

42, 1936

In the Privy Council.

No. 87 of 1935.

ON APPEAL FROM THE SUPREME COURT
OF FIJI.

BETWEEN

GEORGE FRIER GRAHAME - - - - - *Appellant*

AND

THE ATTORNEY GENERAL OF FIJI - - - - - *Respondent.*

RECORD OF PROCEEDINGS.

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In the Privy Council.

No. 87 of 1935.

ON APPEAL FROM THE SUPREME COURT
OF FIJI.

BETWEEN

GEORGE FRIER GRAHAME - - - - - *Appellant*

AND

THE ATTORNEY GENERAL OF FIJI - - - - - *Respondent.*

RECORD OF PROCEEDINGS.

No. 1.

Application of Attorney General of Fiji that George Frier Grahame be struck off Roll.

IN THE SUPREME COURT OF FIJI.
No. 57 of 1934.

IN THE MATTER of GEORGE FRIER GRAHAME of Suva a Barrister and Solicitor of this Honourable Court.
To the Registrar of the Supreme Court.

I, RANSLEY SAMUEL THACKER, His Majesty's Attorney-General for
10 the Colony of Fiji, hereby make application that George Frier Grahame,
Barrister and Solicitor, of Suva, may be required to answer the allegations
contained in the affidavits which accompany this application, and that his
name may be struck off the roll of barristers and solicitors of the Supreme
Court, or that he may be suspended from practice as a barrister and
solicitor, or that such other order may be made as the Court shall think
right.

I make this application on the ground that the matters of fact stated
in the said affidavits constitute professional misconduct on the part of the
said George Frier Grahame in his capacity as a barrister and solicitor of
20 the Supreme Court of the Colony.

Dated this 31st day of October 1934.

(Sgd.) R. S. THACKER,
Attorney General.

No. 1.
Application
of Attorney
General of
Fiji that
George Frier
Grahame
be struck
off Roll,
31st Octo-
ber, 1934.

No. 2.
 Notice of
 hearing of
 Application,
 1st Novem-
 ber, 1934.

No. 2.
 Notice of hearing of Application.

IN THE SUPREME COURT OF FIJI.
 No. 57 of 1934.

IN THE MATTER of GEORGE FRIER GRAHAME a Barrister and Solicitor of
 this Honourable Court.

To : George Frier Grahame of Suva a Barrister and Solicitor.

Application has been made by His Majesty's Attorney General of the
 Colony of Fiji to this Honourable Court that you may be required to answer
 the allegations contained in the affidavits whereof copies accompany this
 notice, and that your name may be struck off the roll of Barristers and
 Solicitors, or that you may be suspended from practice as a Barrister and
 Solicitor, or that such order may be made as the Court shall think right. 10

The 21st day of November 1934 is the day fixed for the hearing of the
 application. The Court will sit at the Supreme Court House Suva at 10
 o'clock in the forenoon, and you may appear in person or be represented
 by Counsel. If you fail to appear or to be represented, the Court may
 proceed in your absence. You are required to furnish to His Majesty's
 Attorney General and to the Registrar of the Supreme Court a list of all
 the documents which you propose to put in within 7 days of the receipt
 of a list of the documents which His Majesty's Attorney General intends
 to put in. Either party may inspect the documents included in the list
 furnished by the other, and a copy of any document mentioned in the list
 of either party must, on the application and at the expense of the party
 requiring it, be furnished by that party to the other within 3 days after
 receipt of the application. You are requested to acknowledge the receipt
 of this notice without delay. 20

Dated this 1st day of November 1934.

L.S.

(Sgd.) B. ST. J. FISHER,

Registrar Supreme Court. 30

No. 3.

List of Documents put in by Attorney General.

IN THE MATTER of GEORGE FRIER GRAHAME a Barrister and Solicitor of this Honourable Court.

1. Order made 23rd October 1934 in Civil Action No. 49 of 1934.
2. Affidavit of Samuel Howard Ellis in Civil Action No. 49 of 1934.

Sworn 22nd October 1934.

3. Affidavit of Bertie St. Julian Fisher. Sworn 25th October 1934.
4. Order made 23rd October 1934 in Civil Action No. 50 of 1934.
5. Affidavit of Bertie St. Julian Fisher. Sworn 29th October 1934.
6. Probate of the Will of J. H. F. Vollmer deceased.

(Sgd.) R. S. THACKER,

Attorney General.
1st day of November, 1934.

No. 3.
List of
Documents
put in by
Attorney
General
1st Novem-
ber, 1934.

No. 4.

Order made in Action No. 49 of 1934.

IN THE SUPREME COURT OF FIJI.

No. 49 of 1934.

IN THE MATTER of the Estate of the late HARRY GRANVILLE NICHOLAS
20 CARR

AND IN THE MATTER of GEORGE FRIER GRAHAME of Suva a Solicitor of this Honourable Court.

Upon hearing Mr. S. H. Ellis of Counsel for Esther Rebecca Carr and Frederick Charles Clapcott the trustees of the Estate of the late Harry Granville Nicholas Carr And upon Reading the affidavit of Samuel Howard Ellis dated the 22nd day of October 1934 It is ordered that a copy of the said affidavit be referred to the Attorney General to consider and take thereon such action as he may deem proper referring to this Court if in his opinion a prima facie case is established against the abovenamed solicitor
30 George Frier Grahame And that the costs of and occasioned by this application be reserved. Fit for counsel.

Dated the 23rd day of October 1934.

By the Court.

L.S.

B. ST. J. FISHER,
Registrar.

No. 4.
Order made
in Action
No. 49 of
1934,
23rd Octo-
ber, 1934.

No. 5.
Affidavit of
S. H. Ellis,
22nd Octo-
ber, 1934.

No. 5.
Affidavit of Samuel Howard Ellis sworn 22nd October 1934
with Exhibit.

IN THE SUPREME COURT OF FIJI.
No. 49 of 1934.

IN THE MATTER of the Estate of the late HARRY GRANVILLE NICHOLAS
CARR

AND IN THE MATTER of GEORGE FRIER GRAHAME of Suva a Solicitor of this
Honourable Court.

I, SAMUEL HOWARD ELLIS of Suva in the Colony of Fiji Solicitor make 10
oath and say as follows :

(1) I am solicitor to Esther Rebecca Carr at present of Portsmouth
England Widow and Frederick Charles Clapcott of Ba in the said Colony
Planter the trustees of the will of the late Harry Granville Nicholas Carr
deceased, of which Probate was granted to them by this Honourable Court
on the 31st day of December 1917.

(2) From the 1st day of January 1926 to the 30th day of April 1933
the firm of "Ellis and Grahame," whose partners were George Frier Grahame
of Suva aforesaid Solicitor and myself, were solicitors to the said trustees.
On the 30th April 1933 the said partnership was dissolved and since that 20
date I have been solicitor to the said trustees.

(3). On the 25th day of August 1923 the said trustees gave to one
John Linn Hunt of Rewa Planter a lease registered Book 46 Folio 38 of
446 acres 33 perches known as "Vunivesi" and comprised in Certificates
of Title X1/05/241, 4140, and 4604 for 10 years from the 1st May 1923 at
a rental of £200 : 0 : 0 per annum with an option to purchase the property
during the period of the lease at £4000 : 0 : 0.

(4) On the 2nd day of November 1932 the said John Linn Hunt gave
the said trustees notice of his intention to exercise his option to purchase
the said property for £4000 : 0 : 0. 30

(5) On the 15th day of March 1933 the said trustees transferred the
said property to the said John Linn Hunt for the sum of £4000 : 0 : 0 by
Transfer which was registered as No. 3942.

(6) The said John Linn Hunt paid the said trustees £1350 : 0 : 0 in
cash, and he executed a mortgage in their favour which was registered as
No. 3943 for the balance of £2650 : 0 : 0. This mortgage provided for pay-
ment of interest at 6½% per annum, and gave the mortgagor the right to
repay the whole or any part thereof being not less than £200 : 0 : 0 on
giving three months' notice.

(7) The said firm of Ellis & Grahame acted as solicitors to the said 40
trustees and to the said John Linn Hunt in regard to the said transfer
and mortgage.

(8) From the 1st day of May 1933 I alone acted as solicitor to the said trustees and the said George Frier Grahame acted as solicitor to the said John Linn Hunt in connection with the said property and dealings affecting the same.

No. 5.
Affidavit of
S. H. Ellis,
22nd October,
1934—
continued.

(9) On the 24th day of August 1933 the said George Frier Grahame acting apparently on behalf of the said John Linn Hunt paid to the said trustees £650 : 0 : 0 in reduction of the said mortgage.

(10) On the 15th day of December 1933 the said George Frier Grahame acting apparently on behalf of the said John Linn Hunt paid to the said trustees the balance £2000 : 0 : 0 owing under the said mortgage.

(11) The said trustees thereupon at the request of the said George Frier Grahame transferred the said mortgage to the said George Frier Grahame as trustee of the estate of J. H. F. Vollmer deceased by Transfer registered as No. 8951.

(12) After the transfer to him of the said property the said John Linn Hunt subdivided it into small blocks which he sold to Indian purchasers. On the 4th day of October 1934 he had so sold blocks to the value of £8480 : 1 : 3, and a balance of 13 blocks of a total area of 103 acres 2 roods 29 perches remained unsold.

(13) In the month of September 1934 it came to the knowledge of the said trustees that the actual purchaser from them of the said property was not the said John Linn Hunt but the said George Frier Grahame who had entered into an agreement with the said John Linn Hunt by which the said property was agreed to be transferred to the said John Linn Hunt's name on behalf of the said George Frier Grahame and the said George Frier Grahame agreed to employ the said John Linn Hunt to subdivide and sell the said property upon a commission basis.

(14) The said trustees thereupon requested the said George Frier Grahame to return the said property to them, together with all profits that he had made out of the said purchase from the said trustees upon the ground that at the time of his making the said purchase he being the solicitor to the said trustees had failed to disclose his action to them and his purchase was accordingly a breach of his duty to the said trustees.

(15) On the 4th day of October 1934 the said George Frier Grahame and the said John Linn Hunt gave to the said trustees a document of which a copy is hereunto annexed marked "A."

(16) The said George Frier Grahame and the said John Linn Hunt have on the 18th day of October 1934 carried out the agreements and undertaking on their part in the said document referred to in paragraph 15 hereof.

(17) I am instructed by the said trustees to bring to the notice of this Honourable Court the said conduct of the said George Frier Grahame and to apply for an order directing that such conduct be enquired into.

Sworn at Suva this 22nd day of }
October 1934 }
Before me }

S. H. ELLIS.

B. ST. J. FISHER.

" A "

No. 5.
Affidavit of
S. H. Ellis,
22nd Octo-
ber, 1934—
continued.

