

Kermode: Case law is clear. In matters of this  
nature Court does not interfere.

30

Foss v. Harbottle. Palmer 10th Edition.  
Danish Mercantile Co. Ltd. v. Beaumont  
1951 All.E.R. page 925 para.2.  
It can be ratified.

Delay by plaintiff in his allegation.  
We did have authority.



In the Supreme  
Court

No. 4

Court Notes

11th August,  
1960 -  
continued.

Court: The presumption omnia Praesumuntur Rite Esse Acta may well be in your favour and there may be a principle to be drawn by analogy from Foss v. Harbottle but I do not wish to rule separately on this issue.

Kermode opens: Correspondence put in by consent Ex. "1" 6 Returns 1952 - 1957 Ex. "2".

Plaintiff's  
Evidence

No. 5

George Bently  
Examination.

PLAINTIFF'S EVIDENCE

10

No. 5

GEORGE BENTLY

GEORGE BENTLY Sworn on Bible in English.

Member of staff of Bank of New South Wales. I produce the cheques listed on Part "B" of list on pleadings. Cheque exhibited "3".

I produce Form AY-E of 2nd June, 1952. This is signed by Mr. Chalmers and Shiu Nath authorising him to operate the new account Kisan Sangh Building Fund Account. Exhibit "4".

20

I produce Form AY-E 2 of 2nd June, 1952 relating to this account Exhibit "5". It refers to a resolution.

I produce the resolution Exhibit "6". I also produce Form AY-E2 of 23rd April, 1957 Exhibit "7". I also produce AY-E 2 of 23rd April, 1957 Exhibit "8". And the extract of Resolution Exhibit "9".

Bundle of cheques listed in Part "A" exhibit "10".

30

Cross-examination:

None.

No. 6

JOHN PERCY BAYLYIn the Supreme  
CourtPlaintiff's  
Evidence

No. 6

John Percy  
Bayly.

Examination.

JOHN PERCY BAYLY affirmed.

Living in Navua District. President of Fiji Kisan Sangh. This action against Mr. Chalmers was commenced 7th April, 1959.

10 When I became President, the Central Board unanimously agreed that action should be taken. That Mr. Kermode was to sue him on behalf of the Kisan Sangh. I should say it was 8 or 9 months ago.

As President I expected the General Secretary to carry out the resolution of the Central Board. On 24th January a resolution was passed to institute these proceedings.

Kermode: Presumption omnia praesumuntur is in favour of plaintiff. It is for defendant to show prima facie irregularity.

20 Cross-examination:

Cross-  
examination.

I was elected President March and April 1959. The Central Board is composed of delegates from the district. The General Secretary asked me to stand as President. The Central Board elected me.

Question: At one meeting representations were made that the delegates had not been properly elected?

Answer: I can't remember that.

30 Question: Delegates are to be elected at what month of the year?

Answer: I don't know. I don't know of any election this year. I wasn't President in January, 1959. So I don't know of resolution then.

On 24th January the resolution was passed after Mr. Prasad had said that there was an alleged irregularity by Mr. Chalmers as regards funds upon which action should be taken. It could be that I didn't know that proceedings had already been commenced. I

In the Supreme  
Court

Plaintiff's  
Evidence

No. 6

John Percy  
Bayly.  
Cross-  
examination  
- continued.

am not sure. The substance was that legal action should be taken. I can't remember anything as to any ratification of action already taken by the Board against Mr. Chalmers.

Mr. Kermode wanted definite instructions from the Kisan Sangh to take action. It received the sanction of the Central Board.

Question: Was anything said about the Registrar of Industrial Association investigating the accounts?

10

Answer: I can remember it was brought up at a subsequent meeting. It could be that the District Elections should be held in January each year. I did not check on the regularity of the meeting at which I was elected.

No. 7

Shiu Nath.  
Examination.

No. 7

SHIU NATH.

SHIU NATH Sworn on Ramayan in English.

Assistant Secretary, Fiji Kisan Sangh. In 1952 I was Acting Secretary. In that year there was discussion regarding the erection of the new building in Lautoka. I am referred to resolution Exhibit "6" of January 1st 1952. I check that in the Minute Book. Exhibit "6" is a correct copy of what is recorded in the Minute Book. I was present at the meeting and this is my own record.

20

In those days it was decided to erect a building and we opened a bank account to collect moneys from the farmers. Known as the Kisan Sangh Building Fund. Mr. Chalmers was President at that time. He presided at the Meeting. He suggested that he should be authorised to open the account, and the sole person to operate it. Shown cheques Exhibit "3".

30

All are signed by Mr. Chalmers. Apart from the weighbridge account, I have been given a list of chits and I have checked through the minutes and there is no record of any authorisation by the

committee for the drawing of those cheques. There is an authorisation in respect of the Weighbridge account. Mr. Koya was Chairman of this meeting. He told the meeting that £450 should be put aside for the Weighbridge and that Mr. Richmond had come with a cheque but I refused to sign. The Board did give an authority to sign the cheque. It was agreed that authority for the £450 and £60 be given. The date is 10th September, 1957.

In the Supreme  
Court

Plaintiff's  
Evidence.

No. 7

Shiu Nath.  
Examination  
- continued.

10 At page 136 of the Minute Book there is reference to the Weighbridge account. There it was resolved that £450 be given for the Weighbridge. Mr. Chalmers was President - Mr. Koya signed. At page 102 of the Minute Book there is reference to the land for the building.

20 After discussion it was resolved that the meeting authorises the President and Ajodhya Prasad to purchase the land. Mr. Chalmers was President. After the account was opened Mr. Chalmers made no report to the Committee as to the state of the account. At that time the General Secretary was overseas. After his return the question of account arose.

Mr. Chalmers was still President. Mr. Prasad asked Mr. Chalmers to give up all the accounts. He used to say I will bring over soon but he never did. I was also present when there was a resolution passed authorising Mr. Kermode to look into accounts between then, and April, 1959.

30 There was discussion in the Central Committee that action should be taken upon Mr. Chalmers. That was the feeling of the majority. Mr. Koya used to be Vice-President in December, 1958.

On 28th December Mr. Koya was at the meeting when it was decided to "enquire". On 24th January, 1960 a further resolution was passed (refers to Minute Book) Extent as stated in 1(b) answer to interrogatories.

40 I knew this action has been commenced in April, 1959. That fact had been commenced at earlier meetings. None of the members of the Committee had objected to this. I don't know anything about the accounts the Kisan Sangh operated.

In June 1952, the fund was set up to acquire land and to erect one building for Kisan Sangh. Mr. Chalmers as President conducted meetings but at no time did he put out the correct procedure regarding accounts.

In the Supreme  
Court

Plaintiff's  
Evidence.

No. 7

Shiu Nath.  
Examination  
- continued.

After Mr. Koya came in as Vice-President he insisted on the Treasurer bringing forward accounts for special approval by the Committee. Until Mr. Koya there was no such system. Apart from those Committee Members there was no express authorisation. Mr. Chalmers was also authorised in 1952 to open a Government Savings Account. I know of no such account. In the list of cheques List "B" is one February 1 - Deposit Government Savings Bank. £500. I have found nothing about that.

10

Minute Books Exhibited 11(a) - 11(b).

Cross-  
examination.

Cross-examination.

I know the provision of the constitution.

Question: You have to hold election in "January or any earlier period each year?"

Answer: Yes.

Question: The last election wasn't held in January?

Answer: I can see from the Minutes.  
Minute Book Exhibit 11B consulted.

20

Question: When were you elected as Ba delegate last year?

Answer: In January last year.

I don't know about Ajodhya Prasad. I don't know about other districts. The Branch Presidents will know. At the Ba Branch Meeting where I was elected delegate, I can't remember who was the Chairman. It was at the Embassy Theatre. I don't know the date in January. Nasir Mohammed, Birval Verma, Abdul and Ram Narayan Dube were elected.

30

A report was sent to the Central Board. The report is incorporated in the minutes. All were read by Mr. Prasad. I can't give you all the dates. It is noted that Mr. Prasad read out all the district elections. It wasn't complained that the Board's elections were not held in accordance with the Constitution.

There is nothing to this effect in the Minutes. The meeting was on 15th March, 1959. All the delegate said the election was in January.

40

I didn't make any inquiries. I have studied the Part "B" list of cheques. There is no specific authority recorded in the Minutes for the passing of any of the cheques listed in the Part "A" list apart from two Weighbridge cheques. I don't know if the cheques on Part "B" was authorised or not. Referred to para "8" of the Statement of Claim.

In the Supreme  
Court

Plaintiff's  
Evidence.

No. 7

Question: You don't know whether that allegation is true or not?

Shiu Nath.  
Cross-  
examination.  
- continued.

10 Answer: It is true because there are no instructions in the Minute Book.

Any items not in the Minute Book. Mr. Chalmers must be liable for. I don't know whether he should be liable for such items. The allegation in para 8 is true because Mr. Prasad said so in the Meeting. I am relying on his allegation.

20 If the Bank Statement shows that it wasn't drawn for the Kisan Sangh that is not properly drawn. The Bank Statement show that it wasn't drawn for the Kisan Sangh Building. I have made enquiries about each cheque in Part "B" and each one is improperly drawn by Mr. Chalmers. I didn't find out what the £150 paid to Burns Philp was for. I don't know if anything isn't in the Minutes it wasn't properly drawn. Its not in the Minutes it's not a proper payment.

Question: Was the cheque for A. Prasad Cheque 684 on list A properly drawn for Your Association says it was on the pleadings?

30 Answer: Yes it was. But I agree cheque 684 is not authorised in the minutes.

Kermode: I admit it isn't in the Minutes. Any payment not in the Minutes isn't authorised.

Kermode: I admit there was a lack of control. The whole committee was guilty of that.

Koya: That is the point. It was left to the absolute discretion of the defendant as sole trustee - so how can the Plaintiff's Association now complain.

40

I know that £100 was paid for stamp duties.

In the Supreme Court

Plaintiff's Evidence

No. 7

Shiu Nath. Cross-examination - continued.

Koya:

It is conceded that defendant refused to deliver accounts to the Plaintiff's Association because the association as such is not entitled to them.

I say that Mr. Chalmers improperly drew these amounts in Part "B". Each and every item in Part "B" was improperly drawn by Defendant. I made inquiries into the Bank Book and the Minute Books to reach this conclusion. I say they all were improperly used by him and not for the benefit of the Building Fund.

10

Adjourned to 2.00 p.m. on 12.8.60.

(Sgd.) R. Knox-Mawer  
Acting Puisne Judge.

11. 8. 60.

12. 8. 60.

Koya:

Justice would be better served if Mr. Chalmers conducted his case in person.

By arrangement we have decided that I wish to have leave to withdraw.

20

Kermode:

No objection. Koya withdraws. Defendant in person.

Kermode:

As a result of previous inquiries the cheque for £610 cheque 209 in List "B" was properly passed by Defendant. And so that item may be deleted from this list.

Cross-Examination of Shiu Nath resumed:

Question: You said these cheques in Part "B" were improperly drawn by me?

30

Answer: Yes.

Question: Was that true or false?

Answer: Mr. Kermode found that the £610 had been properly paid.

Question: You say they were all improperly drawn today?

Answer: Yes I stick by that.

Question: The £610 was not drawn directly by me, you say?

Answer: Until yesterday my investigation showed that it had not been properly drawn.

Question: It was a false statement when you said all of the cheques were improperly drawn yesterday?

Answer: To my knowledge it was true yesterday. I now know that it wasn't true.

Question: Have you investigated all the other items in Part "B" to find out if they were improperly drawn?

Answer: Up to yesterday my investigations showed. Chalmers - answer the question.

Witness: The answer is yes.

I was appointed Assistant Secretary on the same day when you were authorised to open the bank account. On 1st January, 1952 the Minutes record it (extract of minutes read).

As Assistant Secretary I have had to do with the accounts of the Kisan Sangh, because when all the Board members are there we have to read the accounts. I never kept any accounts myself.

Question: Was there an accountant Treasurer?

Answer: Mr. Aziz was Treasurer. In 1952.

After 1952 Mr. M.D. Richmond was the accountant and Treasurer during the whole of the period when these cheques were drawn. He didn't keep the accounts and present them to every meeting of the Board and the Annual General Meeting. He presented some at the Annual General Meetings and not at the Board Meetings.

Question: He is the proper person to keep all the accounts?

Answer: He was doing everything under instructions. I know nothing about it.

In the Supreme Court

Plaintiff's Evidence.

No. 7

Shiu Nath. Cross-examination - continued.

10

20

30



In the Supreme  
Court

Plaintiff's  
Evidence.

No. 7

Shiu Nath,  
Cross-  
examination  
- continued.

Question: The only person who would know is the accountant and treasurer?

Answer: If it's not brought clearly at the meeting I can say it has not been brought.

Question: The accountant and treasurer deals with all the accounts?

Answer: So far as I know but you were handling all the accounts in those days. I don't know if he was paid or not.

10

Question: Were you at Sigatoka when I was authorised to pay him what I thought he would accept?

Answer: Yes. I don't remember well. It was mentioned to pay him some monies. I don't know why later Ajodhya Prasad nor the accountant are being called to give evidence for the Plaintiff.

Question: Is not the General Secretary the custodian of all minutes, documents, accounts, books and the seal of the Association by law?

20

Answer: Yes.

Question: Can you produce any accounts of the Kisan Sangh?

Kermode: They have been produced by consent.

Chalmers: Those are returned. I mean the various accounts. The detailed accounts.

30

Witness (Contd.) I have none of the detailed accounts. The Treasurer G.R.Bhola, in Lautoka, has them.

Question: There were 3 accounts. The Building Fund Account which I controlled?

Answer: Yes.

Question: The Weighbridge account?

Answer: At that time there was no Weighbridge account. Up to the time when you were President, there was no Weighbridge account.

In the Supreme  
Court

Plaintiff's  
Evidence.

No. 7

Shiu Nath.  
Cross-  
examination  
- continued.

Question: As far back as these first cheques were drawn there was a Weighbridge account operated by Ajodhya Prasad?

Answer: No, never any such account to my knowledge. There was no such account.

10 Question: Did you attend a meeting when £900 had to be paid to Weighbridge account and I objected?

Answer: I don't remember it.

Question: Was there not also any Income Account operated by Ajodhya Prasad and others apart from the Building Fund Account?

Answer: There was no such account.

Question: The Kisan Sangh had all sorts of claims to meet, where did the money come from?

20 Answer: There was only one Building Fund Account.

Question: All the expenses for running the Kisan Sangh came from out of the Building Fund Account?

Question: Where did your salary come from?

Answer: I'am not paid a single penny for 20 years. I didn't get a salary. I don't know about Ajodhya Prasad. It's never been brought to the meeting so I don't know. I've not seen such accounts of Ajodhya Prasad's and my salary.

Question: If I produce an account from Mr. Richmond showing all monies received and expenses, will you say it is false?

0 Kermode: I would like to see it first. We allege that the relevant Books of Accounts are all in the possession of the Defendant. I will call an Accountant to verify that fact.

In the Supreme  
Court

Plaintiff's  
Evidence

No.7

Shiu Nath.  
Cross-  
examination  
- continued

Chalmers: I will produce the income account to the Treasurer if he is called.

Kermode: I concede that there were such accounts - there were other accounts - Weighbridge and Income and I believe a cash account. This witness is only speaking from his knowledge.

Chalmers: This witness claimed to be conversant with and to deny them.

Kermode: I will call Mr. Bholia and Mr. Richmond. I shall also call upon them to produce books of account. But my instructions are that there were no books of account or in Mr. Chalmer's possession. I am not calling Mr. A. Prasad. 10

Chalmers: I shall subpoena him.

Cross-examination continued:

Question: Do you know I borrowed £6,000 from the Bank of New South Wales in connection with the Kisan Sangh Building on behalf of the Kisan Sangh. 20

Answer: I don't know.

Question: You don't know of any cheque signed by me for that borrowed money?

Answer: I don't know. I can't say that it was your personal account or the building fund or what.

Question: Do you know that I borrowed £10,000 on behalf of the Kisan Sangh, for this building. 30

Answer: Yes.

Question: Who operated and used that money?

Answer: You did.

Question: You say that money taken for that loan was not used by me.

Answer: By a long investigation we came to know about another cheque which we cannot say about.