This is the exhibit marked "A" referred to in the annexed affidavit
of SAMUEL HOWARD ELLIS.

Sworn this 22nd day of October 1934.

Exhibit
" A. "

Before me,

B. ST. J. FISHER,
a Commissioner, etc.

Copy under-
taking of
G. F.
Grahame.

To E. R. CARR and F. C. CLAPCOTT as trustees of H. G. N. Carr Estate.

In consideration of your refraining for a period of fourteen days from
this date from issuing a writ against me in respect of the property known as
Koronivia or Vunivesi I agree and undertake forthwith— 10

(1) To procure the transfer by J. L. Hunt to you of the balance of the
lands in Certificate of Titles 42/4140, 47/4604, X1/05/241 now still
registered in his name.

(2) To procure the transfer by J. L. Hunt to you of all agreements for
sale and purchase or other contracts in respect of sales or portions of the lands
in the said titles.

(3) To procure the transfer by J. L. Hunt to you of all easements and
other documents in his name or held by him or by me in respect of the
whole or any portion of the lands comprised in the said lands. 20

(4) To give you a full account of all money received by me or by J. L.
Hunt in respect of (1) sales of any portions of the said lands and (2) interest
on balance of purchase money and (3) rents.

(5) To pay to you the whole of the money mentioned in paragraph 4
upon you repaying to me £4000 : 0 : 0 the purchase money paid for the
transfer of the said titles 4140, 4604, X1/05/241 to J. L. Hunt and £45 : 0 : 0
money expended on making drains on the said lands and £290 : 2 : 9 interest
(Sgd.) G. F. G.

on the said sum of £4000 : 0 : 0.

(6) To deliver to you all survey plans and copies thereof in the possession 30
of J. L. Hunt or myself in respect of the said lands or any portion thereof.

(7) To give you a complete account of all moneys paid for surveys
in respect of the said lands and received by J. L. Hunt or myself from
purchasers, and to pay to you the excess (if any) of amounts received over
amounts paid—you to pay to me the amount (if any) of survey fees expended
over and above the amount received from purchasers.

(8) To pay all stamp duty, registration fees and other outgoings in
respect of the transfers mentioned in paragraphs 1, 2 and 3.

(9) To hand to you all documents relating to subdivisions of the said
lands and to sales to purchasers. 40

(10) Now and whenever hereafter required by you to allow you access
to and give you copies of any documents correspondence or information in
the possession of myself on behalf of myself or J. L. Hunt relating to the
said lands and sales to purchasers or intending purchasers.

(11) To pay you 150 guineas for your solicitor's costs in this matter. It is understood that upon performances by me of the above agreements and undertaking you will waive and abandon all other or further claims (if any) by you against me in respect of the said transfer of the said

lands by you to J. L. Hunt.

(Sgd.) G. F. G.

(Sgd.) G. F. GRAHAME.

In consideration of your refraining for a period of fourteen days from issuing a writ against me in respect of the property known as "Vunivesi" I agree for my part to execute the transfers referred to in paragraphs 1, 2 and 3 above, and to carry out the undertakings in which I am concerned in paragraphs 1 to 4, 6, 7, 9, 10.

(Sgd.) J. L. HUNT.

No. 5.
Affidavit of
S. H. Ellis,
22nd Octo-
ber, 1934—
continued.

Exhibit
"A."

Copy under-
taking of
G. F.
Grahame—
continued.

No. 6.

Affidavit of Bertie St. Julian Fisher, sworn 25th October 1934,
with Exhibits.

IN THE SUPREME COURT OF FIJI.
No. of 1934.

IN THE MATTER of the Estate of J. H. F. VOLLMER deceased

AND IN THE MATTER of GEORGE FRIER GRAHAME of Suva, a Solicitor of this Honourable Court and Managing Trustee of the said Estate.

I, BERTIE ST. JULIAN FISHER of Suva in the Colony of Fiji Public Trustee make oath and say as follows:—

(1) By an Order of this Honourable Court dated 22nd day of December 1931 I was appointed Custodian Trustee of the Estate of the abovenamed deceased and by the same Order George Frier Grahame of Suva aforesaid, Solicitor, was appointed Managing Trustee of the said Estate.

(2) The document hereunto annexed marked "A" is a copy of a letter dated the 22nd October 1934 received by me from Samuel Howard Ellis of Suva aforesaid, Solicitor.

(3) I crave leave to refer to paragraph 5 of the said letter and say that upon reading the same I caused a search to be made in the office of the Registrar of Titles to ascertain what transactions had taken place with regard to the matters referred to.

(4) The document hereto annexed marked "B" is a certified copy of a Mortgage registered No. 3943 given by one John Linn Hunt to the Trustees of the Estate of the late Harry Granville Nicholas Carr.

(5) The document marked "C" annexed hereto is a certified copy of a transfer of the said Mortgage from the Trustees of the Estate of the said Harry Granville Nicholas Carr deceased to the said George Frier Grahame

No. 6.
Affidavit of
B. St. Julian
Fisher,
25th Octo-
ber, 1934.

No. 6.
Affidavit of
B. St. Julian
Fisher,
25th Octo-
ber, 1934—
continued.

as Trustee of the Estate of the said J. H. F. Vollmer deceased dated the 18th December 1933 the said transfer being registered on the 9th January 1934 and being Dealing No. 8951.

(6) The document hereto annexed marked " D " is a certified copy of a variation of Mortgage No. 3943 such variation being dated 8th January 1934 registered on the 12th February 1934 as Dealing No. 9134.

(7) The Variation of Mortgage referred to in the last mentioned paragraph reduced the rate of interest reserved in the said mortgage No. 3943 from $6\frac{1}{2}\%$ per annum to $5\frac{1}{2}\%$ per annum and a condition was added that the mortgagor should be permitted to pay off the said mortgage by 10 instalments of £100 without notice.

(8) The said Variation was signed by J. L. Hunt as mortgagor and by the said G. F. Grahame as Mortgagee.

(9) The said George Frier Grahame did not at any time disclose to me as Custodian Trustee of the said Estate that the property the subject of the Mortgage No. 3943 and the subject of the said Variation of Mortgage was in fact his own property and I was unaware that he had advanced the trust moneys to himself and that he was the person who was to benefit by the said Variation.

(10) The accounts hereto annexed marked " E " were received by me 20 from the said George Frier Grahame on the 11th January 1934 and purport to show the position of the estate as at 31st December 1933. The opening account is a Balance Sheet on the asset side of which appears an investment to J. L. Hunt of £800 on Mortgage bearing interest $5\frac{1}{2}\%$. This £800 was part of the £2,000 ultimately advanced.

(11) The £800 referred to was in fact withdrawn by the said George Frier Grahame from the Estate Account at the Bank of New Zealand on the 19th December 1933. At that date there had been no Variation of interest from $6\frac{1}{2}\%$ to $5\frac{1}{2}\%$ as the Variation filed by the said George Frier Grahame was dated the 8th January 1934. 30

(12) The accounts hereto annexed marked " F " were delivered to me by the said George Frier Grahame on the 24th July 1934 and purport to show the position of the Estate as at the 30th June 1934.

(13) The said George Frier Grahame withdrew from the Estate account at the Bank of New Zealand on the 8th March 1934 £1200 being the balance of the said advance of £2000 and he charged the usual legal fees in respect of the transaction.

Sworn at Suva in the Colony of
Fiji this 25th day of October,
1934

(Sgd.) B. ST. J. FISHER.

40

Before me

(Sgd.) WILLIAM BURROWS.

A Commissioner &c.

" A "

This is the document marked " A " referred to in the affidavit of Bertie St. Julian Fisher hereunto annexed sworn this 25th day of October, 1934.

Before me :

(Sgd.) WILLIAM BURROWS,
A Commissioner &c.

CENTRAL CHAMBERS, SUVA, FIJI. 22nd October, 1934.

The Public Trustee, as Custodian Trustee in the Estate of J. H. F. Vollmer deceased.

10 Sir,

I am instructed by the Trustees of the estate of the late H. G. N. Carr to acquaint you with certain facts, in which the Vollmer Estate is concerned. These facts have come to my clients' knowledge in the course of their investigation of transactions relative to their property known as " Vunivesi."

(2) Carr Estate gave to one J. L. Hunt of Rewa, Planter a lease of 446 acres 33 perches known as Vunivesi and comprised in Certificates of Title X1/05/241, 4140 and 4604 for 10 years from the 1st May 1923 at a rental of £200.0.0 per annum with an option to purchase the property 20 during the period of the lease at £4000.0.0.

(3) On the 2nd November 1932 Mr. Hunt gave my clients notice of his intention to exercise his option to purchase for £4000.0.0, and offered to pay £1350.0.0 cash, and to give a mortgage for the balance. This my clients agreed to. On the 15th March 1933 the property was transferred to Mr. Hunt, and he gave Carr Estate a mortgage for £2650.0.0 at 6½% interest, with the right to repay the whole or any part not less than £200.0.0 on giving 3 months notice.

(4) On the 24th August 1933 Mr. Hunt paid £650.0.0 off his mortgage and on the 18th December 1933 he paid off the remaining £2000.0.0 through 30 Mr. G. F. Grahame.

(5) By Transfer No. 8951 dated 18th December 1933 and registered on the 9th January 1934 the said mortgage of £2650.0.0 to Carr Estate was, at Mr. Grahame's request transferred to G. F. Grahame as Trustee of the Estate of J. H. F. Vollmer deceased.

(6) This mortgage was partially discharged at divers times, and was finally discharged quite recently.

(7) My clients have now ascertained that the real purchaser of " Vunivesi " was not Mr. Hunt but Mr. Grahame who purchased the property in Mr. Hunt's name.

40 (8) From the information in my client's possession it appears that the £2000.0.0 paid to Carr Estate on the 18th December 1933 was borrowed

No. 6.
Affidavit of
B. St. Julian
Fisher,
25th Octo-
ber, 1934—
continued.

Exhibit
" A."

Copy letter,
S. H. Ellis
to Public
Trustee,
22nd Octo-
ber, 1934.

No. 6.
Affidavit of
B. St. Julian
Fisher,
25th Octo-
ber, 1934—
continued.

12

by Mr. Grahame from the Vollmer Estate. Of this sum he appears to have borrowed £800.0.0 on the 18th December 1933 and £1200 on the 8th March 1934.

(9) I am instructed by my clients to give you any further information in their possession relative to the matter that you may require.

Exhibit
"A."

Copy letter,
S. H. Ellis
to Public
Trustee,
22nd Octo-
ber, 1934—
continued.

I have the honour to be,

Sir,

Your obedient servant,

(Sgd.) S. H. ELLIS.

Exhibit
"B."

Mortgage
No. 3943
J. L. Hunt
to E. R.
Carr and
F. C. Clap-
cott, for
£2,650,
15th March,
1933.

" B "

10

This is the document marked " B " referred to in the affidavit of Bertie St. Julian Fisher hereto annexed sworn this 25th day of October 1934 Before me

(Sgd.) WILLIAM BURROWS,

A Commissioner &c.

STAMP DUTY
1304

OFFICE OF
THE COMMISSIONER OF
STAMP DUTIES, FIJI

17- Mar, 1933

Duty paid
£3/7/6

REAL PROPERTY DEALING No. 3943

FIJI.

£ : 15 : 0

20

FORM OF
MORTGAGE

Registration fee paid
vide Revenue Receipt.

No. 189612

Initials R.R.C.

I, JOHN LINN HUNT of Rewa in the Colony of Fiji Planter who together with his executors administrators and assigns except where the context requires a different construction is hereinafter more particularly referred to as and included in the term " the Mortgagor ") being registered as proprietor subject however to such mortgages and encumbrances as are notified by

memorandum underwritten or endorsed hereon of those pieces of land particularised in the following schedule :

No. 6.
Affidavit of
B. St. Julian
Fisher,
25th Octo-
ber, 1934—
continued.

Instru- ment of Title	Number	Description	Province. Island	District or Town	Area		
					A.	R.	P.
C.T.	4140	" Vunivesi "	Vitilevu	Rewa	260	—	33
C.T.	4604	" Vunivesi "	Vitilevu	Rewa	100	—	—
C.T.	X1/05/241	" Vunivesi "	Vitilevu	Rewa, Toga	86	—	—
		CANCELLED 11 Oct 1934 at 11.50 a.m. by Discharge No. 10214 (Sgd.) D. R. McDONALD Dep. Registrar of Titles					

Exhibit
" B. "

Mortgage
No. 3943
J. L. Hunt
to E. R.
Carr and
F. C. Clap-
cott, for
£2,650,
15th March,
1933—*con-
tinued.*

10 IN CONSIDERATION of the sum of £2,650 . 0 . 0 (Two thousand six hundred and fifty pounds) lent to the Mortgagor by ESTHER REBECCA CARR of Sydney in the State of New South Wales Widow and FREDERICK CHARLES CLAPCOTT of Ba in the Colony of Fiji Planter as Executors the receipt of which sum the Mortgagor doth hereby acknowledge doth hereby covenant with the said Esther Rebecca Carr and Frederick Charles Clapcott as executors (who together with their executors administrators and assigns except where the context requires a different construction are hereinafter more particularly referred to as and included in the term " the Mortgagees ")

20 FIRSTLY that the Mortgagor will pay to the Mortgagees the above sum of £2,650 . 0 . 0 (Two thousand six hundred and fifty pounds) on the 15th day of March 1936

SECONDLY The Mortgagor will pay interest on the said sum or on the balance thereof remaining unpaid from time to time at the rate of J.L.H. £6 : 10 : 0 (Six pounds ten shillings) per centum per annum computed in quarterly rests and payable on the 15th days of June September December and March in each and every year of the said term.

30

REAL PROPERTY DEALING No. 3943
Registered 17th March 1933 at 3 p.m.
on Certificates of Title No. 4140, 4604,
X1/05/241
and Crown Grant No.
(Sgd.) D. R. McDONALD L.S.
Ag. Registrar of Titles

Lodged by
ELLIS & GRAHAME,
Solicitors,
Central Chambers, SUVA.
Date 17/3/33
Documents.....

No. 6.
Affidavit of
B. St. Julian
Fisher,
25th Octo-
ber, 1934—
continued.

Exhibit
"B."

Mortgage
No. 3943
J. L. Hunt
to E. R.
Carr and
F. C. Clap-
cott, for
£2,650,
15th March,
1933—
continued.

THIRDLY—The Mortgagor will continue to pay interest under this mortgage after the expiry of the term of this mortgage should the principal moneys hereby secured be not paid and any interest accruing due after such term shall be deemed to be secured by this mortgage.

FOURTHLY—The Mortgagor further agrees that all interest unpaid by him at due date shall be added to the principal sum and carry interest after the rate aforesaid provided always that nothing contained in this paragraph shall take away the right of the Mortgagee to exercise the remedies conferred on a Mortgagee by the Real Property Ordinance 1876 on non-payment of interest.

10

FIFTHLY—That during the continuance of this security the Mortgagee shall be entitled to the exclusive custody of the Certificate of Title or other documents and deeds relating to the said mortgaged premises and shall not be called upon to produce the same except upon payment of the Mortgagees's reasonable costs for so doing PROVIDED that the Mortgagee shall not be compelled to produce any of such documents whilst any moneys intended to be hereby secured or any costs of and incidental to the preparation stamping and registration of this security shall be in arrear and unpaid.

SIXTHLY—In the event of foreclosure and sale under this security if the property hereby mortgaged shall fail to realise the amount due for principal and interest at such date together with the costs charges and expenses of such foreclosure the Mortgagor will forthwith pay to the Mortgagee such balance of principal and interest and costs charges and expenses as shall be required to pay the same in full.

20

SEVENTHLY—It is hereby agreed that the term "one month" referred to in Sections 63 and 64 of the Real Property Ordinance 1876 shall for all purposes of this security be reduced to "seven days."

EIGHTHLY—The Mortgagor will insure and keep insured against fire storm hurricane and tempest during the continuance of this mortgage in the name of the Mortgagee the buildings erected on the said land in their full insurable value in some Insurance Company to be approved by the Mortgagee and will punctually pay the premiums thereon when due and will hand the receipts for same to the Mortgagee immediately upon the issue thereof and the Mortgagor agrees that in the event of his failing to pay the said premiums or any of them the Mortgagees may in their absolute discretion pay the same and all moneys so paid by the Mortgagees shall be covered by this security and bear interest at the rate aforesaid until repaid to the Mortgagees. The Mortgagor agrees that in the event of loss or damage by fire storm hurricane or tempest of any buildings now or at any time hereafter upon the said lands the Mortgagee shall alone have full power to settle and compromise any claim against any insurance company

30

40

or companies under any policies now or hereafter to be in existence and the amounts so received or obtained on account of such insurance shall be applicable either in or towards repairs or rebuilding or shall be credited to the Mortgagor at the option of the Mortgagees.

No. 6.
Affidavit of
B. St. Julian
Fisher,
25th Octo-
ber, 1934—
continued.

NINTHLY—The Mortgagor will at all times during the continuance of this security duly and punctually pay all rents rates taxes charges duties assessments and all other impositions whatsoever now charged or which may hereafter be charged upon the said mortgaged premises or any part thereof or upon the owner or occupier in respect thereof or any part thereof and
10 in case the Mortgagor shall at any time fail to keep the said premises in good tenantable repair and order or to duly or punctually pay all such rents rates taxes charges duties assessments or other impositions as aforesaid it shall be lawful for but not obligatory upon the Mortgagee to execute pay effect and keep up all such repairs rates duties assessments and impositions as aforesaid. And all moneys paid in respect thereof shall be debited and charged to the Mortgagor and bear interest after the rate aforesaid from the date of payment and shall immediately thereupon be and become payable by the Mortgagor to the Mortgagees and shall until repayment be covered by this mortgage.

Exhibit
" B. "

Mortgage
No. 3943
J. L. Hunt
to E. R.
Carr and
F. C. Clap-
cott, for
£2,650,
15th March,
1933—*con-
tinued.*

20 TENTHLY—The Mortgagor hereby agrees that nothing herein contained shall extinguish the right or claim of the Mortgagees against the Mortgagor as simple contract creditor nor in any way merge abridge or otherwise prejudice any rights remedies powers claims or demands at law or in equity of the Mortgagees under or by virtue of any other security or securities heretofore or to be hereafter given to the Mortgagee or which the Mortgagees at any time or times hereafter may have for any moneys intended or expressed to be hereby secured against the Mortgagor

No. 3988 PARTIAL DISCHARGE registered 20 April 1933 at 2.30 p.m. being a full discharge as to 39a.2r. 14p. part of C.T.X1/05/241.

D. R. McDONALD.

Lot 4 on D.P.384 Ag. Registrar of Titles.

No. 4000 PARTIAL DISCHARGE registered 25 April 1933 at noon being a full discharge as to 11a.0r. 1p. part of C/T X1/05/241 Lot 3 on D.P. 384.

D. R. McDONALD.

Ag. Registrar of Titles.

No. 1998 PARTIAL DISCHARGE registered 25 April 1933 at noon being a full discharge as to 25a.1r.9p. part of C/T X1/05/241 Lot 1 on D.P. 384.

D. R. McDONALD.

Ag. Registrar of Titles.

TRANSFER.

No. 8951 Registered 9 Jan. 1934 at 12.30 p.m. to George Frier Grahame.

D. R. McDONALD.

Dep. Registrar of Titles.

40

No. 6.
Affidavit of
B. St. Julian
Fisher,
25th Octo-
ber, 1934—
continued.

Exhibit
"B."

Mortgage
No. 3943
J. L. Hunt
to E. R.
Carr and
F. C. Clap-
cott, for
£2,650,
15th March,
1933—*con-
tinued.*

VARIATION OF MORTGAGE.

No. 9134 Registered 12 Feb. 1934
at 3.15 p.m. varying clauses 2 and 12
of the mortgage 3943 as therein
stated.

E. C. WOODWARD.
Dep. Registrar of Titles.

PARTIAL DISCHARGE.

No. 9791 Registered 18 July 1934
at 12.15 p.m. being a full discharge
as to 21a.2r.29p. lots 16, 17 & 18
on D.P.461 being part of C.T.4140.

D. R. McDONALD.
Dep. Registrar of Titles.

PARTIAL DISCHARGE.

No. 9821 Registered 26 July 1934
at 11 a.m. being a full discharge as
to 14a.3r.0p. lots 1,2 & 3 on D.P.462
being part of C.T. 4604.

D. R. McDONALD.
Dep. Registrar of Titles.

ANNEXURE made to this Mortgage
for the purpose of recording memo-
rials Dated the 18th September,
1934 at 11 a.m.

D. R. McDONALD.
Dep. Registrar of Titles.

PARTIAL DISCHARGE.

No. 9833 Registered 27 July 1934
at 11 a.m. being a full discharge as
to 28a. 0r. 9p. lots 4,5,6,16,17 and
18 on D.P.462 being part of C/T 4604.

D. R. McDONALD.
Dep. Registrar of Titles.

ENCUMBRANCE.

No. 9793 registered 18th July 1934
at 12.15 p.m. to the registered pro-
prietor and occupier for the time
being of 21a.2r.29p. being lots 16,
17 & 18 on D.P. 461 of an Easement
over 1a.2r.28·8p. being lots 2,5,8,
11, 14, 20, 23, 26, 29, 32, 35, 38, 41,
44, 47, 50 & 66 on D.P. 461.
part of C.T. 4140

10

Consent of mtgee
endorsed D. R. McDONALD.
Dep. Reg. of Titles.