Question: Reference the cheques referred to us A and B, there are a lot of other cheques listed in the Bank Statements. Have you see them?

Answer: No.

Question: They are not all the cheques drawn by me by any means?

Answer: Part "B" merely lists the cheques not concerned with the building.

10 Question: Have you checked all the cheques drawn by me and running into thousands of pounds?

Answer: If I see I can say.

Question: You say you investigated it?

Answer: A committee was appointed but you never brought any accounts to any meeting so we don't know anything about it.

Question: But an accountant, Mr. R.D. Richmond kept the accounts?

20 Answer: I never saw them. The President had to see they were brought to the meeting.

According to the constitution it is the duty of the Secretary to check the accounts which the Treasurer brings to the meeting.

Chalmers: As these other witnesses are to be called I will not carry this cross-examination any further.

Re-examination:

30 I have seen these Annual Returns. I know they contain copies of accounts. I never saw the Treasurer or anybody, between 1952 - 1957, produce any books of account.

During that time there were discussions of books of account, argument why Mr. Chalmers and Mr. Richmond don't produce the account and Mr. Chalmers used to say I am your President. I am operating the account, do you not believe me that I am keeping the account in the correct way.

In the Supreme  
Court

Plaintiff's  
Evidence.

No. 7

Shiu Nath.  
Cross-  
examination  
- continued.

Re-examination.

In the Supreme  
Court

Plaintiff's  
Evidence.

No. 7

Shiu Nath.  
Re-examination  
- continued.

When the delegates said we must see the accounts Mr. Chalmers used to say I'll bring the accounts later on. By accounts I mean Building Fund Accounts, not accounts generally. Mr. Chalmers suggested that Mr. Richmond was the Accountant but in 1952 the Treasurer was Aziz, in 1953 also, in 1954 also, in 1955 no change, in 1956 Treasurer was Mr. D. Richmond, 1957 Treasurer Safiulla.

From my own knowledge I know my Committee has been unaware about 10

(a) whether there were Books of account and

(b) where they were.

Mr. Safiulla held the book covering this period. That is my view and that of our Committee.

The Kisan Sangh hasn't got any of the books for the period. Safiulla holds same. As Secretary at that time I have checked through all the accounts and the only authorisation I can find is what I have explained. I have seen no accounts covering any of the items mentioned in List "B". 20

At no time did Mr. Chalmers seek verbal permission to draw any of these cheques, even including the £610 which we have now debited from List "B". I have also looked through the Annual Returns Exhibited "2" the payments and receipts, and have found no such payments are listed. Day to day expenses are not listed here. I don't know whether these returns were prepared under Mr. Chalmers's guidance or not. 30

Adjourned to 15.8.60 at 9.30 a.m.

(Sgd.) R. Knox-Mawer.  
Acting Puisne Judge.

15. 8. 60.

Kermode  
Chalmers

Kermode: Ref: Item Cheque 770 - £333. 13. 9.  
See cheque 772 - item of £450 making a total of £783.13. 9. There is a credit in the Weighbridge Account for the same amount. My instructions are to withdraw this amount of £333.13. 9. from List "B". 40

No. 8  
GHASI RAM BHOLA.

In the Supreme  
Court

Plaintiff's  
Evidence.

GHASI RAM BHOLA sworn on Ramayan in English, Clerk.

No. 8

Ghasi Ram  
Bhola.  
Examination.

10           Employed by Burns Philp (ss) Co. Ltd.,  
Lautoka. Treasurer of Fiji Kisan Sangh. Elected  
15.3.59. I had been a member since 1950. I  
attended meetings as a member in 1957 to 1958 when  
Mr. Chalmers was President. Questions were  
raised about the finance. Then Mr. Chalmers didn't  
want to answer, got annoyed and left the chair on  
several occasions. These are Bank of New South Wales  
Statements from April 28th 1952 to December 30th 1957.  
Exhibited as one bundle Exhibit "12".

The Kisan Sangh Building was erected under  
contract by Fiji Builders. This is their statement.  
Tendered Exhibit "13".

Kermode: By agreement I put in a copy of the Con-  
stitution of the Kisan Sangh, Exhibit "14".

20           Witness (Cont.) I received no salary as Treasurer.  
Because the Kisan Sangh says all members  
work voluntarily. We get expenses but  
no salary.

Since 1952 I don't know of any official  
being paid salary as distinct from expense. I know  
of none as Treasurer, during last 18 months. I took  
over from Saffiulla. When I took over he handed  
me no books. I demanded books but I haven't  
received any up to now.

30           No where in the records of the Kisan Sangh  
is there any approval for these payments listed in  
Part "B". I have no receipts or dockets covering  
any of them. I heard the motion put through by the  
Central Committee for this action.

40           I recollect the Central Committee author-  
ised payment to your firm in March, 1959. The Vice-  
President and General Secretary and myself signed the  
chit. Mr. Koya was Vice-President at that time. He  
refused to sign, once a cheque was presented to him.  
We held it back until we had a new authority in the  
Bank to sign the cheque.

It was discussed that we should find out the

In the Supreme  
Court

Plaintiff's  
Evidence.

No. 8

Ghasi Ram  
Bhola.  
Examination  
- continued.

Cross-  
examination.

expenses of the building. From the statement of the bank we found that several cheques had been drawn not for the purpose of the building. They were all in favour of this action. The majority was voted.

Cross-examination:

I was appointed by resolution voted upon as recorded; I received 12 votes, Saffiulla 10 votes. The date was 15th March, 1959 (shows extract in Minute Book). I attended some of the Annual General Meetings since 1950. They were held in temporary buildings at Lautoka. They had to be small every year. The cost I cannot say. I don't remember the meeting when the temporary structure nearly fell down. We were asked to donate to a fund for a Kisan Sangh School and Building. The money was donated by certain members. We agreed to pay a combined payment of £3.12. 0. per year. £3. 2. 0. to the Building Fund and 10/- to the Kisan Sangh ordinary income. 10/- was the annual subscription. 10 20

Question: Was £4,000 paid by various members?

Answer: I don't know. I have never seen the accounts.

I cannot say that all members donated to the Fund. All have not paid. I don't think its fair that those who didn't donate should have a share in the building.

Question: Shouldn't the building be held on trust for those who gave. 30

Answer: They have their own trustees. It is in the constitution.

The building is the property of the Kisan Sangh. The President, Secretary and Treasurer are the trustees. It should be held on trust for those who donated the money.

Question: Those who donated money to build the Mosque at Lautoka were held to be the owners of the property?

Answer: That is a different question. I don't know the details. There was a discussion over accounts at a meeting. 40

Question: Did the Kisan Sangh vote £600 for Mr. Prasad to take a trip to India? In the Supreme Court

Answer: I don't know. I didn't know he had been ordered to refund it. Plaintiff's Evidence.

Question: Did Sheik Aziz claimed that he was owed £300 by A. Prasad for money lent for the Kisan Sangh? No. 8

Answer: Yes I heard that Mr. Chalmers refused to sanction the repayment of the £300 to Sheik Aziz. Ghasi Ram Bholia. Cross-examination - continued.

10

Question: Could A. Prasad give no details?

Answer: I remember that.

Question. Didn't the Central Board say we passed that and you must pay?

Answer: I don't remember an uproar when you refused to pay the £300. I do remember you left and refused to return several times.

Every time a financial question was raised you got annoyed and got out.

20

(Witness shown 10 cheques).

You were President in 1957.

Question: Were you there when I refused to sign these cheques because there was no proper accounts?

Answer: I know nothing about the accounts. I've never seen them before. I've never seen any of the accounts.

Kermode: I rest my case there.

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In the Supreme  
Court

No. 9

COURT NOTES.

No. 9

Court Notes:  
15th August,  
1960.

Chalmers: If that is the case, and the plaintiff is calling neither the General Secretary nor the Treasurer, Mr. Richmond, I submit that I have no case to answer. I leave it to the Court to decide whether I should be called upon to defend.

Kermode: In reply.

10

Adjourned to 11.15 a.m.

(Sgd.) R. Knox-Mawer.

11.15 a.m. (Court resumes)

Court: As Mr. Kermode has pointed out, unless Mr. Chalmers states that he intends to call no evidence, the Court will refuse to rule on his submission of 'no case to answer'. I do not therefore intend to rule upon this question before Mr. Chalmers has made his election. However it has now become perfectly apparent to the Court, that this case cannot be satisfactorily concluded unless and until certain accounts and inquiries relevant thereto are directed to be made.

20

In para. 6 of the Statement of Claim the Plaintiff has stated that the defendant has refused to render accounts, but no order for account is sought in the prayer.

Learned Counsel for the Plaintiff has said that he did not include such a prayer because he felt that the only accounts which the defendant would submit, the plaintiff union already had, in the form of the Part "A" and Part "B" appendices to the Statement of Claim. It is now clear however that a Court Order ordering full accounts and inquiries relevant thereto be made and taken must assist the Court, in this case, far more fully than does the information set out in these appendices.

30

Order 33 Rule (2) of the Rules of Court empowers the Court, at any stage of the proceedings, (notwithstanding that it may appear that some further relief is sought or some special issue to be tried) to direct any necessary inquiries or accounts to be made or taken.

In the Supreme Court

No. 9

Court Notes:  
15th August,  
1960 -  
continued.

10

I therefore direct that, in default of any agreement between the parties, the Registrar do appoint forthwith a fit and proper person to enquire into all financial transactions relating to the Fiji Kisan Sangh Building Fund, and to file, in writing, in this Court, a complete report thereon within three months of to-days date. For this purpose both parties are ordered to submit to the person so appointed any documents relevant to such an inquiry, and to answer any of such person's questions. Liberty to apply.

(Sgd.) R. Knox-Mawer

ACTING PUISNE JUDGE

20

SUVA,  
15th August, 1960.

No. 10

No.10

ORDER FOR ACCOUNTS

Order for  
Accounts.  
15th August,  
1960.

IN THE SUPREME COURT OF FIJI

No.54 of 1959

BETWEEN

THE FIJI KISAN SANGH

Plaintiff

- and -

NATHANIEL STUART CHALMERS

Defendant

Before R. Knox-Mawer Esq., Puisne Judge

30

Upon hearing Mr. R.G. Kermode of Counsel for the Plaintiff Association and the Defendant Nathaniel Stuart Chalmers the abovenamed Defendant

In the Supreme Court

No.10

Order for Accounts. 15th August, 1960 - continued.

in person and the Court being satisfied that this action cannot be satisfactorily concluded unless and until certain accounts and inquiries relevant thereto are made, IT IS HEREBY ORDERED AND DIRECTED that in default of agreement between the parties the Registrar of this Court do appoint a fit and proper person to inquire into all financial transactions relating to the Fiji Kisan Sangh Building Fund, and to file, in writing, in this Court, a complete report thereon within three months of the date hereof.

10

And it is further ordered that for the purpose aforesaid both parties do submit to the person so appointed any documents relevant to such inquiry and to answer any of such persons questions.

Liberty to either party to apply.

DATED this 15th day of August 1960

By the Court

G. YATES

Registrar.

L.S.

20

No.11

Notice and Grounds of Appeal. 10th September, 1960.

No. 11

NOTICE AND GROUNDS OF APPEAL

IN THE SUPREME COURT OF FIJI No. 54 of 1959

Appeal No. 10 of 1960.

BETWEEN THE FIJI KISAN SANGH Plaintiff

- and -

NATHANIEL STUART CHALMERS Defendant

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 abovenamed Defendant for an Order that the verdict given and Judgment directed on the trial of the abovenamed action before the HONOURABLE ACTING PUISNE JUDGE MR. KNOX-MAWER at Suva on the 15th day of August, 1960, be set aside and that Judgment be entered for the Defendant dismissing this action with costs or ALTERNATIVELY that a new trial be had between the parties and the costs of former trial be paid by the Plaintiff to the Defendant or ALTERNATIVELY that the said costs abide the result of the new trial AND for an order that the Plaintiff pay to the Defendant the costs of and occasioned by this application.

In the Supreme  
Court  

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No.11  
Notice and  
Grounds of  
Appeal.  
10th September,  
1960 -  
continued.

1. THAT the learned trial Judge was wrong in law proceeding to order an inquiry for accounts without proceeding to determine the following issues:

(a) whether this action was instituted with the authority of the duly constituted Executive Committee of the Central Board of the Plaintiff Association.

(b) whether or not the Defendant was the sole trustee of the donors and as such whether he was duty bound to account to them and to protect their interests and not to the Plaintiff.

2. THAT having regard to the fact that the Plaintiff Association was claiming the sum of £3,752.15. 5. as being the amount allegedly improperly drawn by the Defendant and that the same was used for his own use or in payment of accounts not incurred authorised or approved by the Plaintiff Association, the learned trial Judge was wrong in law in exercising his discretion under Order 33 Rule (2) of the Rules of the Court.

3. THAT having regard to the evidence given by Mr. Bhola (the present Treasurer of the Plaintiff Association) the learned trial Judge ought to have dismissed this action on the grounds that the Defendant was not duty bound to account to the Plaintiff Association in respect of the cheques drawn under the Bank Account titled "Fiji Kisan Sangh Building Fund Account".

4. THAT having regard to the fact that the Plaintiff Association's witness Mr. Shiunath was unable to depose as to the allegations contained in the Statement of Claim and the fact that the Plaintiff

In the Supreme Court

Association did not call Messrs. Ayodhya Prasad and M.D. Richmond who were material witnesses, the learned trial Judge ought to have dismissed this action with costs.

No.11

Dated the 10th day of September, 1960.

Notice and Grounds of Appeal. 10th September, 1960 - continued.

KOYA & CO.

Per:

S.M. Koya

Solicitors for the Defendant.

To the abovenamed Plaintiff or its Solicitors, Messrs. Munro, Warren, Leys & Kermode, Lautoka.

10

No.12

No. 12

Order for Stay of Execution and Leave to Appeal. 28th September, 1960.

ORDER FOR STAY OF EXECUTION AND LEAVE TO APPEAL.

IN THE SUPREME COURT OF FIJI

No.54 of 1959

BETWEEN

THE FIJI KISAN SANGH

Plaintiff/Respondent

- and -

NATHANIEL STUART CHALMERS

Defendant/Appellant

20

WEDNESDAY THE 28th DAY OF SEPTEMBER, 1960, BEFORE HIS LORDSHIP THE ACTING PUISNE JUDGE MR. JUSTICE KNOX-MAWER IN CHAMBERS.

UPON MOTION this day unto the Court by Counsel for the Defendant/Appellant for an Order

that execution and all proceedings to enforce the Judgment herein dated the 15th day of August, 1960, might be stayed pending the hearing of the Appeal, therefrom of which the Defendant/Appellant gave Notice of Motion dated the 22nd September, 1960, AND UPON HEARING SIDDIQ MOIDIN KOYA of Counsel for the Defendant/Appellant and MR. H.A.L. MARQUARDT-GRAY of Counsel for the Plaintiff/Respondent AND UPON READING the said Judgment IT IS ORDERED that

10 no proceedings to be taken to enforce this Judgment until the Appeal shall have been disposed of AND IT IS FURTHER ORDERED that the Defendant/Appellant do have leave to appeal under Section 11 of the Court of Appeal Ordinance (Cap.3) and any irregularities with respect to the Notice of Appeal dated the 10th day of September, 1960, and filed herein arising by the operation of Rules 13 and 21 of the Court of Appeal Rules are hereby waived AND IT IS FURTHER

20 ORDERED that the Defendant/Appellant do within TWENTY ONE (21) days from the date hereof furnish security for costs in respect of trial and in respect of proposed appeal in the sum of ONE HUNDRED POUNDS (£100. 0. 0.) by lodgment of a bond executed by the Defendant/Appellant with one surety AND IT IS FURTHER ORDERED that costs of this application do abide by the result of the Appeal.

BY THE COURT

(Sgd.) G. Yates

R E G I S T R A R .

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In the Supreme  
Court

No.12

Order for Stay  
of Execution  
and Leave to  
Appeal.  
28th September,  
1960 -  
continued.

34.

In the Court  
of Appeal

No. 13

JUDGMENT

No. 13

Judgment.  
3rd May, 1961.

IN THE FIJI COURT OF APPEAL

Civil Jurisdiction

Civil Appeal No.10 of 1960

BETWEEN

NATHANIEL STUART CHALMERS Appellant

- and -

THE FIJI KISAN SANGH Respondent

J U D G M E N T

10

The plaintiff is an Industrial Union registered under the provisions of the Industrial Associations Ordinance, of which at all material times the defendant was the President. The plaintiff maintains that it had at the Bank of New South Wales an account styled the Kisan Sangh Building Fund Account and that the defendant improperly withdrew from this account a sum of £3,752. 15. 2. The claim was for this sum or such lesser sum as the defendant was found to have withdrawn improperly from this account. 20

The defence maintains, inter alia, that the defendant as trustee for the several donors of a fund known as "The Kisan Sangh Building Fund" opened an account with the Bank of New South Wales which account was styled "The Kisan Sangh Building Account" and that the plaintiff Association is not entitled to question the propriety of payments made by the defendant from the fund. The defence further maintains that the action has been instituted without the authority of the duly constituted Central Board of the plaintiff Association. 30

At the close of the case for the plaintiff

the defendant submitted that he had no case to answer. The learned trial Judge did not in fact give a ruling on this submission but under the provisions of Order 33 Rule 2 of the Supreme Court Rules directed that the Registrar appoint a fit and proper person to inquire into all the financial transactions relating to the Fiji Kisan Sangh Building Fund and to file a report thereon within three months.

In the Court  
of Appeal

\_\_\_\_\_  
No. 13

Judgment.  
3rd May, 1961  
- continued.

10 The defendant has appealed against this  
"Judgment".

It is quite clear that this appeal is misconceived. There has in fact been no judgment in this case yet. The order made by the learned trial Judge was an interlocutory order from which no appeal lies to this Court without leave, and no such leave was sought or granted before the hearing.

20 We have heard Counsel for both sides on the matter and they have agreed that before an account is ordered in this case the trial Court should first arrive at findings of fact and determine the issues arising on the pleadings.

In these circumstances we have granted leave to the appellant to appeal from the Interlocutory Order made in this case and make the following direction by consent.

30 The order of the learned trial Judge dated 15th August, 1960, directing inquiries into accounts and matters incidental thereto is set aside and the action is remitted to the court below for the learned trial Judge to proceed with the hearing of the action.

We do not feel that an order for an account should be made unless and until the learned trial Judge has decided, after hearing all the evidence, whether the action was properly instituted; whether the defendant is accountable to the plaintiff Association; and whether he then considers such an order should be made.

40 In dealing with the defendant's submission that he has no case to answer we have no doubt that the learned trial Judge will give consideration to the authorities on this point reviewed in the case of Young v. Bank & Ors. (1950) 2 K.B.D., 510.

We order that the costs of this appeal be



In the Court  
of Appeal

costs in cause and abide the result of the trial of  
the action.

\_\_\_\_\_  
No. 13

(Sgd.) C.J. Hammett  
President.

Judgment.  
3rd May, 1961  
- continued.

(Sgd.) C.C. Marsack  
Judge of Appeal.

(Sgd.) J.P. Trainor  
Judge of Appeal.

SUVA.

3rd May, 1961.

10

In the Supreme  
Court

\_\_\_\_\_  
No. 14

COURT NOTES.

\_\_\_\_\_  
No. 14

Court Notes:  
16th August,  
1961.

On Wednesday 16th day of August, 1961  
at 9.30 a.m.

Mr. Kermode for the Plaintiff.  
Defendant in person.

Defendant: I was misled by Mr. Kermode's state-  
ment at p.19 re Bhola and Richmond in cross-examin-  
ing this witness. see p.20. Only person who could  
speak as to accounts was Accountant not this unquali- 20  
fied person. I had not finished with this witness.  
I was deceived by Mr. Kermode's statement. Plaint-  
iff has closed his case. I cannot call him. I ask  
that Shiu Nath be recalled by the Court for further  
cross-examination by me.

Kermode: I don't wish to consider Mr. Chalmers. I  
did call Bhola. Mr. Richmond was there in Court.  
I discovered that day that he was in fact Mr. Chalmers  
witness - that's why I did not call him - I had not  
until then. As for today's application - I was given 30  
notice of this. I have Shiu Nath here.

Chalmers: I never had the account goods. They were only produced at the trial. Then Mr. Richmond and I went through them together.

In the Supreme Court

Court: I direct that Shiu Nath be recalled into the Witness Box for further cross-examination by Mr. Chalmers.

No. 14

Court Notes:  
16th August,  
1961 -  
continued.

No. 15

SHIU NATH

Plaintiff's Evidence.

No. 15

SHIU NATH re sworn on Ramayan in Hindi.

Shiu Nath.  
Cross-examination  
- continued.

10 Cross-examination by Chambers:

Question: From September 17th 1954 to 19th April, 1957 who was keeping the accounts?

Answer: I will have to peruse the Minute Book. I was present at the meetings. There were requests made for the accounts to be available but Mr. Chalmers made excuses.

Question: Accounts must be presented at every General Meetings, don't you know that?

20 Answer: Satisfactory accounts were not presented. The full account was never brought. We were never satisfied.

Question: I am going to show you our account for 1956 presented to the Annual General Meeting - are you going to deny that? Document produced to witness.

Kermode: The Annual Returns are exhibited and these include a balance sheet in each case.

30 Answer: What is itemised in this account was never explained to the meeting.

Question: It was read out in Hindustani and adopted was it not?

In the Supreme  
Court

Plaintiff's  
Evidence

No. 15

Shiu Nath.  
Cross-  
examination  
- continued.

**Answer:** I don't know.

A full and truthful account was never produced. Document exhibited exhibit 15.

**Kermode:** Witness may refresh his memory from the Minute Book.

**Cross-examination resumed:**

I rely on the Minute Book not on what Mr. Prasad said.

**Question:** Are all the items in List A in the Minute Book? 10

**Kermode:** We concede they are not.

In those days Mr. Chalmers used to attend to all the buying and selling personally. Whatever he dealt with, he should have had recorded in the Minute Book. We don't know whatever transaction took place.

Not more than 1 or 2 of the items listed in A are not recorded in the Minute Book.

**Question:** You have sworn that only the items appearing in the Minute Book were properly drawn? 20

**Answer:** Yes, what is in the Minute Book is correct.

**Kermode:** The only item in the Minute Book from List A is the Weighbridge item. There is one item in List B £333.13. 9. which was the weighbridge account too.

**Question:** Who said that the items in Part A were properly drawn and the items in Part B improperly drawn? Who advised Mr. Kermode? 30

**Answer:** The Treasurer Mr. Bholia showed me the account and then we realised how much of the account was out of focus. This account Exhibit 15 is not noted in the Minute Book. This is the Central Board Minute Book, not of the Annual General Meeting.

Question: There is a book of the Minutes of the Annual General Meeting?

In the Supreme Court

Answer: I don't know.

Plaintiff's Evidence

Question: Where were the Minutes of the Annual General Meetings recorded?

Answer: I don't know. Mr. Prasad would know. He is the General Secretary.

No. 15

Shiu Nath. Cross-examination - continued

Question: Who decided that the items in A and B were properly or improperly drawn?

10 Answer: Upon what the Treasurer told Mr. Prasad. Mr. Prasad then said Mr. Bhola was the Treasurer.

Question: He said he knew nothing about the accounts?

Answer: Mr. Bhola drew our attention to it. He became treasurer in 1959.

Re-examination:

Re-examination.

20 Over the period in question 1954 - 1957 Mr. Chalmers was President and presided at the meetings. During that period Mr. Chalmers did not draw the Committee's attention to the fact that proper accounts had not been rendered. When the Building Account Fund was first opened I was Acting General Secretary. I and Mr. Chalmers opened the account together. Mr. Prasad was away in England. I took over possession of the Kisan Sangh's Books. I did not see any Minute Books of the Annual General Meetings. It was the Committee who complained to Mr. Chalmers about the absence of accounts.

30

No. 16

No. 16

COURT NOTES

Court Notes. 16th August, 1961.

Chalmers: I was not calling any evidence. I rest my case as it stands. As the question of accounts. There is a vital matter involved. Whether land and building account is the property of those who donated

In the Supreme  
Court

No. 16

Court Notes.  
16th August,  
1961 -  
continued.

the money. Not all the members subscribed. Association can raise money by a levy on members. This was not raised by levy. Raised by donation. One man gave £50, and so on. Under the Industrial Association Ordinance there is a body corporate. It can own and sell land at its will. This association can draft with lands of persons who did not subscribed to fund. No unwillingness on my part to account for every penny. I would be committing a breach of trust to those who donated money - if I did. It was donated to me as trustee for them. If I admit my liability to account to Kisan Sangh I am saying that the money and land bought is the property of the Kisan Sangh. That is my principal defence. I claim I am trustee of that fund for the donors, I have sole right to use and administer fund in carrying out the objects of the donors. Provided it is clearly understood that I am not accounting to the Association - I will sit down with an Accountant and prove exactly what the money was used for. 10

Plaintiff's Claim: Were cheques part A - correctly drawn  
part B - correctly drawn? 20

p.4 para 13 (1) of prayer goes much further - misappropriation - no evidence whatsoever of misappropriation? Every cheque properly endorsed. Signature on back of each. Far better than a receipt. No proof whatsoever of any defalcation. 30

Travelling Expenses of President.

Each cheque drawn by me, payable to me. No question of trying to take funds - why not put travelling expenses - no, each one is payable to me and I am accountable for it. The accounts are all here.

Letter (1) of Correspondence. Cheque to Dean put in List A. £129 - Sateriki according to letter (1) why? If Prasad had given out lot I would want to know what happened to it. Of all items this one is picked out - because they don't want any enquiry made into it? 40

Letter 30th October, 1958 - Cheques improperly drawn - ending with Burns Philp. What happens when they issue the writ?

List B - p.6 of record - a number of items added to this list. All these items subsequently added. No explanation given.

In the Supreme Court

Young v. Ranks & others 1950 2 K.B.D. 510.

No. 16

Court Notes:  
16th August,  
1961 -  
continued.

Kermode:

10 General: Chalmers was the president of Plaintiff Association. During relevant time presided at all Annual General Meetings, Chairman of Executive. He drew up the present constitution. Plaintiff Association's evidence. Affairs not run in a business like manner - or strictly in accordance with constitution. If there was any laxity Mr. Chalmers must accept blame - he was guiding the Kisan Sangh.

Main defence of Mr. Chalmers - Am I accountable to Kisan Sangh or the donors. When drawing claims I did seek accounts but by the time we formulated Statement of Claim we did not seek an account. We went straight for the £375.15. 5.

(sic.)

20 We no longer sought accounts. We still do not seek accounts. Constitution, Clause 24. Control vested in Central Board.

Prayer 4. Would apply if the Court will consider that accounts are necessary - if Court felt that it could not say whether or not there was any misappropriation.

Kermode: I say that we have shown improper drawing of accounts. Cheques in Part A were properly drawn - because plaintiff association now says so.

30 Apart from 2 or 3 items - not one of other cheques - A or B are properly drawn in accordance with Para 24 constitution.

By resolution:

40 Apart from 3 items - defendant did not bother to get any resolution authorising payments of these sums. In A or B. Kisan Sangh authorised my firm to investigate. We advised that moneys in Part A were spent on behalf of Kisan Sangh. Others were not. Improperly drawn because there was no resolution. p.5 of record. Cheque 811 £128 - nothing odd at all. Correspondence 30th October - 2nd page.

In the Supreme  
Court

No. 16

Court Notes.  
16th August,  
1961 -  
continued.

"As regards the cheques shown as paid"  
Letter November 5th 1st letter of correspondence.

Munster - Defendant and Prasad authorised to negotiate about the land. Sateriki one of the Fijians involved. Part B - a number of cheques paid to Sateriki. Plaintiff's Case - This is Sateriki. Only payment found to be authorised - to Sateriki is £129. All other payments were unauthorised.

Fiji Builders Statement - We found those 10  
were properly paid. I said - to whom was it accountable. Whose money was this? Exhibit 4 - Statement of Accounts. Kisan Sangh Building Fund Account. Chalmers has signed it. By Resolution of The Sangh Executive Committee - authority given to President solely - p.25 of record - exhibit 6.

Court: Would that cover the part made by you in respect of Clause 24 of the Constitution.

Kermode: Yes.

Resolution did not waive necessity for 20  
Mr. Chalmers to seek approval for any payment. Authorises solely to operate it. Mr. Chalmers properly aware of situation. Plaintiff himself produced a number of cheques which he said does not authorise by Central Board and he refused to sign them - not until admission of Mr. Koya as Vice President - Letter of October 1st from Mr. Chalmers, p.1 and p.2nd and 5th para.

On 23rd April, 1957 - form AYE 2  
Exhibit 8 - Koya authorised to operate account. 30  
Exhibit 4 - 2nd June. Quite clearly money belonged to the plaintiff association. No basis. P.19 record. Did you know I borrowed Kisan Sangh - no clearer admission. Letter 16th October "we have been consulted".. This does not necessitate accounts because we have all the cheques drawn by Mr. Chalmers. We have produced the Bank statements.

We have produced the Annual Returns.  
Interrogatories - should he ask account for those 40  
cheques - show where the money has gone? As he has not - is he liable? - as claimed.

Chalmers: Interrogatories are not part of evidence.

Kermode: Books of account in possession of Shafi Ullah - he would not give them up - Mr. Chalmers says he has them now - My client has not seen them -

In the Supreme Court

Court: Is the Defendants explanation, if any, as to above. The cheques were applied in those books? Which hessays he has. And has refused to show to plaintiff?

No. 16

Court Notes:  
16th August,  
1961 -  
continued.

Chalmers: Such portions of interrogatories - as were relied on should have been put in.

10 Kermode: Interrogatories are part of the pleadings. But I will not refer to them as the Court has not had its mind directed to them and it has not been ruled which if any part of the answers are in evidence.

20 Neither can you find in these accounts any details of drawings from the account. 1956 p.5 of record. Board sought detail of withdrawals. Everytime this was raised Mr. Chalmers left meeting - would not account to the Board. Payments to Fiji Builders do appear. Payments Part B for 1956.

Compare these years with Part A and B - Certified accounts - signed by General Secretary - lodged in 1955 by Richmond. Even that account authorised by Mr. Richmond (1956) When Mr. Chalmers handed over to Mr. Richmond all dockets - the 1955 withdrawals shown in part B do not appear.

30 Why we don't require an account to be taken is that if Cheques Part B - not authorised by Association - as you must. Then you must find that so far as Association's Rates are concerned - they were improperly drawn - if on that part alone - you so find - onus shifts from plaintiff to defendant - to show that they were properly drawn - has not done so - liable -

Secondly - para 8 - applied to defendant's use or to accounts not authorised by plaintiffs. Shiu Nath produced minutes.

40 Onus on Defendant to show that they were authorised - could not do so - but could at least from that they were incurred on behalf of Kisan Sangh - he called no evidence of this.

Plaintiff Association did not want to bring the accounts - because he had done so much in



In the Supreme  
Court

No. 16

Court Notes.  
16th August,  
1961 -  
continued.

the past. Mr. Chalmers says he was asked for it - I will do so if I am told - plaintiff association took view that item would be withdrawn if we could see they were opened on behalf of Kisan Sangh.

Open to defendant to come into witness box - produce his books - show that they were applied on behalf of Kisan Sangh. Why did not he do so?

Would not need accounts because we have admission in documentary form as to what purpose the invoices were used for - in body of cheques full details as entered - part B - details recorded by defendant on cheques -

10.

Defendant must explain how these payments came to be made on behalf of Plaintiff Association - has not done so. Garrick Hotel - £6. 0. 6. When he drew these cheques he had nothing to hide - He was running it as he saw fit - but still improper - why not explain it?

Prima facie - if he does not account for each item claim must succeed?

20

If Court holds that it is upon defendant now to show that these monies (List B) were properly applied on behalf of Plaintiff. Then as defendant has elected not to do so - has put it out of his power to do so in this action - too late - plaintiff must succeed? He should have been prepared to go into box and accept any way - if at any time Mr. Chalmers satisfied in that they were spent on behalf of the Kisan Sangh we will not execute judgment against him for that part - I give my present undertaking for that - and my clients will undertake it too.

30

We could not do any fairer than that. I don't know if that could be part of the judgment - judgment should be given less items on Part B now conceded as spent on behalf of Plaintiff.

Chalmers: Why at this stage come forward for accounts?