ENCUMBRANCE.

No. 9823 Registered 26 July 1934
at 11 a.m. To the registered pro-
prietor and occupier for the time
being of 14a.3r.0p. being lots 1,2, 20
and 3 on D.P.462 of an easement
over 4r.16p. being lots 5,8,11,14,
20, 23 & 26 on D.P. 462 part of C.T.
4604.

D. R. McDONALD.
Dep. Registrar of Titles.

Consent of mtgee endorsed.

30

ENCUMBRANCE.

No. 9835 registered 27th July 1934
at 11.30 a.m. to the registered pro-
prietor and occupier for the time
being of 7a.0r.5p. being lots 4,5 and
6 on D. p. 462 of an Easement over
3r. 3p. being lots 8, 11, 14, 20, 23 &
26 on D.P. 462 part of C.T. 4604.

D. R. McDONALD. 40
Dep. Reg. of Titles.

Consent of Mtgee endorsed.

ENCUMBRANCE.

No. 9836 registered 27 July 1934 at 11.30 a.m. to the registered proprietor and occupier for the time being of 21a.0r.4p. being lots 16, 17 & 18 on D.P.462 of an easement over 3r. 3p. being lots 8,11,14,20,23,& 26 on D.P. 462 part of C.T. 4604.

D. R. McDONALD.

10 Dep. Registrar of Titles.
Consent of mtgee endorsed.

PARTIAL DISCHARGE.

No. 10087 registered 18 Sep.1934 at 11 a.m. being a full discharge as to 23a.1r.7p. lots 19, 20, 21, 37, 38 & 39 on D.P. 461 being part of C.T. 4140.

D. R. McDONALD.

20 Dep. Registrar of Titles.

ANNEXED to Mortgage No. 3943 for the purpose of recording memorials.

D. R. McDONALD.

Dep. Registrar of Titles.

ENCUMBRANCE.

No. 10089 registered 18 Sept. 1934 at 11 a.m. to the Registered proprietor and occupier for the time being of 12a. 2r. 23p. being lots 19, 20 & 21 on D.P. 461 of an easement over 1a.2r.9.8p. being lots, 2, 5, 8, 11, 14, 23, 26, 29, 32 35, 38, 41, 44 47, 50 & 66 on D.P. 461 part of C.T. 4140.

D. R. McDONALD.

Dep. Registrar of Titles.
Consent of Mtgee endorsed.

ENCUMBRANCE.

No. 10093 registered 18 Sept. 1934 at 11 a.m. to the registered proprietor and occupier for the time being of 10a. 2r. 24p. being lots 3, 7, 38, 39 on D.P. 461 of an Easement over 1a. 1r. 36.8p. being lots 2, 5, 8, 11, 14, 23, 26, 29, 32, 35, 41, 44, 47, 50 & 66 on D.P. 461 part of C.T. 4140.

D. R. McDONALD.

Dep. Registrar of Titles.

Consent of mtgee endorsed.

No. 6.
Affidavit of
B. St. Julian
Fisher,
25th Octo-
ber, 1934—
continued.

Exhibit
" B."

Mortgage
No. 3943
J. L. Hunt
to E. R.
Carr and
F. C. Clap-
cott, for
£2,650,
15th March,
1933—*con-
tinued.*

30 ELEVENTHLY—The Mortgagor hereby agrees that the Mortgagees upon entering into possession of the mortgaged land by receiving the rents and profits thereof under the power conferred by Section 60 of the Real Property Ordinance 1876 or any amendment thereof shall be entitled and is hereby empowered to grant tenancies or leases of the mortgaged land or any part thereof for any period not exceeding three years at such rental and on such conditions and terms and with such covenants as the Mortgagees shall decide.

TWELFTHLY—It is declared and agreed that the Mortgagor shall be entitled on any of the days hereinbefore appointed for payment of interest to pay off the whole of the principal sum or any part thereof not being less than £200.0.0 upon giving to the mortgagees three months prior notice in writing of his intention so to do and of the amount intended to be paid off.

40 AND for the better securing to the Mortgagees the repayment in manner aforesaid of the principal sum and interest the Mortgagor doth hereby

No. 6.
Affidavit of
B. St. Julian
Fisher,
25th Octo-
ber, 1934—
continued.

MORTGAGE to the Mortgagees the lands particularised in the Schedule
hereinbefore appearing.

IN WITNESS whereof I have hereto signed my name this 15th day of
March 1933.

The Signature J. L. HUNT was made in
my presence, and I verily believe that
such signature is of the proper hand-
writing of the person described as John
Linn Hunt of Rewa Planter.

(Sgd.) J. L. HUNT.

Exhibit
"B."

Mortgage
No. 3943
J. L. Hunt
to E. R.
Carr and
F. C. Clap-
cott, for
£2,650,
15th March,
1933—*con-
tinued.*

(Sgd.) F. G. FORSTER,
Managing Clerk,
Suva.

10

**MEMORANDUM OF PRIOR MORTGAGES OR ENCUMBRANCES,
ETC., REFERRED TO.**

Lease registered Book 46 Folio 38.

FORM OF DECLARATION OF ATTESTING WITNESS.

Appeared before me at Suva the 16th day of March one thousand nine
hundred and thirty three FRANCIS GEORGE FORSTER the attesting
witness to this instrument and declared that he personally knew John Linn
Hunt the person signing the same and whose signature the said Francis
George Forster attested and that the name purporting to be the signature
of the said John Linn Hunt is his own handwriting and that he is the person
described as John Linn Hunt of Rewa Planter.

20

(Sgd.) W. H. JOHNSON J.P.
Suva.



" C."

This is the document marked " C " referred to in the affidavit of Bertie St. Julian Fisher annexed hereto sworn this 25th day of October 1934.

(Sgd.) WILLIAM BURROWS

A Commissioner, etc.

No. 6.
Affidavit of
B. St. Julian
Fisher,
25th Octo-
ber, 1934—
continued.

OFFICE OF
THE COMMISSIONER OF FIJI
9 Jan 1934
STAMP DUTIES, FIJI.
10 FIJI
DUTY PAID
£1

FORM OF TRANSFER

Dealing No. 8951.

5/-

2/6

7/6

R.R.230154

R.R.C.

Exhibit
" C."

Transfer by
E. R. Carr
and F. C.
Clapcott
to G. F.
Grahame as
Managing
Trustee of
the estate
of J. H. F.
Vollmer,
deceased of
Mortgage
No. 3943,
18th Decem-
ber, 1933.

120

ESTHER REBECCA CARR of Sydney in the State of New South Wales
Widow and FREDERICK CHARLES CLAPCOTT of Ba in the Colony
of Fiji Planter as Executors (hereinafter called the Transferors) being pro-
prietors as mortgagees subject however to such leases mortgages and
encumbrances as are notified by memorandum underwritten or endorsed
hereon of the following lands :

20	Title	Number	Description	Island	District	A	r	p
	Mtge. R.P.D.	3943	" Vunivesi "	Vitilevu	Rewa	260	—	33 C.T. 4140
			" Vunivesi "	Vitilevu	Rewa	100	—	— „ 4604
			(part of)					
			" Vunivesi "	Vitilevu	Rewa (Toga)	10	—	16 „ X1/05/241

30 IN CONSIDERATION of the sum of £2,000 : 0 : 0 (Two thousand pounds)
this day paid to the Transferors by GEORGE FRIER GRAHAME of
Suva in the Colony of Fiji Solicitor as Managing Trustee of the Estate of
J. H. F. Vollmer deceased (hereinafter called the Transferee) the receipt
of which sum the Transferors hereby acknowledge hereby transfer to the
transferee all the rights powers title and interest of the transferors therein.

IN WITNESS whereof the transferors have hereunto subscribed their
names this 18th day of December 1933.

Esther Rebecca Carr by her attorney
S. H. ELLIS.
F. C. CLAPCOTT,
as Executor.

No. 6. ACCEPTED

Affidavit of
B. St. Julian
Fisher,
25th Octo-
ber, 1934—
continued.

Exhibit
"C."

Transfer by
E. R. Carr
and F. C.
Clapcott
to G. F.
Grahame as
Managing
Trustee of
the estate
of J. H. F.
Vollmer,
deceased of
Mortgage
No. 3943,
18th Decem-
ber, 1933—
continued.

The Signature " Esther Rebecca Carr as Executor by her attorney S. H. Ellis " was made in my presence and I verily believe that such signature is of the proper handwriting of Samuel Howard Ellis of Suva Solicitor the duly appointed attorney of Esther Rebecca Carr and I certify that the contents hereof were read over and explained to him in the English language and he appeared fully to understand the meaning and effect thereof

G. F. GRAHAME
as Trustee.

HENRY M. SCOTT
Solicitor
Suva.

10

The Signature " F. C. Clapcott as executor " was made in my presence and I verily believe that such signature is of the proper handwriting of Frederick Charles Clapcott of Ba in the Colony of Fiji Planter and I certify that the contents hereof were read over and explained to him in the English language and he appeared fully to understand the meaning and effect thereof

C. H. CARNE, J.P.

20

The Signature " G. F. Grahame as Trustee " was made in my presence and I verily believe that such signature is of the proper handwriting of George Frier Grahame of Suva Solicitor and I certify that the contents hereof were read over and explained to him in the English language and he appeared fully to understand the meaning and effect thereof

W. H. JOHNSON J.P.

30

Correct for the purposes of the Land (Transfer & Registration) Ordinance 1933.

40

G. F. GRAHAME,
Solicitor for the Transferee.

Lodged by G. F. Grahame
Solicitor,
Central Chambers, Suva.
Date 9/1/34
Documents C.T's (3)

No. 6.
Affidavit of
B. St. Julian
Fisher,
25th Octo-
ber, 1934—
continued.

I, Samuel Howard Ellis the donee of the Power of Attorney given by
Esther Rebecca Carr to me registered Book 43 Folio 10 do hereby state
that I have had no notice of the revocation of such Power of Attorney.

Exhibit
"C."

DATED at Suva this 18th day of December 1933.

10

S. H. ELLIS.

Transfer by
E. R. Carr
and F. C.
Clapcott
to G. F.
Grahame as
Managing
Trustee of
the estate
of J. H. F.
Vollmer,
deceased of
Mortgage
No. 3943,
18th Decem-
ber, 1933—
continued.

The Signature "S. H. Ellis" was made in my presence and I verily
believe that such signature is of the proper handwriting of Samuel Howard
Ellis and I certify that the contents hereof were read over and explained
to him in the English language and he appeared fully to understand the
meaning and effect thereof.