At that time we had Mr. Richmond keeping

40

full accounts. I have never had these documents before from Mr. Richmond -

In the Supreme Court

Judgment Reserved.

            
No. 16

(Sgd.) P. Knox-Mawer Atg. J.

Court Notes:  
16th August,  
1961 -  
continued.

16. 8. 61.

No. 17

No. 17

J U D G M E N T

Judgment.  
1st September,  
1961.

IN THE SUPREME COURT OF FIJI

Civil Jurisdiction

10 Action No. 54 of 1959.

BETWEEN:

THE FIJI KISAN SANGH Plaintiff

- and -

NATHANIEL STUART CHALMERS Defendant

J U D G M E N T

20 The plaintiff is an Industrial Union registered under the Industrial Associations Ordinance. The defendant was the President of the plaintiff-union throughout the period material to this suit. The constitution of the Union, adopted on 18th November, 1951, has been exhibited, Exhibit 14. Rule 17 of this constitution provides that the management and control of the Union's affairs shall be in the hands of an Executive Committee referred to as the Central Board. Rule 24 provides for the banking of all monies received by the Union, and states that "such banking account

In the Supreme  
Court

No. 17

Judgment.  
1st September,  
1961 -  
continued.

shall be operated upon the authority, and signatures of such officials and officers as are appointed by the Central Board. By resolution of the Central Board any funds of the Union may be employed in connection with any one or more of the objects of the Union and the Board shall also have power to make a levy on members for that purpose if circumstances should so require".

On June 1st, 1952, the following resolution was passed -

"At a Meeting of the Central Board (Executive) it is resolved that the meeting authorise the President, Mr. Nathaniel Stuart Chalmers, to open a special Bank account with the Bank of New South Wales, Lautoka, to be called the KISAN SANGH BUILDING FUND ACCOUNT and that all monies subscribed by members to the said Fund be paid to the credit of that fund which shall include payments on Assignments made by members in favour of the Kisan Sangh through the Colonial Sugar Refining Company Limited and that the only person authorised to operate on the said account shall be Nathaniel Stuart Chalmers, the President, or such other person or persons as may be by him authorised in writing so to do. It is further resolved that the said Nathaniel Stuart Chalmers shall have authority to place any of the said Fund subscribed as aforesaid in the Government Savings Bank to the credit of an account in the same name, namely, the KISAN SANGH BUILDING FUND ACCOUNT, and the said Nathaniel Stuart Chalmers shall for all purposes be authorised to open such an account and he alone or such other person or persons by him authorised in writing shall be permitted to withdraw any monies placed to the credit of such account."

The plaintiff-Union subsequently lodged a notice, dated 2nd June, 1952, (Exhibit 4), with the Bank of New South Wales, Lautoka, opening a special banking account in the name of the plaintiff styled "The Kisan Sangh Building Fund Account". The notice authorised the defendant, as President, solely to draw cheques upon the account.

Money was subscribed to this Building Fund by members of the plaintiff-Union. The defendant operated the account, up to 1957, as he was authorised to do, and indeed the building was ultimately

erected. The plaintiff has now instituted this action maintaining that in respect of the cheques drawn by the defendant upon this account as are itemised in List B filed with the Statement of Claim, the defendant is liable to reimburse the plaintiff because he has failed to show that these monies were properly applied on behalf of the Union. Item 770 on List B (£333.13. 9.) is no longer disputed and is deleted from List B. The plaintiff no longer seeks the return of the motor car referred to in the Statement of Claim.

In the Supreme  
Court

\_\_\_\_\_

No. 17

Judgment.  
1st September,  
1961 -  
continued.

The defendant contends that this action has been instituted without the authority of the duly constituted executive Committee or Central Board of the plaintiff-Union. He claims that the persons who now purport to act as office bearers in the Fiji Kisan Sangh were not duly elected in accordance with the constitution. This action, he says, is not therefore maintainable at law. The defendant also submits that he is not liable to account to the plaintiff association in respect of cheques drawn on this Building Account. It is the defendant's case that the persons who donated the monies to the Building Fund appointed him their sole trustee and authorised him to operate the fund on their behalf. He is answerable as their trustee only to those persons, and not to the plaintiff, for the way in which the money has been applied, which, in any event, he says has been applied in accordance with the authority and wishes of the donors of the fund.

On behalf of the plaintiff, the reigning President Mr. J.P. Bayly, the Assistant Secretary, Mr. Shiu Nath, and the present Treasurer, Mr. G.R. Bhola, have given evidence. The defendant has elected to call no evidence. I am satisfied that this action has been properly instituted and that the defendant is accountable to the plaintiff-Union in respect of the disputed items in List B. This fund was clearly the plaintiff's money. There is no substance in the defendant's contentions.

In his closing address, the defendant stated "there is no unwillingness upon my part to account for every penny ..... provided it is clearly understood that I am not accounting to the Association I will sit down with an accountant and prove exactly what the money was used for". I intend to direct that the defendant shall do exactly what he has said he can do, but it is of course to the plaintiff-association that he will be accounting, as I have held he must.

Learned Counsel for the plaintiff has asked me

In the Supreme  
Court.

-----  
No. 17

Judgment.  
1st September,  
1961 -  
continued.

to award judgment forthwith for the whole amount claimed. However, having regard (a) to the defendant's assertion quoted above, (b) to the wide authority in operating this fund originally given to the defendant by the plaintiff-Union, and (c) to the details given at least on some of the disputed cheques, I think justice requires me to allow the defendant a final chance to account for the monies itemised in List B.

All costs in this litigation incurred to date must in any event be paid by the defendant and I so order. The defendant must also pay the accountant's fee.

10

I appoint such qualified account as the Registrar shall name as a special referee and it is to this person that the defendant must account within 28 days of today's date. The defendant must satisfy the referee that the monies represented by the cheques itemised in List B were properly applied by him on behalf of the plaintiff-Union. The referee will be requested to file herein a written report within 56 days of today's date. The plaintiff may then move for judgment against the defendant for such amount, if any, as the referee's report states has not been satisfactorily accounted for liberty to apply.

20

(Sgd.) R. Knox-Mawer

ACTING PUISNE JUDGE

SUYA.

1st September, 1961.

30

O R D E R

IN THE SUPREME COURT OF FIJI

BETWEEN THE FIJI KISAN SANGH Plaintiff

- and -

NATHANIEL STUART CHALMERS Defendant

Friday 1st September 1961

10

THIS ACTION coming on for trial on the 11th, 15th and 16th days of August 1960 and the 16th day of August 1961 before the Court in the presence of Counsel for the Plaintiff Union and the Defendant at first by Counsel but later in person and upon reading the Pleadings and upon hearing the evidence and what was alleged by Counsel for the Plaintiff Union and by the Defendant this Court did order that this action should stand for judgment

20

AND this action standing this day in the paper for judgment in the presence of Counsel for the Plaintiff Union and for the Defendant

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THIS COURT DOTH ORDER that the Defendant do within twentyeight (28) days of the date hereof account to such qualified accountant as the Registrar of this Honourable Court shall name as a special referee and to the satisfaction of such special referee that the monies represented by the cheques itemised in List B filed with the Statement of Claim herein, excluding item 770, were properly applied by the Defendant on behalf of the Plaintiff Union with liberty to the Plaintiff Union to move for judgment against the Defendant for such amount, if any, as the special referee's report states has not been satisfactorily accounted for

AND IT IS ORDERED that the Defendant do in any event pay to the Plaintiff Union all costs in this litigation incurred by the Plaintiff Union to date of this order.

In the Supreme  
Court

AND IT IS FURTHER ORDERED that the Defendant do pay the fee of the accountant named herein as special referee.

No. 18

LIBERTY to either party to apply.

Order.  
1st September,  
1961 -  
continued.

By the Court

L.S.

G. YATES

Registrar.

No. 19

No. 19

Motion and  
Grounds of  
Appeal.  
12th September,  
1961.

MOTION AND GROUNDS OF APPEAL.

IN THE SUPREME COURT OF FIJI

10

Action No. 54 of 1959

BETWEEN THE FIJI KISAN SANGH Plaintiff

- and -

NATHANIEL STUART CHALMERS  
Defendant

TAKE NOTICE that this Honourable Court will be moved on Friday the 22nd day of September 1961 at the Supreme Court, Government Buildings Suva at the hour of 2.15 o'clock in the afternoon or so soon thereafter as Counsel can be heard, by Counsel, for the abovenamed Defendant for AN ORDER under Section 11 of the Fiji Court of Appeal Ordinance and the Rules made thereunder that the Defendant be at liberty to Appeal (within such time as this Honourable Court thinks fit) from an Interlocutory Order made by the Acting Puisne Judge Mr. Justice Knox-Mawer on the 1st day of

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September, 1961 WHEREBY IT WAS ORDERED inter alia, that the Defendant should furnish accounts to a Special Referee who shall be a qualified Accountant to be named by the Registrar of this Honourable Court within 28 days from the 1st September 1961 and that the Defendant must satisfy the Special Referee that the moneys represented by the cheques, itemised in List B annexed to the Statement of Claim were applied by him on behalf of the Plaintiff-Union and that the Defendant should pay all costs of these proceedings incurred to the date of the said Interlocutory Order and also the Accountant's fee.

In the Supreme  
Court

\_\_\_\_\_

No. 19

Motion and  
Grounds of  
Appeal.  
1st September,  
1961 -  
continued.

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The Proposed grounds of Appeal are:-

1. THAT on the 15th day of August, 1960 and at the close of the Plaintiff-Union's case and before giving a ruling on the submission that there was no case to answer, the learned trial Judge directed that the Registrar appoint a fit and proper person to inquire into all the financial transactions relating to the Fiji Kisan Sangh Building Fund and to file a report thereon within three months. On the 3rd day of May, 1961 the Fiji Court of Appeal set aside the said Order and the action was remitted to the Court below for the learned trial Judge to proceed with the hearing of the action. The Fiji Court of Appeal in its judgment dated 3rd May, 1961 said, inter alia, "We do not feel that an order for an account should be made unless and until the learned trial Judge has decided, after hearing all the evidence, whether the action was properly instituted; whether the Defendant is accountable to the Plaintiff Association; and whether he then considers such an order should be made".

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30

When the trial was resumed no further evidence of any significance to the Plaintiff-Union's case was adduced and the learned trial Judge was faced with the problem of dealing with the evidence adduced on the trial of the action culminating in the learned trial Judge's Order for accounts made on the 15th day of August, 1960. The Appellant complains that at the resumed hearing the learned trial Judge did not comply with the directions given by the Fiji Court of Appeal on the 3rd day of May, 1961 and erred in law making an Order for accounts again.

40

2. THAT at the resumed hearing inasmuch as both parties had closed their case and addressed the Court, the learned trial Judge was wrong in law in referring the matters in dispute between the parties



In the Supreme  
Court

No.19

Motion and  
Grounds of  
Appeal.  
1st September,  
1961 -  
continued.

to a Special Referee and delegating to him the functions of Court to determine whether or not the moneys represented by the cheques itemised in List B were properly applied by the Defendant or not.

3. THAT the learned trial Judge erred in law in not following the direction of the Fiji Court of Appeal made on the 3rd May, 1961 when it said:-

"In dealing with the Defendant's submission that he had no case to answer we have no doubt that the learned trial Judge will give consideration to the authorities on this point reviewed in the case of Young v. Bank & Ors. (1950) 2 K.B.D. 510".

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4. THAT the learned trial Judge erred in law in making the Order as to costs and in particular the Defendant complains:-

(a) that it is harsh and unreasonable

(b) that it is wrong in principle

(c) that it is contrary to the direction given in the Fiji Court of Appeal on the 3rd May, 1961.

20

5. THAT having regard to the evidence given by Mr. Bhola (the Treasurer of the Plaintiff-Union) the learned trial Judge ought to have dismissed this action on the ground that the Defendant-Appellant was not duty bound to account to the Plaintiff-Union in respect of the cheques drawn under the Bank account titled "FIJI KISAN SANGH BUILDING FUND ACCOUNT".

6. THAT having regard to the fact that the Plaintiff-Union's witness Shiunath was unable to depose from his personal knowledge as to the allegations contained in the Statement of Claim and the fact that the Plaintiff-Union did not call its General Secretary Mr. Ayoudha Prasad and its former Treasurer Mr. M.D. Richmond who, it was understood by all concerned, were material witnesses, the learned trial Judge ought to have dismissed this action with costs in favour of the Defendant

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7. THAT inasmuch as the Plaintiff-Union's General Secretary Mr. Ayoudha Prasad was not called and in view of the fact he alone was duty bound

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under Section 11 of the Industrial Associations Ordinance (Cap.94) to transmit true and correct Annual Accounts to the Registrar of Industrial Associations, the learned trial Judge ought to have concluded that the General Secretary had fully complied with the provisions of Section 11 aforesaid and that the Annual Accounts submitted by him to the Registrar of Industrial Associations and exhibited in Court were true and correct and passed by the general body of the Plaintiff-Union and that if they were not so passed, such accounts were false.

In the Supreme  
Court

\_\_\_\_\_

No. 19

Motion and  
Grounds of  
Appeal.  
1st September,  
1961 -  
continued.

8. THAT the learned trial Judge erred in law in making an Order for Accounts when (a) the Plaintiff-Union did not seek an Order for Accounts in its pleadings (b) when Counsel for the Plaintiff at the original and at the resumed hearing expressly informed the Court that the Plaintiff-Union was not seeking an Order for Accounts but recovery of moneys allegedly misappropriated by the Defendant and (c) when the Plaintiff-Union had failed to establish either by way of pleadings or in evidence the exact terms of the alleged trust and other essential matters to maintain its action for a breach of trust.

AND TAKE FURTHER NOTICE that the Defendant will also seek for an Order that the execution and all further proceedings on the said Interlocutory Order and on that aspect of the Order which is final (which Order was made by the said learned trial Judge on the 1st September, 1961) be STAYED until appeal therefrom is heard and determined by the Fiji Court of Appeal upon such terms as this Honourable Court thinks fit and that the costs of this application abide by the result of the Appeal.

DATED the 12th day of September, 1961.

KOYA & CO.

per: (Sgd.) S.M. Koya

Solicitors for the Defendant.

To the Registrar,  
Supreme Court,  
SUVA

and

To the abovenamed Plaintiff-Union or its Solicitors,  
Messrs. Munro, Warren, Leys and Kermode, Lautoka.

In the Supreme  
Court

No. 20

ORDER GRANTING LEAVE TO APPEAL.

No. 20

Order granting  
leave to  
Appeal.  
22nd September,  
1961.

IN THE SUPREME COURT OF FIJI

ACTION No. 54 of 1959.

BETWEEN THE FIJI KISAN SANGH Plaintiff  
(Respondent)

- and -

NATHANIEL STUART CHALMERS Defendant  
(Appellant)

FRIDAY THE 22nd DAY OF SEPTEMBER, 1961  
BEFORE HIS LORDSHIP THE ACTING PUISNE  
JUDGE MR. JUSTICE KNOX-MAWER IN CHAMBERS.

10

UPON MOTION made this day unto the Court by  
Counsel for the Defendant/Appellant for an Order  
for leave to appeal from an Interlocutory Order  
for accounts made by the Honourable the Acting  
Puisne Judge Mr. Justice Knox-Mawer at the  
trial of this action and dated the 1st day of  
September, 1961, of which the Defendant/Appellant  
gave Notice of Motion dated the 12th day of  
September, 1961 AND UPON HEARING MR. SIDDIQ  
MOIDIN KOYA of Counsel for the Defendant/  
Appellant and MR. DAVID WHIPPY of Counsel for  
the Plaintiff/Respondent AND UPON READING the  
said Order IT IS ORDERED BY CONSENT that the  
Defendant/Appellant do have leave to appeal  
against the said Order under Section 11 of the  
Court of Appeal Ordinance (Cap.3) AND that the  
costs of this application do abide the result of  
the appeal AND IT IS FURTHER ORDERED that the  
Defendant/Appellant's application for a stay of  
execution on the said Order be and is hereby  
refused.

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30

BY THE COURT

(Sgd.) G. YATES

REGISTRAR.

MOTION AND GROUNDS OF CROSS-APPEAL.

IN THE SUPREME COURT OF FIJI

Civil Jurisdiction

Action No. 54 of 1959.

Motion and  
Grounds of  
Cross-Appeal.  
7th November,  
1961.

BETWEEN THE FIJI KISAN SANGH Plaintiff

- and -

NATHANIEL STUART CHALMERS Defendant

10 TAKE NOTICE that the abovenamed Plaintiff  
 Union intends upon the hearing of the appeal under  
 the Defendant's Notice of Appeal dated the 26th day  
 of September 1961 from the judgment given and order  
 made on the resumed trial of the above action before  
 the Honourable Mr. Justice Knox-Mawer at Suva on the  
 1st day of September 1961 TO CONTEND that the said  
 judgment and order made therein **BE VARIED** by setting  
 aside the order of the trial judge whereby it was  
 ordered that the Defendant do within 28 days of such  
 order account to the satisfaction of a qualified  
 20 accountant to be appointed as a special referee by  
 the Registrar of the Supreme Court that the moneys  
 represented by the cheques itemised in List B were  
 properly applied by the Defendant on behalf of the  
 Plaintiff Union and substituting therefor an order  
 that judgment be entered up for the Plaintiff Union  
 on the Statement of Claim

AND TAKE NOTICE that the grounds of appeal are:-

- 30 1. That in as much as the Appellant (Defendant)  
 upon the resumed hearing before the trial  
 judge having elected to call no evidence and  
 having regard to the judgment therein where  
 the Idarned trial judge said "I am satisfied  
 that this action has been properly instituted  
 and that the Defendant is accountable to the  
 Plaintiff Union in respect of the disputed  
 items in List B. This fund was clearly the  
 Plaintiff Union's money. There is no sub-  
 stance in the Defendant's contentions" the

In the Supreme  
Court

No. 21

Motion and  
Grounds of  
Cross-Appeal:  
7th November,  
1961 -  
continued.

learned trial judge erred in law in not ordering judgment to be entered up for the Plaintiff Union on the claim

- 2. The Plaintiff Union complains that in as much as no order for accounts was prayed for in the Statement of Claim, the learned trial judge erred in law in making an order for such accounts to be taken

AND FURTHER TAKE NOTICE that the Plaintiff Union will apply to the Court of Appeal for an order that the Defendant do pay the costs incurred by this Notice

10

DATED this 7th day of November 1961.

MUNRO, WARREN, LEYS & KERMODE

Per: (Sgd.) R.G. Kermode

Solicitors for the Plaintiff  
Union.

This Notice of Cross Appeal was taken out by Messrs. Munro, Warren, Leys & Kermode of Lautoka, Solicitors for the Plaintiff Union whose address for service is at the Chambers of its said Solicitors Narara Parade, Lautoka and Central Chambers, Suva,

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To the Registrar Supreme Court and  
Messrs. Koya & Co., Solicitors for the  
Appellant (Defendant) of Lautoka.

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No.22 (a)

JUDGMENT OF TRAINOR J.A.In the Court  
of AppealFIJI COURT OF APPEAL

Civil Jurisdiction

Civil Appeal No.17 of 1961.

No. 22(a)

Judgment of  
Trainor J.A.

28th May, 1962.

BETWEEN NATHANIEL STUART CHALMERS Appellant

- and -

THE FIJI KISAN SANGH Respondent

10 The Fiji Kisan Sangh, a duly registered Industrial Union (hereinafter called "the respondents") of the 7th April, 1959 had issued from the Supreme Court a Writ against Nathaniel Stuart Chalmers (hereinafter called "the appellant") claiming "firstly for an account and repayment of all moneys improperly drawn by the appellant from the plaintiff's Building Fund .... and secondly for the return of the Rover motor car ...." On the 1st May, 1959 the respondents delivered a Statement of Claim from which they omitted their claim for an account but claimed £3752.15. 5. improperly drawn from the Building Fund account and the return of the car. After the delivery of lengthy interrogatories and replies thereto the case came before the Court. At the outset the respondents abandoned their claim for the motor car and the only matter before the Court was for £3752.15. 5 "improperly drawn....out of the said Building Fund Account." After what must have been an extremely difficult case and without much help from either party the learned Judge decided that before judgment could be given certain accounts and enquiries should be made. He ordered that in default of agreement between the parties the Registrar should appoint a fit and proper person to enquire into all the transactions relating to the Fiji Kisan Sangh Building Fund and file in Court a complete report thereon. He further ordered both parties to submit to the person so appointed any relevant documents in their possession and answer any question such person might put. Against this Order the appellant

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40 appealed and the Court of Appeal remitted the case

In the Court  
of Appeal

No. 22(a)

Judgment of  
Trainor J.A.

28th May, 1962  
- continued.

to the Court below with directions that the Court should first decide whether or not the respondents' action was properly instituted, whether the appellant was accountable to the respondent, and if so whether the Court still considered an order for an account should be made. At the continuation of the hearing, in the Court below, after hearing further cross examination and Counsel for the respondent and the appellant in person the learned trial Judge held that the proceedings were properly instituted and that the appellant was accountable to the respondents in respect of items set out in a list marked "B" annexed to the Statement of Claim. He stated quite categorically that the fund in question belonged to the respondents and that there was no substance in the appellant's contention to the contrary. 10

In his judgment the Judge referred to part of a statement of the appellant "... there is no unwillingness upon my part to account for every penny .... Provided it is clearly understood that I am not accounting to the Association I will sit down with an Accountant and prove exactly what the money was used for" and went on to say "I intend to direct that the defendant shall do exactly what he has said he can do but it is of course to the plaintiff association that he will be accounting, as I have held he must". The Judge went on to say that he had been asked by Counsel for the respondents to award the respondents the full amount claimed but declined to do so for reasons he gave and said he would give the appellant an opportunity to account for the items in the List "B". He then appointed such qualified accountant as the Registrar of the Supreme Court should name as a special referee to whom the appellant should account and directed that the appellant must satisfy the referee that the monies represented by the cheque itemised in List "B" were properly applied on behalf of the respondent. He further directed that the referee should file a report and that the respondents might move for judgment for such amount, if any, as the referee should state had not been satisfactorily accounted for. 20 30 40

The appellant appealed against this judgment on eight lengthy grounds which might be summarised:-

1. That the learned trial Judge did not comply with the directions given by the Court of Appeal and erred in law in making an order 50

for accounts again;

2. That the learned trial Judge was wrong in law in referring the matter in dispute to a Special Referee and delegating to him the functions of a Court namely to determine whether or not the moneys represented by the cheques itemised in List "B" were properly applied by the appellant;

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3. That the learned trial Judge erred at law in not following the direction of the Court of Appeal when it said "In dealing with the defendant's submission that he has no case to answer we have no doubt the learned trial Judge will give consideration to the authorities on the point reviewed in the case of Young v. Back and Ors 1960 2 K.B.D. 510".

4. That the learned trial Judge erred in law awarding costs and complained in particular that

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(a) it was harsh and unreasonable,

(b) wrong in principle,

(c) contrary to the direction of the Court of Appeal.

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5. That having regard to the evidence of Mr. Bhola, the respondent's treasurer, the learned trial Judge should have dismissed the case on the grounds that the appellant was not bound to account to the respondents in respect of cheques drawn on the Fiji Kisan Sangh Building Fund Account;

6. That as respondent's witness Shin Nath was unable to depose from his own personal knowledge as to the allegation in the Statement of Claim and as the respondent's General Secretary and former Treasurer "who it was understood by all concerned were material witnesses", were not called to give evidence the case should have been dismissed with costs;

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7. That as the respondent's General Secretary was bound under Section 11 of the Industrial Associations Ordinance Cap.94 to transmit true and correct Annual Accounts to the Registrar of the Industrial Association and was not called

In the Court  
of Appeal

\_\_\_\_\_  
No. 22(a)

Judgment of  
Trainor J.A.

28th May, 1962

- continued.



In the Court  
of Appeal

No.22(a)

Judgment of  
Trainor J.A.

28th May, 1962

- continued.

to give evidence the Court ought to have concluded that the accounts submitted by him to the Registrar and exhibited in Court were true and correct and passed by the general body of the Fiji Kisan Sangh.

8. That the learned trial Judge erred in law in making an order for accounts when the respondents expressly said that they did not seek that remedy and "when the Respondent Union had failed to establish either by way of pleadings or in evidence the exact terms of the alleged trust and other essential matters to maintain its action for a breach of trust".

10

The respondents also appealed against the judgment on the grounds that as no order for account was sought and having regard to the Judge's findings:- that the action was properly instituted; that the appellant was accountable to the respondents in respect of the disputed items in List "B"; and that the fund was clearly the respondent's money, the Judge should have entered judgment for the respondents.

20

As I said earlier this was a case made extremely difficult by the parties in which the Judge received the minimum of assistance from either. He made every possible effort to arrive at a decision which would do justice to the parties and put an end to this tedious dispute.

What is the effect of the Judgment?

He held that the proceedings were properly instituted; that the Kisan Sangh Building Fund belonged to the Fiji Kisan Sangh and that the appellant was accountable to it. He also held that the appellant must satisfy a referee that the cheques for the items in List "B" were properly applied by him on behalf of the respondents. The Judge then made an order which afforded the appellant an opportunity of explaining the items remaining in List "B" after removing therefrom those which the respondents admitted represented payments for their benefit. By doing this the Court already indicated that it considered a prima facie case had been established that the cheques in List "B" had been improperly drawn (I interpret the word "improperly" as meaning "not for the benefit of the respondents").

30

40

Although he has not said so it is quite clear that the learned trial Judge came to this conclusion by reason of the fact that all the cheques in List "B" were irregularly drawn in that all the requirements, such as the passing of the necessary resolutions, had not been complied with. It is true that cheques in List "A" had been irregularly drawn too but it was known by the respondents what had happened to the proceeds and no claim was made. It is no argument that: if no claim is made in respect of one irregularly drawn cheque that no claim can exist with regard to other similar cheques.

In the Court  
of Appeal

\_\_\_\_\_  
No.22(a)

Judgment of  
Trainor J.A.

28th May, 1962

- continued.

I think it can be safely said that the evidence adduced by the respondents in establishing their claim was scanty and badly presented but a close analysis of it and particularly the admitted or non disputed documents and the fact that no contrary evidence was adduced left the Judge with no other possible logical conclusion than that the Building Fund belonged to the respondents. Furthermore the oral evidence, unsatisfactory though much of it was, coupled with the admitted or non disputed documents clearly established that the payments shown in List "B" had been irregularly made. In these circumstances the learned trial Judge was in my opinion entitled, in the absence of anything to the contrary from the appellant, to find that the appellant was accountable to the respondents. The only question remaining was how much.

Had more of the evidence of the respondents and their method of conducting their affairs been reliable; had there not been such things as cheques 209 for £610, 770 for £333.13.9 being in List "B" which were in fact drawn for the benefit of the respondents, and cheque 684 in List "A" when it was obviously irregularly drawn I might have been more kindly disposed to the application of the respondents Counsel to the trial Judge that judgment be given for the amount claimed less the sums admitted to have been paid to the respondent's benefit. I think the learned trial Judge made a noble effort to effect justice in this case but I feel that this end might have been better achieved had he in the circumstances of this case indicated to the appellant that he had a case to meet in respect of the items remaining in List "B" after the deductions. With great respect to the able and very patient trial Judge I am of the opinion that in the circumstances of this case he erred in appointing a special referee, to whom the defendant must account, with powers

In the Court  
or Appeal

No.22(a)  
Judgment of  
Trainer J.A.  
28th May, 1962  
- continued.

to decide which sums are and which sums are not (if any) due by the appellant. It is my opinion that these are matters on which it was desirable for the trial Judge to adjudicate.

I am of the opinion, however, that the judgment of the Court below should be upheld save that portion which appointed a Special Referee and ordered the appellant to pay all costs. I would remit the case once more to the Court below with directions.

10

(a) to dismiss that portion of the respondent's claim pertaining to the motor car, with costs

(b) to hear such evidence as the defendant may adduce in respect of the remaining items in List "B" with permission to the respondents to cross examine or call rebutting evidence.

(c) to order judgment for the party in whose favour there is a balance or in favour of the appellant if there is no balance

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(d) to make such order as to costs (other than the costs of the dismissal of the respondent's claim in respect of the motor car) as he considers proper.

I have not dealt with each ground of the appeal separately, what I have said above indicates my decision on each, but in so far as each party has failed on the principal issue in his appeal or cross appeal (the appellant that the respondent's claim should have been dismissed and the respondents that judgment should have been entered in their favour on the claim) I think there should be no order made on this appeal as to costs.

30

(Sgd.) JAMES P. TRAINOR.

JUDGE OF APPEAL

VILA,  
28th May, 1962.

No.22(b)

JUDGMENT OF MARSACK J.In the Court  
of Appeal

No.22(b)

Judgment of  
Marsack J.

14th June, 1962.

10 I have had the advantage of seeing the judgment of the learned President which has just been read, and also that of Trainor J. I agree with my learned brothers that the case was left in a thoroughly unsatisfactory position at its conclusion, and that it was a difficult matter for the trial Judge to do substantial justice between the parties, upon the material which he had before him. In my view the questions to be determined in order to do that substantial justice are well set out in the President's judgment, namely -

- (a) what was the extent of the Appellant's authority to expend the moneys entrusted to him; and
- (b) to what extent were these moneys expended within the scope of the Appellant's authority.

20 I agree with the other members of the Court that these questions should be judicially determined and not left to the decision of a referee. Where I differ from my brother Trainor is in the matter of the best method of obtaining a judicial decision on these questions, and after their determination achieving finality between the parties.

30 In view of the previous history of this case, of the unsatisfactory features to which attention is drawn in both the other judgments, I think the only satisfactory solution is that proposed by the learned President. Accordingly I concur with his judgment that the decision appealed from should be set aside and a trial de novo ordered before another Judge. I agree also that there should be no order as to the costs of the appeal.

(Sgd.) C.C. MARSACK

JUDGE OF APPEAL.

SUVA,

14th June, 1962.

In the Court  
of Appeal

No. 22 (c)

JUDGMENT OF HAMMETT, AG. PRESIDENT.

No.22(c)

Judgment of  
Hammett,  
Ag. President.

14th June, 1962.

J U D G M E N T

This is an appeal from the decision of the Supreme Court of Fiji dated 1st September, 1961, whereby the Court below directed that an account be taken by a special referee to be appointed by the Registrar and that the Fiji Kisan Sangh, the Plaintiff, might then move for judgment against the Defendant for such amount, if any, as the referee's report states has not been satisfactorily accounted for by the Defendant-Appellant. 10

Against this order both the Defendant-Appellant and the Plaintiff-Respondent have appealed, on the ground that such an order was not sought in the Statement of Claim. The Defendant also appeals against the order for an account on a large number of grounds, which I do not consider it necessary to set out in full, of which one is : 20

"That the learned trial Judge was wrong in law in referring the matter in dispute between the parties to a special referee and delegating to him the functions of a Court, namely to determine whether or not the moneys represented by the cheques itemised in List B were properly applied by the Appellant."

The circumstances giving rise to this litigation are somewhat involved and complicated and it is sufficient for the purpose of this Judgment if I summarise them as follows: 30

At the material time, i.e. between February, 1954, and April, 1957, the Defendant was the President of the Industrial Association called the Fiji Kisan Sangh which was registered under the Industrial Associations Ordinance. In this period funds were raised for the construction of a building, which funds were deposited in an

account of the Bank of New South Wales at Lautoka under the title "Kisan Sangh Building Fund Account".

In the Court  
of Appeal

The Defendant was given power by resolution of the Fiji Kisan Sangh to operate this account and it is alleged that he did so as trustee on behalf of the Fiji Kisan Sangh. After the Defendant ceased to be the President of the Fiji Kisan Sangh it was alleged that he had not accounted to the Fiji Kisan Sangh for all the moneys he had drawn from the account.

-----  
No.22(c)

Judgment of  
Hammett,  
Ag. President.

14th June, 1962  
- continued.

10

Following considerable correspondence on the matter this action was instituted by the Fiji Kisan Sangh in which paragraph 1 of the prayer of the Statement of Claim reads:

"Wherefor the Plaintiff claims:

1. The sum of £3,752.15. 5. improperly drawn by the Defendant out of the said Building Fund Account or such lesser sum as the Defendant is found to have improperly withdrawn or mis-appropriated from the said account."