NOEL McFARLANE

Solicitor

Suva.

No. 8951

20 Registered 9 Jan. 1934 at 12.30 p.m.
on Mortgage No. 3943

L.S. (Sgd.) D. R. McDONALD
Dep. Registrar of Titles.



No. 6.
Affidavit of
B. St. Julian
Fisher,
25th Octo-
ber, 1934—
continued.

Exhibit
" D. "

Variation
No. 9134 of
Mortgage
No. 3943,
8th Janu-
ary, 1934.

" D "

This is the document marked " D " referred to in the affidavit of Bertie St. Julian Fisher hereunto annexed sworn this 25th day of October 1934. Before me :

(Sgd.) WILLIAM BURROWS

A Commissioner &c.

No. 9134

10/-

2/6

12/6

10

R.R. 230384

R.R.C.

FIJI
VARIATION OF MORTGAGE

7/6

R.R. 230394

R.R.C.

I, JOHN LINN HUNT of Rewa in the Colony of Fiji Planter the Mortgagor of those pieces of land particularised in the following schedule :

Title	Number	Description	Island	District	A	r	p	20
C.T. 4140		" Vunivesi "	Vitilevu	Rewa	260	—	33	
C.T. 4604		" Vunivesi " (part)	Vitilevu	Rewa	100	—	—	
C.T. X1/05/241		" Vunivesi "	Vitilevu	Rewa	10	—	16	

and I, GEORGE FRIER GRAHAME of Suva in the said Colony Solicitor as Managing Trustee of the Estate of J. H. F. Vollmer deceased the Mortgagee of the said lands subject however to such mortgages leases and encumbrances as are notified by memorandum underwritten or endorsed hereon by virtue of Mortgage registered as Real Property Dealing No. 3943 HEREBY AGREE to the variation of the terms of the said Mortgage as follows, as from the 18th day of December 1933.

30

(1) The rate of interest shall be £5.10.0 (five pounds ten shillings) per centum per annum in lieu of the £6.10.0 per centum per annum provided in the second covenant of the mortgage.

(2) " The Mortgagor shall have the right to pay off at any time without giving any prior notice to the Mortgagee of his intention so to do the whole of the principal sum or any part thereof not being less than £100.0.0 " shall be substituted for the twelfth clause of the mortgage.

IN WITNESS whereof we have hereunto signed our names this 8th day of January 1934.

J. L. HUNT Mortgagor
G. F. GRAHAME Mortgagee

No. 6.
Affidavit of
B. St. Julian
Fisher,
25th Octo-
ber, 1934—
continued.

Exhibit
" D. "

Variation
No. 9134 of
Mortgage
No. 3943,
8th Janu-
ary, 1934—
continued.

10 The Signature " J. L. Hunt " was made
in my presence and I verily believe that
such signature is of the proper hand-
writing of John Linn Hunt of Rewa in
the Colony of Fiji Planter and I certify
that the contents hereof were read over
and explained to him in the English and
he appeared fully to understand the
meaning and effect thereof.

W. H. JOHNSON, J.P.

20 The Signature " G. F. Grahame as
Trustee " was made in my presence and
I verily believe that such signature is of
the proper handwriting of George Frier
Grahame of Suva Solicitor and I certify
that the contents hereof were read over
and explained to him in the English
language and he appeared fully to under-
stand the meaning and effect thereof.

NOEL McFARLANE
Solicitor
Suva

Lodged by G. F. GRAHAME
Solicitor
Central Chambers, Suva
Date 12/2/34
Documents C.T.'s

Correct for the purposes of the Land (Transfer and Registration)
Ordinance 1933

30

G. F. GRAHAME

Solicitor for the Mortgagee.

No. 9134
Registered 12th Feb. 1934 at 3.15 p.m.
On Mortgage No. 3943

L.S. (Sgd.) E. C. WOODWARD
Dep. Registrar of Titles

" E "

These are the accounts marked " E " referred to in the affidavit of Bertie St. Julian Fisher hereto annexed.

Sworn the 25th day of October 1934.

Before me.

(Sgd.) WILLIAM BURROWS
 A Commissioner, etc.

ESTATE OF THE LATE J. H. F. VOLLMER
 BALANCE SHEET AS AT 31ST DECEMBER 1933

LIABILITIES	ASSETS.
LEGACY (Capital) ACCOUNTS—	INVESTMENTS—R. W. Vollmer—Legacy—
R. W. Vollmer 2,500 : 0 : 0	I. H. Beattie—mortgage 6½% - 1,535 : 17 : 0
Children—	Government Savings Bank - 113 : 8 : 6
T. A. L. Vollmer deceased - 1,126 : 18 : 9	J. L. Hunt—mortgage 5½% - 800 : 0 : 0
Hans R. W. Vollmer - - 1,126 : 18 : 10	R. W. Vollmer—loan 7½% - 50 : 14 : 6
F. M. H. Vollmer - - - 1,126 : 18 : 9	————— 2,500 : 0 : 0
————— 3,380 : 16 : 4	INVESTMENTS—Children's legacies—
INCOME ACCOUNTS—	A. L. Patel—mortgage - - 88 : 13 : 9
R. W. Vollmer - - - 23 : 18 : 1	Church of England—mortgage
Mrs. P. Vollmer - - - 126 : 0 : 9	6½% - - - - 1,300 : 0 : 0
————— 149 : 18 : 10	I. Hamilton Beattie—mortgage
BANK OF NEW ZEALAND - - 4 : 15 : 3	6½% - - - - 964 : 3 : 0
	Jaikal and Ramlugan—mort-
	gage - - - - 296 : 2 : 2
	Government Savings Bank - 731 : 17 : 5
	————— 3,380 : 16 : 4
	GOVERNMENT SAVINGS BANK—Deposit - - 154 : 14 : 1
—————	—————
£6,035 : 10 : 5	£6,035 : 10 : 5
—————	—————

(Remainder of Accounts not printed)

“ F ”

* These are the accounts marked “ F ” referred to in the Affidavit of Bertie St. Julian Fisher hereto annexed
 D sworn this 25th day of October 1934,

Q 15508

Before me,
 (Sgd.) WILLIAM BURROWS,
 A Commissioner etc.

ESTATE OF THE LATE J. H. F. VOLLMER.

BALANCE SHEET at 30TH JUNE, 1934.

LIABILITIES.		ASSETS	
LEGACY (Capital) ACCOUNTS—		INVESTMENTS—Children’s legacies—	
R. W. Vollmer - - -	2,500 : 0 : 0	Patel, A. L.—Mortgage - -	75 : 0 : 0
Children—		Jaikal and Ramlugan—Mort-	
T. A. L. Vollmer Estate -	1,126 : 18 : 9	gage - - - -	296 : 2 : 2
Hans. R. W. Vollmer - -	1,126 : 18 : 10	Hunt, J. L.—Mortgage - -	2,000 : 0 : 0
F. M. A. Vollmer - - -	1,126 : 18 : 9	Government	
	<hr/> 3,380 : 16 : 4	Savings Bank,	
INCOME ACCOUNTS—		Suva - - -	1,000 : 0 : 0
Mrs. P. Vollmer - - -	117 : 11 : 11	Interest accrued	
		to 30/6/34 - - -	6 : 17 : 6
		<hr/> 1,006 : 17 : 6	
		<hr/> 3,377 : 19 : 8	
		Bank of New Zealand - - -	2,519 : 0 : 8
		R. W. Vollmer—loan account -	99 : 1 : 6
		R. W. Vollmer—Income account -	2 : 6 : 5
	<hr/> £5,998 : 8 : 3	<hr/> £5,998 : 8 : 3	
	<hr/> <hr/>	<hr/> <hr/>	

25

(Remainder of Accounts not printed.)

No. 6.
 Affidavit of
 B. St. Julian
 Fisher,
 25th Octo-
 ber, 1934—
continued.
 Exhibit
 “ F ”
 Accounts
 of the
 Estate of
 J. H. F.
 Vollmer,
 30th June
 1934.

No. 7.
Order giving
leave to
Public
Trustee to
employ
Solicitor
and Counsel
in Action
No. 50 of
1934, 23rd
October,
1934.

No. 7.

Order giving leave to Public Trustee to employ Solicitor and Counsel in
Action No. 50 of 1934.

IN THE SUPREME COURT OF FIJI

No. 50 of 1934.

IN THE MATTER of the Estate of J. H. F. VOLLMER deceased.

In Chambers :

Tuesday the 23rd day of October, 1934.

Upon hearing Bertie St. Julian Fisher the Public Trustee of the Colony
of Fiji and Custodian Trustee in the Estate of J. H. F. Vollmer deceased 10
AND UPON READING the affidavit of the said Bertie St. Julian Fisher sworn
and filed herein on the 22nd day of October 1934 IT IS ORDERED that the said
Public Trustee be permitted to engage the services of a Solicitor and Counsel
to represent the said Public Trustee and to investigate the trust funds in the
hands of George Frier Grahame as Managing Trustee of the said Estate and
to take such proceedings as may be necessary AND that the costs thereof
be reserved.

By the Court,

L.S.

B. ST. J. FISHER,
Registrar.

20

No. 8.
Affidavit of
B. St. Julian
Fisher,
29th Octo-
ber, 1934.

No. 8.

Affidavit of Bertie St. Julian Fisher, sworn 29th October 1934,
with Exhibit.

IN THE SUPREME COURT OF FIJI.

No. of 1934.

IN THE MATTER of the Estate of J. H. F. VOLLMER deceased.

I, BERTIE St. JULIAN FISHER The Public Trustee for the Colony of Fiji make
oath and say as follows :

(1) That I am the Custodian Trustee of the above estate and George
Frier Grahame is the managing trustee. 30

(2) By an Order of this Honourable Court dated the 23rd day of October,
1934 it was ordered that I as Public Trustee be permitted to engage the
services of a Solicitor and Counsel to represent me and to investigate the
Trust funds in the hands of the said George Frier Grahame as managing
trustee of the said estate.

(3) In accordance with the said order of the Court I appointed Mr. Robert Crompton to represent me as Public Trustee and to investigate the said trust funds.

No. 8.
Affidavit of
B. St. Julian
Fisher,
29th Octo-
ber, 1934—
continued.

(4) The document hereto annexed and marked " A " is the original report received by me from the said Mr. Robert Crompton.

Sworn at Suva in the Colony of Fiji
this 29th day of October 1934

(Sgd.) B. St. J. FISHER.

Before me

(Sgd.) WILLIAM BURROWS,
A Commissioner etc.

10

“ A ”

This is the Exhibit marked " A " referred to in the annexed affidavit of Bertie St. Julian Fisher sworn before me this 29th day of October, 1934.

Exhibit
" A. "

(Sgd.) WILLIAM BURROWS,
A Commissioner etc.