20

The defence relied on a number of points amongst which were the following:

1. That the action had been instituted without proper authority.

2. That the Defendant was not accountable to the Fiji Kisan Sangh but only to the actual contributors to the Fiji Kisan Sangh Building Fund.

3. That the Fiji Kisan Sangh was not entitled in law to say whether cheques drawn under the Building Fund Account were improperly drawn or not.

30

I have carefully studied and considered the whole of the pleadings in the case and the grounds of appeal and the record of the proceedings in the Court below and it appears to me that several of the issues raised in the pleadings have not yet been adjudicated upon nor have definite findings of fact been made thereon. This is in part due to the manner in which the pleadings have been drawn and to the scanty nature of the evidence called.

40

In the Court  
of Appeal

No.22(c)

Judgment of  
Hammett,  
Ag.President.

14th June, 1962  
- continued.

In my opinion the special referee to be appointed has been given insufficient directions as to the basis upon which the account ordered should be taken, and I do not consider it should have been left to him to decide whether or not the items of expenditure referred to him have been "properly" or "improperly" expended. To this extent I am of the view that the Defendant-Appellant is justified in complaining that the whole decision in the case was being left to the special referee to determine when taking an account, which Counsel for the Fiji Kisan Sangh has somewhat to my surprise, says he did not want. I say this in view of paragraph 6 of the Statement of Claim which reads:

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"6. The Defendant has been requested by the Plaintiff to furnish an account of all moneys drawn by him from the said Building Fund Account but he has refused or neglected so to do and still so refuses or neglects to do so."

20

It appears to me that what was first sought of the Court below was a decision on the question of whether the Defendant was not only empowered to operate the Fiji Kisan Sangh Building Fund Bank Account but also on his own authority to direct the specific purposes for which such payments should be made and the amount of such payments and to whom they were to be made, or whether he could only make such payments as the Fiji Kisan Sangh by resolution of its Central Board under the provisions of its Constitution directed should be made. The question of whether any particular sum was properly or improperly expended by the Defendant depended upon findings as to both;

30

- (a) His authority to expend moneys; and
- (b) The actual purposes for which they were expended.

If, therefore, the learned trial Judge had directed that the special referee should merely inquire and report to him the purpose for which the items in List B had in fact been expended, I am of the opinion that such an order might well have been a proper order to make in such an action as this.

40

After giving the whole of the proceedings in this case careful consideration, and bearing in mind the fact that both sides have sought to have the order of the Court below set aside, I would accede to these requests.

In the Court  
of Appeal

\_\_\_\_\_  
No.22(c)

Judgment of  
Hammett,  
Ag.President.

14th June, 1962  
- continued.

In all the circumstances I am of the opinion that the ends of justice will best be met by setting aside the decision of the Court below and ordering trial de novo before another Judge.

10

Since both the Appellant and the Respondent have been, in part at least, successful in the appeal and the cross appeal, I would make no order for the costs of this appeal and order that the costs of the proceedings in the Court below follow the event of the new trial.

(Sgd.) HAMMERR, J.

AG. PRESIDENT.

SUVA.

14th June, 1962.

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No. 23

No.23

O R D E R.

Order. 14th  
June, 1942.

IN THE FIJI COURT OF APPEAL

CIVIL JURISDICTION

Civil Appeal No. 17 of 1961.

BETWEEN: NATHANIEL STUART CHALMERS  
Defendant-Appellant

- and -

THE FIJI KISAN SANGH  
Plaintiff-Respondent

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THURSDAY THE 14th DAY OF JUNE, 1962.

UPON READING the Notice of Motion on behalf of the above-named Defendant-Appellant dated the 26th



In the Court  
of Appeal

No.23

Order, 14th  
June, 1962 -  
continued.

day of September, 1961 AND the Notice of Cross-  
Appeal on behalf of the above-named Plaintiff-  
Respondent dated the 7th day of November, 1961  
and the Judgment hereinafter mentioned AND UPON  
READING the Judges notes herein AND UPON HEARING  
Mr. SIDDIQ MOIDIN KOYA of Counsel for the Defend-  
ant-Appellant and Mr. RONALD GRAHAM QUALE KERMODE  
of Counsel for the Plaintiff-Respondent IT IS  
ORDERED that the Judgment given by the Honourable  
Mr. Justice Knox-Mawer on the 1st day of September,  
1961 BE SET ASIDE AND that a new trial be had  
between the parties and that no order for costs is  
made in respect of this Appeal.

10

BY THE COURT

(Sgd.) G. YATES

REGISTRAR.

No.24

Order grant-  
ing Condition-  
al Leave to  
Appeal.  
6th July, 1962.

No.24

ORDER GRANTING CONDITIONAL LEAVE TO APPEAL

IN THE FIJI COURT OF APPEAL

CIVIL JURISDICTION

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CIVIL APPEAL No. 17 of 1961

BETWEEN NATHANIEL STUART CHALMERS  
Defendant-Appellant

- and -

THE FIJI KISAN SANGH  
Plaintiff-Respondent

FRIDAY THE 6th DAY OF JULY, 1962 BEFORE THE  
HONOURABLE MR. JUSTICE HAMMETT IN CHAMBERS  
SITTING AS A JUDGE OF THE FIJI COURT OF APPEAL

UPON MOTION this day made unto the Court by  
Counsel for the abovenamed Defendant-Appellant for  
Leave to appeal to Her Majesty in Privy Council

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from the Judgment of this Honourable Court given and dated the 14th day of June, 1962 allowing the Appeal lodged by the Defendant-Appellant, whereby it was ordered that a new trial be had between the parties and wherein no order as to costs was made of which the Defendant-Appellant gave Notice of Motion dated the 30th day of June, 1962, AND UPON HEARING MR. SIDDIQ MOIDIN KOYA of Counsel for the Defendant-Appellant and DR. DAVID WHIPPY of Counsel for the Plaintiff-Respondent IT IS ORDERED that the Defendant-Appellant do have leave and leave is hereby granted to the Defendant-Appellant to enter and prosecute his Appeal before the Privy Council against the Judgment of this Honourable Court dated the 14th day of June, 1962, UPON depositing in the Registry of this Honourable Court within Thirty (30) days from the date hereof the sum of THREE HUNDRED AND FIFTY POUNDS (£350. 0. 0.) as security for costs in respect of costs for the prosecution of the incidental Appeal (of which the sum of £50. 0. 0. shall be reserved for payment of printing the Record of proceedings herein) AND IT IS DIRECTED that the Defendant-Appellant do take necessary steps for the purpose of procuring the preparation of the Record of the proceedings herein AND that the Registrar of this Honourable Court do transmit to the Registrar of the Privy Council within three (3) months from the date hereof 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 Defendant-Appellant the usual fees for the same AND IT IS FURTHER ORDERED that all further proceedings directed to be taken in pursuance of the Judgment of this Honourable Court dated the 14th day of June, 1962 be STAYED until Appeal therefrom to Her Majesty in Privy Council shall have been had and decided AND that the costs of this application be costs in the cause. LIBERTY TO APPLY.

In the Court  
of Appeal

\_\_\_\_\_  
No.24

Order grant-  
ing Condition-  
al Leave to  
Appeal.  
6th July, 1962  
- continued.

40 BY THE COURT

(Sgd.) G. YATES

REGISTRAR

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In the Court  
of Appeal

No. 28

ORDER GRANTING FINAL LEAVE TO APPEAL.

No.25

Order grant-  
ing Final  
Leave to  
Appeal.  
17th July, 1962.

IN THE FIJI COURT OF APPEAL

CIVIL JURISDICTION

CIVIL APPEAL No. 17 OF 1961.

BETWEEN NATHANIEL STUART CHALMERS  
Defendant-Appellant

- and -

THE FIJI KISAN SANGH  
Plaintiff-Respondent

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THE 17th DAY OF JULY, 1962.

WHEREAS by virtue of the Order of this Honourable Court dated the 6th day of July, 1962 the Defendant-Appellant was given conditional leave to appeal to Her Majesty in Council.

AND WHEREAS the Defendant-Appellant has fully complied with the conditions of such order.

IT IS HEREBY ORDERED that the Defendant-Appellant be at liberty to prosecute his appeal to Her Majesty in Council.

20

BY ORDER

G. YATES.

THE REGISTRAR THE FIJI COURT OF APPEAL.

E X H I B I T SExhibitsEXHIBIT 6. RESOLUTION

6.

Resolution.  
1st June, 1952.THE KISAN SANGH

(Industrial Association)

June 1st 1952.

At a meeting of the Central Board (Executive) it is resolved that the meeting authorise the President, Mr. Nathaniel Stuart Chalmers, to open a special Bank account with the Bank of New South Wales, Lautoka, to be called the KISAN SANGH BUILD-  
 10 ING FUND ACCOUNT and that all monies subscribed by members to the said Fund be paid to the credit of that fund which shall include payments on Assign-  
 ments made by members in favour of the Kisan Sangh through the Colonial Sugar Refining Company Limited and that the only person authorised to operate on  
 the said account shall be Nathaniel Stuart Chalmers, the President, or such other person or persons as  
 20 may be by him authorised in writing so to do. It is further resolved that the said Nathaniel Stuart Chalmers shall have authority to place any of the  
 said Fund subscribed as aforesaid in the Government Savings Bank to the credit of an account in the same name, namely, the KISAN SANGH BUILDING FUND  
 ACCOUNT, and the said Nathaniel Stuart Chalmers shall for all purposes be authorised to open such  
 an account and he alone or such other person or persons by him authorised in writing shall be per-  
 30 mitted to withdraw any monies placed to the credit of such account.

(Sgd.) N.S. Chalmers.

PRESIDENT

(Sgd.) Shiu Nath.

SECRETARY

Exhibits

14.

New Constitu-  
tion and Rules  
of The Fiji  
Kisan Sangh.  
30th July, 1952.

EXHIBIT 14. NEW CONSTITUTION AND RULES OF  
THE FIJI KISAN SANGH

THE KISAN SANGH FARMERS INDUSTRIAL ASSOCIATION  
NEW CONSTITUTION AND RULES ADOPTED AT A  
GENERAL MEETING HELD AT LAUTOKA ON THE  
18th DAY OF NOVEMBER, 1951.

I CERTIFY that the CONSTITUTION AND RULES HERE-  
UNTO ANNEXED were passed by the KISAN SANGH by  
unanimous members attending an EXTRAORDINARY  
GENERAL MEETING of the Kisan Sangh at Lautoka  
called for that purpose of which due notice  
was given to the members by way of written  
notice duly signed exhibited in accordance with  
the existing Rules AND FURTHER that I as  
President, was authorised to make such amend-  
ments to the Constitution and/or Rules as may  
be required or as suggested by the Registrar of  
Industrial Associations. The meeting was held  
on the 30th July, 1952.

10

Dated the 30th July, 1952.

20

President.

We certify that at a meeting of the Kisan  
Sangh (Industrial Association) held at Lautoka  
on 18th November 1951 the Association altered  
its Constitution and Rules and that the Consti-  
tution and Rules bearing date the 18th day of  
November 1951 sent herewith were approved by a  
unanimous resolution which was as follows:-

"The new Constitution and Rules prepared  
by Mr. N.S. Chalmers the President of  
the Association were hereby adopted and  
as soon as the same are registered shall  
be and become the new Rules and Consti-  
tution of the Association".

30

We The President and Secretary have signed

the new Constitution and Rules by way of Authentication of the same.

Exhibits

14.

DATED: 23rd day of November, 1951.

New Constitu-  
tion and Rules  
of The Fiji  
Kisan Sangh.  
30th July, 1952  
- continued.

..... President

..... Secretary.

RULES OF THE FIJI KISAN SANGH

- 1. The name shall be the FIJI KISAN SANGH (hereinafter referred to as the "Union").

Registered Office:

10 The Registered Office of the Union shall be at Lautoka or such other place in the Colony as the Central Board may decide.

- 2. The objects and powers of the Union are:

- (a) To exercise all the powers vested in an Industrial Association under the Industrial Laws for the time being in force in the Colony of Fiji.

20 (b) To secure for its members all the advantages of unanimity of action with a view of helping its members to maintain fair conditions in the Sugar Industry in the Colony.

- (c) To further in any lawful way the interest of members (and of those engaged in the Sugar Industry) in any relation to conditions in the Industry.

- (d) To enter into agreements with other Associations or Unions for the purpose of securing the objects of the Union.

Exhibits

14.

New Constitu-  
tion and Rules  
of The Fiji  
Kisan Sangh.  
30th July, 1952  
- continued.

- (e) To encourage co-operation amongst its members and the members of other Unions and Associations having similar objects.
- (f) To purchase lease sell or deal in land and buildings and property in general other than to engage in trade.
- (g) To borrow raise or secure the payment of money by the issue of debentures or by mortgage of its land and buildings or by mortgage or pledge of its securities. 10
- (h) To collect print or publish any statistics or other informations likely to be of interest to its members or those engaged in the Sugar Industry in General.
- (i) To keep and maintain a vigilant watch on all legislature brought before the Legislative Council of the Colony of Fiji and to protest and campaign against such measures as are deemed injurious to its members. 20
- (j) To secure proper representation in the Legislative Council for the farming community by supporting any candidates who are in sympathy with and are prepared to support the objects of the Union in the Council.
- (k) To raise funds in a furtherance of the objects of the Union by holding art Unions or lotteries as may be approved under the laws of the Colony. 30
- (l) To send delegates to attend meetings or conferences to places within and without the Colony.
- (m) To take all lawful steps to secure the protection of the members against any forms of exploitations and to endeavour to secure legislation against the operation of any monopoly in the Colony
- (n) To promote harmony between the members and the Sugar Industry. 40

Exhibits

14.

New Constitu-  
tion and Rules  
of The Fiji  
Kisan Sangh.  
30th July, 1952  
- continued.

- (o) To promote the opening up and settlement of Crown and Native Lands and to endeavour to secure for the members security of tenure on reasonable terms.
- (p) To improve the condition of rural life of the members and rural life in general.
- 10 (q) To provide by means of levies or otherwise as the members shall so decide money necessary to meet the expenses of management of the Union's affairs and the carrying of any one or more of the objects of the Union.
- (r) To assist financially kindred organisations in any lawful movement relating to the improvement in the conditions under which Sugar cane is purchased from the cane farmers in the Colony and in all matters incidental thereto.

3. QUALIFICATION OF MEMBERS:

20 Membership shall be open to all persons regularly and normally engaged in the production of sugar cane provided however:

- (a) That no such person shall be a member of another Industrial Association or become a member of another such Association while a member of this Union.
- (b) That the President and the Secretary may be persons not regularly and normally engaged in the Sugar Industry.

30 No unfinancial member shall be entitled to exercise the privileges of membership or to vote at any meeting of the Union, the Central Board or Branch Committee meetings.

4. ENROLMENT OF MEMBERS:

40 Any qualified person wishing to become the member of the Union shall make application to the Secretary of the Branch to which he desires to belong and shall pay the yearly subscription not exceeding ten shillings (10/-) to be fixed annually by the Central Board and such other amount as may be determined by the Union by way of levies.



Exhibits

14.

New Constitu-  
tion and Rules  
of The Fiji  
Kisan Sangh.  
30th July, 1952  
- continued.

Any qualified person who makes application for membership and pays the aforesaid subscription, shall be deemed to be a member unless within thirty days (30) days of such application, the Branch should notify him that he has not been accepted by the Branch as a member.

5. CONTINUATION OF MEMBERSHIP:

Every member shall continue to be a member of the Union until such time as he gives notice in writing to his Branch Secretary of his intention to resign. Such resignation shall not absolve him from liability in respect of any dues in arrears or to the subscription for the financial year in which he tenders his resignation. Notwithstanding anything in this rule contained, the name of any member whose subscription or dues remain unpaid for six months after the expiration of the financial year in respect of which such subscription or dues are payable may, after due notice, be removed from the Roll of Membership by resolution of the Branch concerned.

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6. TRANSFER OF MEMBERS:

Members at their request may be transferred from one Branch to any other Branch by certificate of the Branch Secretary that all monies due by the member have been paid.

7. EXPULSION OF MEMBERS:

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Any member who shall become obnoxious or shall violate the membership rules may be expelled by a majority vote at any meeting of his Branch, provided fourteen days notice of motion has been given to the Branch Secretary setting forth the names and address of the person to be expelled and the reason for expulsion. The Secretary will give seven days' notice to the members affected, who shall have the right of appeal to the Central Board, whose decision shall be final.

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8. NOTICES OF MEETINGS:

All members of the Union shall be summoned by notice either written or printed, and

delivered by hand or post to all Branch Secretaries or given by advertisement, and in no case shall the notice be less than fourteen days, clear, in respect of any meeting, provided that Branch meetings and Committee meetings may be called by individual notice to the members of such Branch or committee at any time deemed advisable by the Chairman.

Exhibits

14.

New Constitution and Rules of The Fiji Kisan Sangh.  
30th July, 1952  
- continued.

10 Branch meeting shall be called upon the presentation to the Chairman of a request in writing signed by any twenty members of the Branch. Any extraordinary general meeting of the Union of the Central Board may be called for the transaction of special business at the direction of the President. An extraordinary Union meeting shall be requisition of 100 members. Such requisition shall be delivered to the General Secretary who shall call such meeting within thirty (30 days of the receipt of such requisition.

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9. QUORUM:

Fifty (50) members shall form a quorum at general meeting and ten (10) members shall form a quorum at Branch meetings and one half of the members shall form a quorum at Central Board Meetings.

10. VOTING POWERS:

30 Each member shall have one vote but the Chairman at any meeting shall have a casting as well as a deliberate vote. Voting on all questions shall be first on voices; a show of hands may be demanded by any qualified member, provided that election of officers to the Union shall be by ballot. In all elections of officers and members of the Central Board where there are more than two Candidates, any ties may decide by a further election of the candidates so effected. Members shall have one vote each, and the Chairman shall have a deliberate and casting vote for the purpose of taking a vote by ballot the Chairman shall nominate two persons, who may be members, to conduct the ballot. They shall hand the results of the ballot to the Chairman who shall announce the same to the meeting. The results so announced shall be recorded in the Minutes.

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Exhibits

14.  
New Constitu-  
tion and Rules  
of The Fiji  
Kisan Sangh.  
30th July, 1952  
- continued.

11. QUALIFICATION FOR OFFICE:

Every member shall be eligible to hold office, whose annual subscription or dues are not in arrears.

The office shall 'ipso facto' become vacant;

(a) If the official or member of a Committee or of the Central Boards absents himself from three consecutive meetings without special leave of absence;

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(b) If by notice in writing he resigns, and

(c) If his name is removed from Roll of Members.

12. MANAGEMENT:

To facilitate the management and control of the Union Branches shall be established in such parts of the Colony as the Central Board may decide.

13. BRANCH MANAGEMENT:

For the conduct of the general business of a Branch of the Union there shall be elected a Chairman, two vice-chairmen, a Secretary, a Treasurer (or Secretary Treasurer), and not less than four (4) other members all of whom shall constitute the Branch Executive Committee and shall be elected at the first meeting, after the approval of the Central Board has been given to the formation of a Branch, and thereafter shall be elected at the annual meeting of the Branch to hold office until the close of the next annual meeting, or until their successors have been appointed and accepted office. The duties of such Committee shall be to conduct the business of the Branch in accordance with instructions given it by the Central Board. The Secretary shall be appointed by the annual meeting but failing such appointment then by the Branch Executive Committee. Meetings of Branches should be held at least quarterly.

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14. ANNUAL BRANCH MEETINGS:Exhibits

Branches of the Union shall hold an annual meeting during the month of January, or such earlier months as shall be decided on by the branch concerned. At that meeting the Chairman shall give a report on the activities of the Branch a copy of which shall be sent to the Central Board Office. The annual meeting shall also elect its member or members to represent the Branch on the Central Board.

14.

New Constitu-  
tion and Rules  
of The Fiji  
Kisan Sangh.  
30th July, 1952  
- continued.

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15. BRANCH REPRESENTATIONS ON CENTRAL BOARD:

Branches shall have direct representation on the Central Board and representation shall be on a membership basis of one member for every 100 members, or such other number as the Union may from time to time decide.

16. DUTIES OF BRANCH SECRETARIES:

Each Branch Secretary shall keep a roll of Membership properly revised from time to time, setting forth the names and addresses of all members enrolled and shall keep proper books of accounts as may be authorised by the Central Board. The Branch books shall be open, at all reasonable times, for inspection by any Branch member or members of the Central Board. The Secretary shall also keep a record of the business transacted at the meeting of the Branch, and shall conduct correspondence thereto.

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17. THE CENTRAL BOARD:

The management and control of the Union's affairs shall be in the hands of an Executive Committee (in these Rules referred to as "the Central Board"). The Central Board shall consist of a President, two vice-Presidents, a Treasurer and the members elected by the Branches under Rule 14. The officers shall be elected by ballot by the members of the Board at its first meeting after the conclusion of the Branch elections. The Central Board shall exercise all the powers of the Union which are not by these Rules or by Law required to be exercised by the Union in general meeting and without prejudice to the generality of the foregoing powers it shall have power to appoint the general

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Exhibits

14.

New Constitu-  
tion and Rules  
of The Fiji  
Kisan Sangh.  
30th July, 1952  
- continued.

secretary, treasurer, auditor, or auditors, representatives to serve on any Body having for its objects the inquiry into or settlement of any industrial dispute in which the Union is involved and to appoint sub-committees for any special purpose. The power to appoint shall also include the power to remove from office any person or persons appointed under the foregoing Rules. Until the first annual general meeting is held after these rules have become the Rules and/or Constitution of the Union the Members of the Central Board and others holding office under the former Rules shall continue to hold office as if duly elected under these Rules.

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18. ANNUAL MEETING OF THE UNION:

The annual general meeting shall be held not later than the month of March, at such time and place as may be appointed by the Central Board. At that meeting the President shall give a resume of the past year's work, and the Chairman of each Branch shall present a short report on the work of his Branch. The Treasurer shall submit a report and revenue and balance sheet.

20

19. DUTIES OF GENERAL SECRETARY:

The general secretary shall attend and keep records of all minutes of the union, and the Central Board shall conduct or be responsible for all correspondence in connection with such meetings. He shall keep a proper record of all the officials and secretaries and their addresses, and see that Branch Secretaries keep proper records of the names and addresses of the members of their Branches, and do all things necessary to the efficient management of the Union's business. The General Secretary may be suspended by the President and subsequently removed by a majority vote of the Central Board.

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20. SUBSTITUTION OF BRANCH REPRESENTATIVES:

Should any member of the Central Board be unable to attend any Central Board Meeting the Branch which he represents by appointment under the hand of the Chairman of the Branch Committee appoint a qualified member to substitute for the member who is unable to attend.

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21. ORDER OF BUSINESS:Exhibits

At meetings of the Branches, the Central Board and the Union the following shall be the order of business; or as near as may be: Reading and Confirming of minutes; Apologies; Reports of Committees; Notice of Motion; Ordinary Business; Elections. In all cases not provided for, resort shall be made to the ordinary rules of debate, which shall be followed as nearly as the same are applicable to the proceedings of the Union and in all cases the Chairman's ruling must be accepted and followed.

14.

New Constitu-  
tion and Rules  
of The Fiji  
Kisan Sangh.  
30th July, 1952  
- continued.

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22. NOTICES OF MOTION:

Notices of motion for the Central Board and Union Meetings shall be given seven (7) days before the meeting and disseminated amongst the members of the Central Board or Union as the case may be.

23. FINANCE:

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Branch Secretaries shall transmit to the treasurer, at the earliest convenient date, such subscriptions and dues as are collected by the Branch.

24. CONTROL AND INVESTMENT OF FUNDS:

30

All monies received by the Union shall be banked by the Officer or Officers appointed by the Central Board, in such banking institution as the Board decides upon and until such bank if nominated by the Board in the Bank of New South Wales. Such banking account shall be operated upon the authority, and signature of such officials and officers as are appointed by the Central Board. By resolution of the Central Board any funds of the Union may be employed in connection with any one or more of the objects of the Union and the Board shall also have power to make a levy on members for that purpose if circumstances should so require.

25. VACANCIES:

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Any vacancies occurring on a Branch Committee may be filled by the Committee concerned; any vacancies occurring in the Central Board, if a

Exhibits

14.

New Constitu-  
tion and Rules  
of The Fiji  
Kisan Sangh.  
30th July, 1952  
- continued.

member, shall be filed by the Branch concerned and if any officer by the Central Board after such vacancies has been filled by the Branch concerned.

26. RIGHT OF APPEAL:

Provided that notice of intention to do so has been given to the Central Board, if any member of a Branch considers that he has suffered injustice at the hands of his Committee. The decision of the Central Board shall be final.

10

27. FINANCIAL YEAR:

The financial year for the Union shall close on the last day of December in each year.

28. COMMON SEAL:

The General Secretary shall be the custodian of the Common Seal which shall be affixed by the Secretary with the Authority of the Central Board to such deeds documents or instruments as are required to be sealed and all such deeds documents and instruments shall be deemed to have been duly executed if signed by the President and the General Secretary, or in such other manner as the Union may decide.

20

29. WINDING UP OF BRANCHES:

In the event of winding up of any Branch, or in the event of any Branch becoming defunct for any reason whatsoever, the Secretary shall be required to hand over the books, and moneys and other surplus assets to the General Secretary.

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30. WINDING UP OF THE UNION:

(a) Before a general meeting of members is called to pass a resolution to voluntarily wind up the Union at least three (3) calendar months prior to the date on which the general meeting to pass the resolution to voluntarily wind up its purpose to be held, a notice of the intentions to hold such a meeting shall be

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given by the Central Board to all Branches.

Exhibits

- (b) In the event of the Winding up of the Union the disposal of the funds and the property of the Union shall be decided by the members thereof in general meeting or in default of such decision, as a Judge of the Supreme Court may direct.

14.

New Constitu-  
tion and Rules  
of The Fiji  
Kisan Sangh.  
30th July, 1952  
- continued.

31. ALTERATION OF CONSTITUTION AND RULES:

10 The Constitution and Rules may be altered, added to, or rescinded only at the general meeting of the Union. Notice of any proposed alteration, addition, or rescission shall be given to the members not less than fourteen (14) days before the meeting. Such amended constitution and Rules shall be confirmed at a general meeting and until confirmed and registered shall be of no force or effect.

32. BENEFITS TO MEMBERS:

20 No member as such shall be entitled to any distribution of assets or funds of the Union and all moneys received by the Union shall be used in connection with the objects or the furtherance of the objects of the Union.

33. EFFECT OF RULES ON MEMBERS:

30 Every person who becomes a member of the Union shall be bound by the Rules and decisions of the Union and the Central Board acting within the scope of the objects and powers of the Union and Board respectively, and the Rules for the time being of the Union shall be deemed to be a contract entered into by the member so joining the Union with the Union and the other members thereof.

34. BY-LAWS:

40 Notwithstanding anything to this contrary contained in these Rules. It shall be lawful for the Central Board to make by-laws not inconsistent with the Constitution and/or Rules of the Union for the more efficient or expeditious conduct of the affairs or business of the Union and more specially with regard to the following matters:



Exhibits

14.

New Constitu-  
tion and Rules  
of The Fiji  
Kisan Sangh.  
30th July, 1952  
- continued.

(1) The conduct of general meetings and the members generally.

(2) Defining the scope and/or duties of:-

(a) The General Secretary, Branch Secretaries, Treasurer, Trustee or Trustees.

(b) The President, Vice-Presidents and other officers of the Union.

(c) Any special Committee or Representatives or representative elected by the Union or the Central Board for any special purpose.

10

By-Laws made by the Central Board shall upon registration have the effect of Rules duly passed by the Union. By-Laws so made may be amended, replaced or provoked by the Central Board of Union at any General meeting, provided however, that any by-laws amended, replaced, or provoked by a general meeting shall not thereafter be amended, replaced or revoked by the Central Board.

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EXHIBIT 1 (a).     LETTER, N.S. CHALMERS TO MESSRS.  
MUNRO, WARREN, LEYS & KERMODE.

Exhibits

1(a)

P.O. Box 163  
LAUTOKA.

Letter, N.S.  
 Chalmers to  
 Messrs. Munro,  
 Warren, Leys &  
 Kermode.  
 22nd October,  
 1958.

October 22nd 1958.

Messrs. Munro, Warren, Leys & Kermode,  
 Solicitor etc.  
 P.O. Box 60  
LAUTOKA.

10                    re Kisan Sangh Building Fund A/C.

Dear Sirs,

I refer to your letter of the 16th inst. herein and my letter to your firm of even date with your letter,

I would mention that as President I was under no obligation to keep accounts. The Association employed an accountant Mr. D.M. Richmond for that purpose.

20                    The butts of my cheque books contained details (for the information of the Accountant) as to who was the payee and the purpose for which he was paid. Mr. M.D. Richmond called on me at Sigatoka and asked me for the cheque butts which I handed to him. I remember the incident very well as I handed to him at the same time a book kept in connection with Dr. A.J. Eapan's affairs with instructions to get out an account for which I would pay him. This was about 18 months ago but in spite of frequent letters he has neither produced the account or re-  
 30                    turned the Book. This, of course, has nothing to do with the Kisan Sangh but only to illustrate that this man is totally unreliable.

In the absence of the butts of my cheque books the only alternative is to have an investigation of all cheques signed by me to ascertain to whom they were paid. I know that Ayodhya Prasad was drawing cheques on the Building Fund a/c with which to pay weighbridge clerks salaries at a time when there was a weighbridge a/c with the Bank.

Exhibits

1(a)

Letter, N.S.  
Chalmers to  
Messrs. Munro,  
Warren, Leys &  
Kermode.  
22nd October,  
1958 -  
continued.

I remonstrated with the Manager and he agreed the whole thing was wrong and he would get Mr. Ayodhya Prasad to refund the amount drawn to the Building Fund A/C.

The number of cheques drawn by me on the Building Fund a/c some do not appear to be on the list sent me - an investigation should not prove either difficult or lengthy. I have been in contact with the Manager of the Bank of New South Wales about cheques drawn by me. I received a letter from him in which he states .... it is not the Bank's practise to release paid cheques to drawers ... However, we have no objection to allowing you to peruse any cheque at this office .... This letter is dated the 15th Oct. It should be an easy matter now to have all cheques drawn by me investigated (a) to ascertain who signed them and (b) the name of the payee.

10

As you have accused me of making use for my own purposes of money belonging to the Fiji Kisan Sangh Building Fund a/c I consider the obligation is on you to have the investigation I suggest made. I have already cleared the ground for such an investigation. The matter could be simplified by obtaining from the Accountant, Mr. D.M. Richmond, the butts of my cheques when all and every payment made by me will be clearly stated for accounting and audit purposes.

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30

Yours faithfully,

N.S. Chalmers  
(N.S. Chalmers)

EXHIBIT 1 (b). LETTER, MESSRS. MUNRO, WARREN,  
LEYS & KERMODE TO N.S.CHALMERS.

Exhibits

1(b)

24th October, 1958

N.S. Chalmers, Esq.,  
LAUTOKA.

Letter, Messrs.  
Munro, Warren,  
Leys & Kermode  
to N.S.Chalmers.  
24th October,  
1958.

Dear Sir,

re: Kisan Sangh - Building Fund Account.

We acknowledge receipt of your letters of the 16th, 18th and two letters of the 22nd instant.

10        May we say at the outset that we have not accused you of making use of moneys belonging to the Kisan Sangh. We have merely asked for an account and intimated that if any moneys were improperly withdrawn that our instructions were to recover such moneys. Most of the matters raised in your letters concern matters with which we are not concerned. We are concerned only with the above fund during the period when you were Trustee and were the only person authorised to operate on such fund.

20        You have admitted being the Trustee and being the only person authorised to operate on the account for a certain period. It is clear also from your correspondence that you had asked Mr. Richmond to prepare accounts and such accounts have not to date been prepared.

30        As sole Trustee of the account, we think the onus is on you to account for the moneys withdrawn and to prevail upon Mr. Richmond to hand over such papers to enable you to do this. We have in the meantime requested the Bank to produce all the cheques which were drawn by you solely and we intend to furnish a supplementary list of all those cheques which from the face of them cannot be identified as having been properly drawn.

We accept your assurance that the accounts will be found in order and if not that you will pay in moneys but we must ask that you take immediate steps to furnish the account requested in our letter of the 16th instant.

Exhibits

1(b)

Letter, Messrs.  
Munro, Warren,  
Leys & Kermode  
to N.S.Chalmers.  
24th October,  
1958 -  
continued.