Copy,
Report of
Robert
Crompton,
25th Octo-
ber, 1934.

25th October, 1934.

The Public Trustee,
Suva.

Estate of J. H. F. Vollmer deceased.

20 In accordance with your instructions to investigate the Trust Funds in the hands of Mr. George Frier Grahame as Managing Trustee of the above Estate, I have inspected the books of the Estate and have made enquiries and caused searches to be made in the Titles Office, and now beg to report as follows :

re " VUNIVESI " LANDS.

30 The books of the Estate show that on the 18th December 1933, Mr. Grahame withdrew £800 from the current account of the Estate at the Bank of New Zealand, and made entries in the books of the Estate showing that the same had been advanced to Mr. J. L. Hunt. The books also show that on the 8th March 1934, Mr. Grahame withdrew from the Savings Bank £1000, which he paid into the current account of the Estate at the Bank of New Zealand. He then made a further advance in the name of Mr. J. L. Hunt of £1200, making a total of £2000, the security for which was a mortgage over lands known as " Vunivesi " which, according to the documents, had been purchased by Mr. J. L. Hunt for £4000 in March 1933.

At the time of the purchase by Mr. Hunt, Mr Grahame was a member of the firm of Ellis & Grahame, Solicitors, who were the Solicitors to the Trustees of the Estate of H. G. N. Carr deceased, from whom the land was

No. 8.
Affidavit of
B. St. Julian
Fisher,
29th Octo-
ber, 1934—
continued.

Exhibit
"A."

Copy,
Report of
Robert
Crompton,
25th Octo-
ber, 1934—
continued.

purchased. The purchaser paid £1350 in cash and gave a mortgage for £2650 to the said Trustee.

This mortgage provided for the repayment of interest at the rate of $6\frac{1}{2}\%$, and contained a provision that the mortgagor might pay off not less than £200 by giving three months notice of his intention to do so.

Prior to the 18th December, 1933, portions of the lands included in the said mortgage had been sold and partial discharges of the mortgage had been registered. At that date the principal sum due on the mortgage was £2000.

On the said 18th December, 1933, Mr. Grahame took a transfer of the 10 mortgage from the Trustees of the Carr Estate to himself as Trustee of the Vollmer Estate, the consideration for the transfer being £2000. On that date he paid £800 as previously stated herein out of the Vollmer Estate, and he personally provided £1200. There is no entry in the books of the Estate showing that he made the advance.

On the 8th March 1934 Mr. Grahame withdrew from the Estate account at the Bank of New Zealand, the sum of £1200 which he informed me he used to re-imburse himself the £1200 which he had advanced on the 18th December 1933.

On the 8th January 1934, Mr. Grahame as Trustee of the above Estate 20 executed a "Variation of Mortgage" which was registered on the 12th February 1934 as Dealing No. 9134. The purport of this Variance was that the interest payable under the mortgage transferred by the Trustees of the Carr Estate was reduced from $6\frac{1}{2}\%$ to $5\frac{1}{2}\%$, and a provision was inserted in the document that the mortgagor should be permitted to pay off the mortgage not less than £100 at any time without notice.

The books show that Mr. Hunt paid, on the 8th May 1934, £12.1.0 30 being interest on £800 from the 18th December 1933 to the 15th March 1934 at $5\frac{1}{2}\%$, and interest on £1200 from the 8th March 1934 to the 15th March 1934 at $5\frac{1}{2}\%$.

On the 27th June 1934, Mr. Hunt is shown to have paid £27 : 10 : 0 interest, representing interest on £2000 for three months to the 15th June 1934, at $5\frac{1}{2}\%$.

On the 10th October 1934 Mr. Hunt is shown to have paid a sum of £35.0.7 interest for the term 15th June 1934, to 10th October 1934, at $5\frac{1}{2}\%$. The total interest paid, therefore, and credited to the Estate was £74 : 11 : 7.

I am informed by Mr. S. H. Ellis, who formerly practised in partnership with Mr. Grahame, that at the end of September 1934, Mr. Grahame admitted to him that Mr. J. L. Hunt was not the purchaser of the "Vunivesi" 40 property, but that he, Mr. Grahame, was the true purchaser and that he had made use of the name of Mr. J. L. Hunt with the consent of the latter, in the transaction, and I have ascertained that Mr. Grahame has re-transferred to the Trustees of Carr's Estate, the "Vunivesi" lands, which he wrongfully purchased whilst acting as their Solicitor and whilst a partner in the firm of Ellis & Grahame.

In view of these facts I am of opinion that the "Variation of Mortgage" registered on the 12th February 1934, was a fraud upon the trust and that Mr. Grahame is (inter alia) liable for a further payment of interest in accordance with the terms of the mortgage transferred to him as Trustee of the Vollmer Estate.

The full amount of interest payable, in accordance with the mortgage transferred, is £120.5.10. I am of opinion, therefore, that Mr. Grahame should be called upon to pay the difference between that amount and £74.11.7, the sum actually paid, viz., £45 : 14 : 3.

10 I ascertained that Mr. Grahame had charged the Estate with commission amounting to £20.0.0 in connection with the advance to Mr. Hunt, and with an additional sum of £10.0.0 in respect of the £1000 which he received from the Government Savings Bank. In my opinion he should be called upon to refund these sums, viz., £30.0.0

The advance of £2000 was wrongfully made by Mr. Grahame to himself, and therefore, I do not think he is entitled to make any charges in respect of a transaction of this kind.

Mr. Grahame repaid to the Estate the sum of £2000 advanced on the mortgage, on the 10th October 1934, after the true facts of the transac-
20 tion had become known.

I have caused the Registry to be searched and I think it my duty to place before you other facts relating to this transaction, notwithstanding that the principal money has now been repaid.

The property was purchased by Mr. Grahame in the name of Mr. Hunt for £4000; £2650 of which was allowed to remain on mortgage. Up to the 18th December 1933, Mr. Grahame received £3150.3.4 on the sale of portions of the lands comprised in the mortgage, and which at that date had been discharged from the mortgage, but only £650 had been paid off the mortgage, which on the 18th December 1933 remained at £2000.

30 Between the 18th December 1933 and the 18th September 1934, Mr. Grahame, as Trustee of the Vollmer Estate, filed partial releases of the mortgaged lands as follows:—

18th July 1934	21a.	2r.	29p.
26th July 1934	14a.	3r.	0p.
27th July 1934	28a.	0r.	9p.
18th September 1934	12a.	2r.	24p.
" " "	10a.	2r.	23p.

In all he discharged from the security 87 acres 3 roods 5 perches, in consideration for which he received £2089 : 6 : 4. It will be observed that by
40 far the larger portion of this amount was received by Mr. Grahame in July last, but although the value of the securities was being diminished, no part of the principal sum of £2000 was paid off until the 10th October 1934, after the true nature of the transaction had been discovered.

Prior to Mr. Grahame lending £2000 of the Vollmer Trust money to himself, he had already received £3150.3.4 for portions of the mortgaged property, which he had sold; he received £2125 : 15 : 10 (which

No. 8.
Affidavit of
B. St. Julian
Fisher,
29th Octo-
ber, 1934—
continued.

Exhibit
"A."

Copy,
Report of
Robert
Crompton,
25th Octo-
ber, 1934—
continued.

No. 8.
Affidavit of
B. St. Julian
Fisher,
29th Octo-
ber, 1934—
continued.

Exhibit
"A."

Copy,
Report of
Robert
Crompton,
25th Octo-
ber, 1934—
continued.

included the £2089.6.4 mentioned above) between 18th December 1933 and September, 1934, making a total of £5275.19.2, and in addition he held £2000 of the Trust money, *i.e.*, he had actually obtained in cash £7275.19.2 in respect of property purchased 18 months before for £4000.

It appears to me probable that Mr. Grahame made a very substantial profit by using £2000 of the money belonging to the Estate of which he was Managing Trustee, and in my opinion an application to the Court would be justified in order to investigate what profit was made and what portion thereof should be paid into the Estate.

I do not consider that the Public Trustee as Custodian Trustee, or the 10 Beneficiaries of the Estate are concerned with the action taken by the Trustees of the Carr Estate.

CAPITAL OF ESTATE.

The capital moneys of the estate under the control of Mr. Grahame as Managing Trustee consists of cash and investments to the value of £5880.16.4. This sum is now represented by the following items :

(1) Cash to the credit of the Estate at the Bank of New Zealand	£2120.	2.	6	
(2) Cash in Government Savings Bank	1000.	0.	0	
(3) Mortgage—A. L. Patel	75.	0.	0	20
(4) Mortgage—Jaikal & Ramlugan	296.	2.	2	
(5) Mortgage—H. H. Ragg	2000.	0.	0	
(6) Mortgage—Ramautar & Siunarain	383.	0.	0	

I enquired into the advance of £2000 : 0 : 0 to Mr. H. H. Ragg. Mr. Grahame handed to me a memorandum, copy of which is as follows :—

MEMORANDUM AS TO OWNERSHIP OF MONEY ADVANCED TO ACCOMPANY A JOINT ACCOUNT MORTGAGE.

“ Memorandum that of the sum of £6000.0.0 secured by Mortgage registered No. dated the 9th day of August 1934 given by HUGH HALL RAGG of Ba in the Colony of Fiji Planter to GEORGE 30 FRIER GRAHAME of Suva in the said Colony Solicitor as Trustee Mathilde Krafft of Parkstone, Dorset, England Widow is entitled to the sum of £2000.0.0 (Two thousand pounds) the Estate of the late J. H. F. Vollmer deceased is entitled to the sum of £2000.0.0 (Two thousand pounds) and William Edmund Willoughby-Tottenham of Suva aforesaid Planter is entitled to the sum of £2000.0.0 (Two thousand pounds).

Dated this 9th day of August, 1934.

(Sgd.) G. F. GRAHAME.

I have perused the Will of the late Mr. Vollmer and I find that moneys 40 to be invested in that Estate are confined to Trustee investments. In my view it is definitely decided that a contributory Mortgage is not a Trustee

investment. See *Webb v. Jones*, C.D. page 660. Also Lewin, 11 Edition, page 380.

I attach to this Report a certified copy of the Mortgage referred to.

The property was purchased by Mr. Ragg for £7500, and on this value I consider the advance of £6000 too high.

I was informed by Mr. Grahame that he intended to charge the Estate with £20.0.0 for arranging the investment to Mr. Ragg. In view of the circumstances I do not think that Mr. Grahame is entitled to make any charge against the Estate in respect of this loan, and I am further of opinion
10 that he should be called upon to replace the £2000 already advanced.

The advance of £383 to Ramautar and Siunarain was made by Mr. Grahame on the 23rd instant, *i.e.*, the day before I inspected the books. He produced to me copies of the securities he had taken which consisted of a mortgage over 40 acres of freehold land known as "Tikola" situate in the District of Toga, Rewa, and two Native Leases known as "Muanikani" and "Banakawa" of 2 acres 2 roods 27 perches and 2 acres 2 roods 6 perches respectively, and a Crop Lien. I enquired whether there was any valuation of this property and Mr. Grahame informed me that there was not, but to his knowledge the mortgagor purchased the freehold for
20 £500.

There was no entry of this advance in the Estate books, but Mr. Grahame produced to me a counterfoil of the cheque he had drawn on the current account of the Estate at the Bank of New Zealand. I observed that the security was to Mr. Grahame as Trustee, but no mention was made of the Vollmer Estate. In my opinion the advance could not be regarded as a Trustee security and Mr. Grahame should be called upon to refund the amount to the Estate.

In this case also I do not think Mr. Grahame could legitimately charge the Estate with any fees, although I understand he contemplated charging
30 1%.

(Sgd.) ROBERT CROMPTON.

No. 8.
 Affidavit of
 B. St. Julian
 Fisher,
 29th Octo-
 ber, 1934—
continued.

Exhibit
 "A."

Copy,
 Report of
 Robert
 Crompton,
 25th Octo-
 ber, 1934—
continued.

No. 8.
Affidavit of
B. St. Julian
Fisher,
29th Octo-
ber, 1934—
continued.

Copy,
Mortgage
No. 9918
H. H. Ragg
to G. F.
Grahame
as trustee
(annexed to
Exhibit
" A "),
9th August,
1934.

STAMP DUTY

**OFFICE OF
THE COMMISSIONER OF
11 AUG. 1934
STAMP DUTIES, FIJI.
3184**

FIJI DUTY PAID
£7 : 10 : 0

Certified true copy
L.S.
(Sgd.) D. R. McDonald
Dep. Registrar of Titles
31. Oct. 1934

FIJI

MORTGAGE

Land (Transfer and
Registration)
Ordinance 1933.

DEALING NO. 9918

Registration Fees.
Lodgment 10 — 0
Memorial... 2 — 6
.....
Total 12 — 6

Revenue Receipt 10
No..... 254099
Initials R.R.C.

HUGH HALL RAGG of Ba in the Colony of Fiji Planter (who together with his executors administrators and assigns except where the context requires a different construction is hereinafter more particularly referred to as and included in the term " the Mortgagor ") being registered as proprietor subject however to such leases mortgages and encumbrances as are notified by memorandum endorsed hereon of that piece of land particularised in the following schedule :

Instrument of Title	Number	Description	Province or Island	District or Town	AREA		
					A	R	P
C.T.	5814	"Valele and Nawaralailai	Ba	Ba	925	-	4.9 whole
being Lot 4 on Deposited Plan No. 338							

IN CONSIDERATION of the sum of £6,000 : 0 : 0 (Six thousand pounds) lent to the Mortgagor by **GEORGE FRIER GRAHAME** of Suva in the said Colony Solicitor as Trustee

H.R.

the receipt of which sum the Mortgagor doth hereby acknowledge 30
~~AND of such further advance or advances not exceeding the sum of~~
~~£~~ as shall be made to the Mortgagor
~~in the absolute discretion of the said~~

(who together with his executors administrators and assigns except where the context requires a different

construction is hereinafter more particularly referred to as and included in the term "the Mortgagee ") DOTH HEREBY COVENANT

No. 8. Affidavit of B. St. Julian Fisher, 29th October, 1934—continued.

10 H.R. FIRSTLY that the Mortgagor will pay in Suva free from all deductions to the Mortgagee the sum of £6,000 : 0 : 0 (Six thousand pounds as follows that is to say the sum of £1,000 : 0 : 0 (One thousand pounds) on the 30th day of June 1935 the sum of £2,000 : 0 : 0 (Two thousand pounds) on the 30th day of June 1936 and the sum of £3,000 : 0 : 0 (Three thousand pounds) on the 30th day of June 1937 ~~and such further advance or advances on demand~~ PROVIDED ALWAYS and it is hereby agreed and declared that if default shall be made in payment of the said principal sum or interest thereon or any part thereof respectively at the times and in manner herein mentioned or in the observance or performance of any of the covenants herein contained or implied then the principal sum or so much thereof as shall be unpaid and all interest thereon and all other moneys payable under or by virtue of this mortgage shall become due and payable forthwith PROVIDED FURTHER that all moneys which shall be owing by the Mortgagor to the Mortgagee on whatsoever account and at whatsoever time during the currency of this mortgage shall be deemed to be secured by this mortgage.

Copy, Mortgage No. 9918 H. H. Ragg to G. F. Grahame as trustee (annexed to Exhibit "A"), 9th August, 1934—continued.

H.R. SECONDLY the Mortgagor will pay interest on the sum owing from time to time under this security at the rate of £6 : 10 : 0 (Six pounds ten shillings) per centum per annum without any deductions computed as to the said sum of £6,000 : 0 : 0 as from the 30th day of June 1934 ~~and as to such further advance or advances from the date of the same being made~~ on the last days of the months of March June September and December in each year during the continuance of this security the first payment to be made on the 30th day of September now next.

30

No. 9918 Registered 13 Aug. 1934 at 10.45 a.m. on Certificate of Title No.5814 Dep. Registrar of Titles
--

Lodged by
G. F. GRAHAME,
Solicitor,
Central Chambers,
Suva, Fiji
13/8/34

Date
Documents.....

40 THIRDLY—It is hereby agreed and declared that all interest unpaid by the Mortgagor at the due date shall be added to the principal sum and shall carry interest at the rate aforesaid provided always that nothing herein contained shall take away or prejudice the right of the Mortgagee to exercise the powers conferred on a Mortgagee by the Land (Transfer and Registration) Ordinance 1933 for non-payment of interest.

No: 8.
Affidavit of
B. St. Julian
Fisher,
29th October,
1934—
continued.

Copy,
Mortgage
No. 9918
H. H. Ragg
to G. F.
Grahame
as trustee
(annexed to
Exhibit
" A "),
9th August,
1934—*con-
tinued.*

FOURTHLY—That during the continuance of this security the Mortgagee shall be entitled to the exclusive custody of the Certificate of Title or other documents and deeds relating to the said mortgaged premises and shall not be required or be bound to produce the same except upon payment of the Mortgagee's reasonable costs for so doing PROVIDED that the Mortgagee shall not be compelled to produce any of such documents whilst any moneys intended to be hereby secured or any costs of and incidental to the preparation stamping and registration of this security shall be in arrear and unpaid.

FIFTHLY—The Mortgagor will insure and keep insured against 10
damage destruction or loss by fire storm hurricane or tempest so long as any moneys are owing in respect of this mortgage in the name of the Mortgagee all buildings and other improvements erected upon the said land in their full insurable value in such insurance office as the Mortgagee may direct and will punctually pay the premiums thereon when due and deposit the receipts for the premiums with the Mortgagee immediately upon the issue thereof and the Mortgagor agrees that in the event of his failing to pay the said premiums or any of them the Mortgagee may in his absolute discretion pay the same and all moneys so paid by the Mortgagee shall be covered by this 20
security and bear interest at the rate aforesaid until repaid to the Mortgagee. The Mortgagor agrees that in the event of damage destruction or loss by fire storm hurricane or tempest of any buildings now or at any time hereafter erected upon the said land the Mortgagee shall alone have full power to settle and compromise any claim against any insurance company or companies under any policies now or hereafter to be in existence and the amounts so received or obtained on account of such insurance shall be applicable either in or towards 30
repairs or rebuilding or shall be credited to the Mortgagor at the option of the Mortgagee AND the Mortgagor hereby covenants that he will not effect any insurance upon the said building in his own name or in the name of any other person or persons other than the Mortgagee as aforesaid and that he will not do or suffer any thing whereby any policy of insurance for the time being on the said buildings may be made void or voidable.

SIXTHLY—That the Mortgagor will duly and punctually pay and discharge all rents rates taxes charges duties assessments and all other impositions and outgoings whatsoever charged or which hereafter may be charged levied imposed or assessed upon the said mortgaged premises or any part thereof or upon the owner or occupier in respect 40
thereof or any part thereof and shall not nor will claim any deduction whatsoever from the principal sum or interest anything contained in any present or future ordinance or regulation thereunder to the contrary notwithstanding and shall produce and deliver to the Mortgagee upon demand by the Mortgagee all receipts for any payments as aforesaid and in case the Mortgagor shall at any time

fail to punctually pay any such rents rates taxes charges duties assessments or other impositions and outgoings as aforesaid it shall be lawful for but not obligatory upon the Mortgagee to pay such rents rates taxes charges duties assessments or other impositions and outgoings as aforesaid and all moneys paid in respect thereof shall be debited and charged to the Mortgagor and bear interest at the rate aforesaid from the date of payment and shall immediately thereupon become due and payable by the Mortgagor to the Mortgagee and shall until such repayment be secured by this mortgage.

No. 8.
Affidavit of
B. St. Julian
Fisher,
29th Octo-
ber, 1934—
continued.

Copy,
Mortgage
No. 9918
H. H. Ragg
to G. F.
Grahame
as trustee
(annexed to
Exhibit
"A"),
9th August,
1934—*con-
tinued.*

10 SEVENTHLY—That the Mortgagor will at all times during the continuance of this security well and sufficiently maintain uphold support paint and keep in good substantial and tenantable repair order and condition internally and externally the buildings fences gates drains or other improvements for the time being standing or being upon the said land hereby mortgaged AND that it shall be lawful for any person or person thereto authorised by the Mortgagee from time to time to enter upon the said premises or any part thereof to view and inspect the state of repair thereof and in any case of any failure to perform this covenant then the Mortgagee may without
20 prejudice to his rights under any other clause or clauses hereof if he or they think proper (but without obligation to do so) authorise his agents or surveyors with workmen and others to enter upon the said land and make good all such defects damages and omissions as shall have happened to and execute such repairs painting sewerage amendments and other works as shall be requisite for the said premises and will on demand pay to the Mortgagee the costs charges payments and expenses of and occasioned thereby with interest thereon at the rate aforesaid from the time of the same respectively having been
30 incurred advanced or paid until the time of the repayment thereof and the said land shall be a security for the repayment of such costs charges payments and expenses with interest thereon as aforesaid.

EIGHTHLY—That the Mortgagor will destroy and use his best endeavours to keep the said land free from vermin and noxious weeds and will duly and punctually comply with all notices received by him from or served upon the owner or occupier for the time being of the mortgaged premises by any statutory municipal or government authority and it shall be obligatory upon the Mortgagor to enquire from the owner or occupier for the time being as to the service of any such notices and the Mortgagor will at all times during the
40 continuance of this security cultivate use and manage in a proper and husbandlike manner all such parts of the said land as are now or shall hereafter be broken or converted into tillage and will not overstock impoverish or waste the same.