May we also request that the correspondence be confined only to this account as we are not at all concerned with the internal workings of the Association or whether or not it is in fact a legal Association.

As regards the car, our instructions are that the Kisan Sangh adhere to the demand for its return as conveyed in our letter of the 16th instant.

Yours faithfully,

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MUNRO, WARREN, LEYS & KERMODE

R.G. Kermode

1(c)

Letter, N.S.  
Chalmers to  
Messrs. Munro,  
Warren, Leys  
& Kermode.  
29th October,  
1958.

EXHIBIT 1 (c). LETTER, N.S. CHALMERS TO  
MESSRS. MUNRO, WARREN, LEYS  
& KERMODE.

Lautoka.

October 29th 1958.

Messrs. Munro, Warren, Leys  
& Kermode,  
Solicitor etc.  
P.O. Box 60,  
LAUTOKA.

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Dear Sirs,

re: Kisan Sangh Building Fund Account

I am in receipt of your letter RGK/1 herein of the 24th inst. In reply I have to state that there is nothing that I wish to add to alter or vary what I have already written you on this subject.

I will, however, make the following comments in respect of what you say in your letter under acknowledgement:

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"Sole Trustee of the account". That was true. I was appointed by the members in General meeting sole Trustee of the account which was to be used in connection with the Kisan Sangh Building and Expenses incidental thereto. In your previous letter you mention that Mr. Ayoudhya Prasad and others operated on the account. Will you please advise me

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(a) by what authority he operated on that account.

(b) what monies he drew from that account

(c) to whom were these moneys paid and has he any receipts or vouchers or cheque butts to show to whom these moneys drawn from the above account were drawn and finally

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(d) will he produce documents and papers relative to the foregoing matters to any duly qualified accountant appointed by me.

The Question of Accounts. Who appointed Mr. Richmond the Kisan Sangh Accountant? When was he appointed and when did his services cease as such accountant and by what authority and for what reason?

Yours faithfully,

N.S. Chalmers  
(N.S. CHALMERS)

Exhibits

1(c)

Letter, N.S. Chalmers to Messrs. Munro, Warren, Leys & Kermode. 29th October, 1958 - continued.

Exhibits

1(d)

Letter, N.S.  
Chalmers to  
Messrs. Munro,  
Warren, Leys  
& Kermode.  
5th November,  
1958.

EXHIBIT 1 (d). LETTER, N.S. CHALMERS TO  
MESSRS. MUNRO, WARREN,  
LEYS & KERMODE.

Messrs. Koya & Co.  
Solicitors,  
Lautoka.

November 5th 1958.

Messrs. Munro, Warren,  
Keys & Kermode,  
Solicitors etc.  
P.O. Box 60,  
Lautoka.

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Dear Sirs,

re Kisan Sangh Building Fund Account

I am in receipt of your letter herein of the 30th inst. I have delayed replying because I had made arrangements with the Bank of New South Wales to supply me with details of all cheques drawn by me on the above account. This is now to hand. As the details do not agree with the particulars set out in your letter under acknowledgment will you advise me at once the source from which you obtained your particulars and allow me to inspect them.

20

As you have made serious allegations against me I have no alternative to treat them as coming from you. You have never mentioned in your letters for whom you are acting. No practitioner ever writes a letter unless he discloses the person or persons for whom he is acting. You have failed to do that. So I shall deal with you alone until you advise me for whom you are acting.

30

I wish to make it clear to you that I do not recognise (a) Ayodhya Prasad as General Secretary of the Fiji Kisan Sangh Industrial Association as he was never elected under rule 17 of the Rules and (b) The so called Executive (Central Board) of the Fiji Kisan Sangh as no member of such committee was ever elected under rule 14.

40

Consequently in view of the charges made against me by you (not naming for whom you were acting) I can only hold you responsible.

Please reply to this letter immediately. If you can satisfy me for whom you are acting on behalf of the Fiji Kisan Sangh Industrial Association and by what authority your clients claim to act then I will be willing forthwith to present the figures given to me by the Bank of New South Wales.

10 Nothing in this letter is to add to, alter or vary anything I have already written on the matter being dealt with herein.

In spite of the fact that I need medical expert treatment I am still held up in Fiji as a result of the serious threats made by you to prevent me leaving the Colony. As I have already said I will hold you responsible for my enforced delay in leaving Fiji for medical treatment.

Yours faithfully,

20 N.S. Chalmers  
(N.S. CHALMERS)

EXHIBIT 1 (e). LETTER, N.S. CHALMERS TO MESSRS.  
MUNRO, WARREN, LEYS & KERMODE.

c/o Messrs. Koya & Co.  
Solicitors,  
Lautoka.

Nov. 8th 1958.

Messrs. Munro, Warren, Leys  
& Kermode,  
Solicitors etc.  
P.O. Box 60,  
LAUTOKA

30

Dear Sirs,

re Kisan Sangh Building Fund Account  
Yours BGK/I 5-11-58

I have been supplied by the Bank of New South Wales, Lautoka, with a true copy of all the cheques

Exhibits

1(d)

Letter, N.S.  
Chalmers to  
Messrs. Munro,  
Warren, Leys  
& Kermode.  
5th November,  
1958 -  
continued.

1(e)

Letter, N.S.  
Chalmers to  
Messrs. Munro,  
Warren, Leys  
& Kermode.  
8th November,  
1958.



Exhibits

1(e)  
 Letter, N.S.  
 Chalmers to  
 Messrs. Munro,  
 Warren, Leys  
 & Kermodé.  
 8th November,  
 1958 -  
 continued.

drawn by me on the building Fund a/c in respect of which you seek information. I can account for every one of the cheques drawn by me. The list supplied by you differs from that supplied to me by the Bank. I personally never inspected the cheques or sent anyone to do so. However, I rely on the details given me by the Bank.

Unless and until I receive the information set out in my letter to you of the 5th inst. I definitely will not account to your client Mr. Ayodhya Prasad. Please do not beat about the bush but give me direct answers to my letter of the 5th inst.

10

In your letter you say "We were consulted by Mr. Ayodhya Prasad". I do not deny this but were you instructed to write me as you have done by him. That is the important question. No responsible legal practitioner ever writes a letter for a client unless he makes the name of his client clear and states definitely that he has been instructed to act for him.

20

Please let me have an early reply to my letter of the 5th inst. as I might find the information useful when I hope to meet a number of the members of the Fiji Kisan Sangh at Churchill Park on Saturday the 15th inst.

Yours faithfully

N.S. Chalmers  
 (N.S. CHALMERS)

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EXHIBIT 1 (f). LETTER, N.S. CHALMERS TO MESSRS.  
MUNRO, WARREN, LEYS & KERMODE.

Exhibits

1(f)

P.O. Box 186.  
Lautoka.

29th Nov. 1958.

Letter, N.S.  
Chalmers to  
Messrs. Munro,  
Warren, Leys  
& Kermode.  
29th November,  
1958.

Messrs. Munro, Warren, Leys  
& Kermode  
Solicitors etc.  
LAUTOKA

10 Dear Sirs,

Kisan Sangh Building Fund Account  
and other financial matters

20 I have had a deputation of members (following my meeting on the 15th inst. at Churchill Park) from Penang to Sigatoka. Mr. C.C. Chalmers who has been acting as legal adviser to the Kisan Sangh says that it is incumbent on me as President to call a meeting of all the members and explain the financial position to them. The responsibility in that respect is on your client Mr. Ayodhya Prasad. I have been in the Kisan Sangh Building giving whatever advice and assistance I can and complying with Public Health Regulations as required by the Health Authorities. A lot of the money has come out of my own pocket. All the time I have been in Lautoka Mr. Ayodhya Prasad has not thought fit to come and see me and as he is your client I hope you can help me. in the interests of the members as follows:

Arrange with Mr. Ayodhya Prasad :-

- 30
1. To produce at your office for my inspection all audited accounts and, if any, approved by the members in General Meetings for the years 1953 to 1958.
  2. To produce in your office all the notes of all General Meetings from 1953 to 1958.
  3. All copies of returns made to the Registrar of Industrial Association for the years 1953 to 1958.

Exhibits

1(f)

Letter, N.S. Chalmers to Messrs. Munro, Warren, Leys & Kermode. 29th November, 1958 - continued.

4. All banks statement of all the Kisan Sangh Bank accounts from 1953 to 1958.

As he claims to be General Secretary and his duties are clearly defined by the Rules/ or Constitution of the Association he must be in position to bring all the above to your office for my inspection before I call the meeting as requested.

Please treat this matter AS URGENT as it seems to me members are dissatisfied with his administration and the sooner he clears up the serious accusations made against him the better. It was to be regretted he had not the guts to attend my meeting but sent his great friend Siri Ram, a gaol bird convicted of perjury, to represent him.

10

Yours faithfully,

N.S. Chalmers  
(N.S. CHALMERS)

1(g)

Letter, Messrs. Koya & Co. to Messrs. Munro, Warren, Leys & Kermode. 12 August, 1959.

EXHIBIT 1 (g). LETTER, MESSRS. KOYA & CO. TO MESSRS. MUNRO, WARREN, LEYS & KERMODE.

20

KOYA & CO.  
Barristers & Solicitors.

LAUTOKA FIJI  
12th August 1959.

Messrs. Munro, Warren,  
Leys & Kermode,  
Solicitors,  
LAUTOKA.

30

Dear Sirs,

re N.S. Chalmers ats Fiji Kisan Sangh

Will you kindly give further and better particulars relating to following matters arising out of the Statement of Claim:

- Paragraph 1: Under and by what authority did the Plaintiff Association institute the action against the Defendant, Nathaniel Stuart Chalmers?
- Paragraph 2: Under and by what authority did the Defendant cease to be President of the Plaintiff Association about the month of March, 1959.
- 10 Paragraph 6: When and where did the Defendant refuse or neglect to furnish an account of all monies drawn by him from the Building Fund account?
- Paragraph 9: Who subscribed the money and paid for the car; where was the car presented and by whom?
- 20 Paragraph 10: State what communications, if any, were made to the Defendant from the date of the presentation of the car indicating to him that the car was not a gift to him personally but by virtue of his office. Has the Association since the car was presented to him paid anything for its maintenance etc. and if so give details of such payments.

Exhibits

1(g)

Letter, Messrs. Koya & Co. to Messrs. Munro, Warren, Leys & Kermodie. 12th August, 1959 - continued.

Please let us know on what document or paper the Defendant is alleged to have recorded the details of cheques drawn by him and referred to in the 3rd column of the list attached to the Statement of Claim.

30

Yours faithfully,

KOYA &amp; CO.

Per: S.M. Koya

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Exhibits

1(h)

Letter, Messrs.  
Munro, Warren,  
Leys & Kermode  
to Messrs. Koya  
& Co.  
1st September,  
1959.

EXHIBIT 1 (h). LETTER, MESSRS. MUNRO,  
WARREN, LEYS & KERMODE  
TO MESSRS. KOYA & CO.

1st September, 1959.

Messrs. Koya & Co.,  
Solicitors,  
LAUTOKA.

Dear Sirs,

Kisan Sangh - N.S. Chalmers

We refer to your letters of the 12th and 10  
27th August. Your letter of the 10th of June  
last was answered by our letter of the 16th  
June.

With regard to your letter of the 12th  
August the only matter which is properly the  
subject of further particulars is paragraph 6  
and therein we were relying specifically on  
our letter to Mr. Chalmers on the 16th October  
1958 and subsequent correspondence arising out  
of this letter and culminating in our letter 20  
of the 5th November 1958 when your client's  
attention was again drawn to the fact that he  
had been asked to account for the moneys and  
had not done so.

With regard to the other particulars  
requested by you we have to state that none of  
the particulars requested are Matters arising  
out of the statement of claim and we deal  
specifically with each request.

Paragraph 1 There is no reference in the 30  
statement of claim to authority or institut-  
ing of any action. Quite apart from that  
aspect your client has pleaded that the  
plaintiff association had no authority and  
the onus is on him to prove his allegation.

Paragraph 2 There is no reference to the 40  
defendant ceasing to be President but he has  
himself pleaded that he is still President  
and once again the onus is on him to estab-  
lish his allegation.

Paragraph 6 We have already answered this and we repeat that it was at Lautoka between the 16th October 1958 and the 5th November 1958 that he refused to account.

10 Paragraph 9 No mention has been made in the Statement of Claim as to the subscribing of any money but the defendant has pleaded in his defence most of the particulars which he now seeks. The particulars also which you seek were furnished by you on behalf of your client in your letter of the 2nd July last. The onus is on your client to establish the names of the persons who subscribed the money but so far as the plaintiff Association was concerned the car was paid for by the Association and was presented to the President of the Association at Lautoka on or about the 18th day of December 1954.

20 Paragraph 10 This is not a proper request and would not even have been the basis of a proper interrogatory which on the face of it is what it appears to be. We can state, however, that if you will peruse the list of cheques drawn by your client and particularly cheque 711 of April 17 1956 you will note that your client debited the trust account with the sum of £157. 8. 11.

30 With regard to the last paragraph of your letter, if you will again refer to the list of cheques you will find in the heading, "details recorded by the defendant on cheques drawn by him." This is at the head of the third column to which you have referred and is quite clear and requires no further explanation. In any case this is not a proper request for further particulars.

Yours faithfully,

MUNRO, WARREN, LEYS & KERMODE

R.G. Kermode

Exhibits

1(h)

Letter, Messrs. Munro, Warren, Leys & Kermode to Messrs. Koya & Co. 1st September, 1959 - continued.

Exhibits

EXHIBIT 1(i). LETTER, MESSRS. KOYA & CO. TO MESSRS. MUNRO, WARREN, LEYS & KERMODE.

1(i)

Letter, Messrs. Koya & Co. to Messrs. Munro, Warren, Leys & Kermode. 16th December, 1959.

KOYA & CO.  
Barristers & Solicitors.

LAUTOKA FIJI  
16th December 1959.

Messrs. Munro, Warren, Leys & Kermode, Solicitors, LAUTOKA.

10

Dear Sirs,

re The Fiji Kisan Sangh v. N.S. Chalmers  
Supreme Court Action No.54 of 1959.

We refer to our letter of the 14th instant and our conversation with your Mr. Kermode this morning.

Our client wishes to inspect the following specific things

20

- (a) Minutes of the Association since 1951.
- (b) Books of account since 1951.
- (c) Statement of Account and Annual Returns submitted to Registrar of Industrial Associations since 1951.

We notice that no order has been made for Affidavit or Inspection of Documents and in view of the fact that your client is reluctant to permit an inspection on a voluntary basis, we have instructions to ask the Registrar for further directions in this matter so as to include an order for Affidavit and Inspection of Documents.

30

Yours faithfully,

KOYA & CO.

per: S.M. Koya.

EXHIBIT 1 (j).     LETTER, MUNRO, WARREN,  
LEYS & KERMODE TO  
MESSRS. KOYA & CO.

RGK/pml

21st December, 1959.

Messrs. Koya & Co.,  
Solicitors,  
LAUTOKA.

EXhibits  
1 (j)  
Letter, Messrs.  
Munro, Warren,  
Leys &  
Kermode to  
Messrs. Koya  
& Co.  
21st December,  
1959.

Dear Sirs,

10                    re Fiji Kisan Sangh and W.S. Chalmers.

We acknowledge receipt of your letters of the 14th and 16th December.

We have already advised you verbally that in view of your client's Defence to this Action which is a denial that the funds belong to the Kisan Sangh we can not see that our client is bound to allow inspection. We did offer to consider furnishing information on your letting us know what information was required.

20                    We will not countenance a fishing expedition by your client which would appear to be his object. We are concerned with accounts between September, 1954 and April, 1957, and relevant documents in respect of this period only will be disclosed.

We still consider that you should formulate either interrogatories or advise us what information is sought. Any attempts by your client to widen the issues involved or introduce irrelevant matters will be strenuously resisted.

Yours faithfully,

30                    MUNRO, WARREN, LEYS & KERMODE.

per:



ON APPEAL FROM THE FIJI COURT OF APPEAL

B E T W E E N

NATHANIEL STUART CHALMERS (Defendant) Appellant

- and -

THE FIJI KISAN SANGH (Plaintiff) Respondent

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R E C O R D    O F    P R O C E E D I N G S

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T.L. WILSON & CO.,  
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