NINTHLY—It is hereby agreed that the term "one calendar month" referred to in Section 60 of the Land (Transfer and Registration)

No. 8.
Affidavit of
B. St. Julian
Fisher,
29th Octo-
ber, 1934—
continued.

Copy,
Mortgage
No. 9918
H. H. Ragg
to G. F.
Grahame
as trustee
(annexed to
Exhibit
" A "),
9th August
1934—*con-
tinued.*

Ordinance 1933 shall for all purposes of this security be reduced to " seven days."

TENTHLY—It is hereby expressly agreed and declared that the power of sale given by the Land (Transfer and Registration) Ordinance 1933 shall be exercisable in any of the following events notwithstanding anything to the contrary contained in the said Ordinance

(a) if default is made in payment of the principal moneys for the time being owing on the security of this mortgage for 7 (seven) days after notice requiring payment thereof shall have been served on the Mortgagor :

(b) if any interest due hereunder is unpaid for 7 (seven) days,

(c) if the Mortgagor fails to observe or perform any of his covenants or obligations hereunder expressed or implied other than the payment of principal moneys or interest,

10

and such power of sale may be exercised notwithstanding any previous neglect or waiver of any right to serve any notice or make any sale under the said power.

ELEVENTHLY—It is hereby expressly agreed and declared that notwithstanding anything to the contrary contained in the Land (Transfer and Registration) Ordinance 1933 in the event of sale under this security if the property hereby mortgaged shall fail to realise the amount due for principal and interest at such date together with all costs charges and expenses the Mortgagor will forthwith pay to the Mortgagee such balance of principal and interest and costs charges and expenses as shall be required to pay the same in full.

20

TWELFTHLY—The Mortgagor hereby agrees that nothing herein or in the provisions of the Land (Transfer and Registration) Ordinance 1933 contained shall extinguish the right or claim of the Mortgagee against the Mortgagor as a specialty creditor nor in any way merge abridge or otherwise prejudice any rights remedies powers claims or demands at law or in equity of the Mortgagee under or by virtue of any other security or securities heretofore or to be hereafter given to the Mortgagee or which the Mortgagee at any time or times hereafter may have for any moneys intended or expressed to be hereby secured against the Mortgagor.

30

THIRTEENTHLY—The Mortgagor hereby agrees that the Mortgagee upon entering into possession of the mortgaged land by receiving the rents and profits thereof under the power conferred by sections 58 and 59 of the Land (Transfer and Registration) Ordinance 1933 or any amendment thereof shall be entitled and is hereby empowered to grant tenancies or leases of such mortgaged land or any part thereof for any period not exceeding three years at such

40

rental and on such conditions and terms and with such covenants as the Mortgagee shall decide.

10 FOURTEENTHLY—And for the consideration aforesaid the Mortgagor doth hereby attorn and become tenant from quarter to quarter to the said Mortgagee of or in respect of the lands hereditaments and premises hereby mortgaged at a rent equal to the interest first aforesaid for the time being payable hereunder clear of all deductions to be paid by instalments on the days and in the manner hereinbefore provided for payment of interest PROVIDED ALWAYS that the payment of the interest on the said principal sum at the rate on the days and in manner hereinbefore provided shall be deemed to be payment of the rent hereinbefore reserved in respect of the above attornment provided always and it is hereby agreed and declared that if the said Mortgagor shall make default in payment of the hereinbefore mentioned principal sum or the interest thereon or any part thereof respectively on or at the days and times and in manner hereinbefore provided for payment thereof respectively or if the Mortgagor shall make default in the performance or observance of any or either of the covenants and provisions herein contained or implied then or at any time thereafter it shall be lawful for the said Mortgagee upon leaving seven days previous notice upon the said land or premises or any part thereof or with the Mortgagor or any of them in that behalf to determine the tenancy created by the aforesaid attornment and upon the expiration of the said notice to recover possession of the land and premises hereby mortgaged and to enter in upon and take possession of the said land and premises and all persons to expel and eject therefrom anything herein contained to the contrary notwithstanding provided always that neither the tenancy created by the above attornment nor the receipt of the abovementioned money as rent by the said Mortgagee shall operate so as to constitute the said Mortgagee a mortgagee in possession nor render the Mortgagee liable to account as a mortgagee in possession.

20

30

40 FIFTEENTHLY—It is hereby agreed and declared that all costs charges expenses and payments which may be incurred or made by the Mortgagee in or about the preparation execution and registration of these presents or in the exercise or enforcement or attempted exercise or enforcement of any power right or remedy conferred upon the Mortgagee by the Land (Transfer and Registration) Ordinance 1933 or by this instrument or otherwise or which the Mortgagee may in any other way incur owing to the default in payment of any money intended to be hereby secured or the breach of any covenant herein contained or implied by virtue of the said ordinance shall be deemed part of the principal money owing under this security from the time of the same respectively being incurred and shall carry interest at the rate and in manner aforesaid from such time until repayment.

No. 8.
Affidavit of
B. St. Julian
Fisher,
29th October,
1934—
continued.

—
Copy,
Mortgage
No. 9918
H. H. Ragg
to G. F.
Grahame
as trustee
(annexed to
Exhibit
" A "),
9th August,
1934—*con-
tinued.*

No. 8.
Affidavit of
B. St. Julian
Fisher,
29th Octo-
ber, 1934—
continued.

Copy,
Mortgage
No. 9918
H. H. Ragg
to G. F.
Grahame
as trustee
(annexed to
Exhibit
"A"),
9th August
1934—*con-
tinued.*

SIXTEENTHLY—The Mortgagor shall have the right to pay off the whole of the principal sum or any part thereof upon giving three months previous notice in writing to the Mortgagee.

AND for the better securing to the Mortgagee the repayment in manner aforesaid of the principal sum and interest the Mortgagor doth hereby MORTGAGE to the Mortgagee the land particularised in the schedule hereinbefore appearing.

IN WITNESS whereof I have hereto signed my name this 9th day of August 1934.

The signature ~~by-mark-of~~ " HUGH RAGG " was made in my presence and I verily believe that such signature of the ~~proper handwriting~~ ~~left-thumb-mark~~ of the person described as Hugh Hall Ragg of Ba

HUGH RAGG. 10

Planter the Mortgagor and I certify that the contents hereof were read over and explained to him in the English language and he appeared fully to understand the meaning and effect thereof.

JOHN P. BAYLY, J.P. 20

MEMORANDUM OF PRIOR LEASES MORTGAGES OR ENCUMBRANCES, ETC., REFERRED TO.

Lease No. 3671.

Certified correct for the purposes of " The Land (Transfer and Registration) Ordinance 1933."

p.p. G. F. Grahame Noel McFarlane.
Solicitor for the Mortgagee. 30

No. 9.

No. 9.

Probate of the Will of J. H. F. Vollmer, 13th May 1918.

(Not printed.)

No. 10.

Notice of Motion for adjournment of hearing.

IN THE SUPREME COURT OF FIJI.

No. 57 of 1934.

IN THE MATTER of GEORGE FRIER GRAHAME of Suva a Barrister and Solicitor of this Honourable Court.

Take notice that this Honourable Court will be moved on Tuesday the 13th day of November 1934 by Mr. G. F. Grahame on the hearing of an application for the extension of the period of 7 days within which the said George Frier Grahame is required to furnish a list of all documents which he proposes to put in, to a date to be fixed by this Honourable Court and that the hearing of the application by His Majesty's Attorney-General that the name of the said George Frier Grahame be struck off the roll of barristers and solicitors or that such order may be made as the Court shall think right may be adjourned until judgment of this Honourable Court has been given in Action No. 61 of 1934 against Esther Rebecca Carr and Frederick Charles Clapcott as Trustees of the will of the late H. G. N. Carr.

Dated this 8th day of November 1934.

(Sgd.) G. F. GRAHAME

Applicant.

20

No. 11.

Affidavit of George Frier Grahame.

IN THE SUPREME COURT OF FIJI.

No. 57 of 1934.

IN THE MATTER of GEORGE FRIER GRAHAME of Suva a Barrister and Solicitor of this Honourable Court.

I, GEORGE FRIER GRAHAME of Suva in the Colony of Fiji Solicitor make oath and say as follows :

(1) I have this day issued a writ against Esther Rebecca Carr of Portsmouth England Widow and Frederick Charles Clapcott of Ba in the said Colony Planter as Trustees of the will of H. G. N. Carr deceased on behalf of myself and John Linn Hunt as plaintiffs claiming to set aside the settlement contained in the document marked "B" annexed to the affidavit of Samuel Howard Ellis sworn herein on the 22nd day of October 1934.

(2) In the matter of the allegations of facts contained in the affidavits of Samuel Howard Ellis sworn the 22nd day of October 1934 and of Bertie

No. 10.
Notice of
Motion for
adjourn-
ment of
hearing,
8th Novem-
ber, 1934.

No. 11.
Affidavit
of G. F.
Grahame,
8th Novem-
ber, 1934.

No. 11.
Affidavit
of G. F.
Grahame,
8th Novem-
ber, 1934—
continued.

St. Julian Fisher sworn the 25th day of October 1934 and the 29th day of October 1934 so far as they relate to my conduct as Managing trustee of the estate of J. H. F. Vollmer deceased and that I advanced trust moneys to myself that I was the real purchaser of Vunivesi and not Mr. Hunt and that I purchased the property in Mr. Hunt's name I say that I did not advance trust moneys to myself and that the said allegations arise out of dealings between the trustees of the Carr estate and Mr. J. L. Hunt the transfer by the said trustees to the said J. L. Hunt of the land Vunivesi on the 15th day of March 1933 and between Mr. J. L. Hunt and myself and that those dealings and the issue of my misconduct as alleged in paragraphs 13 and 14 of the affidavit of Samuel Howard Ellis sworn the 22nd day of October 1934 are dependent upon the issues that will be raised and the judgment of this Honourable Court in the action which I have commenced by the issue of a writ against the said trustees. 10

(3) In regard to the statements contained in Mr. Robert Crompton's report copy of which is annexed to the affidavit of Bertie St. Julian Fisher sworn the 29th day of October 1934 regarding an advance of £2000 : 0 : 0 to Mr. Hugh Hall Ragg I say that I acted honestly and reasonably upon a valuation by John Percy Bayly of Nadi Grazeir who valued the property at £12000 at present day values although the purchase price was £7,500 which was the price fixed in the lease of the land to Mr. Ragg. With reference to the advance to Ramautar and Siunarain £383 I was prompted by the desire to find investment for the estate moneys, I acted honestly and reasonably and in my opinion the security is worth £700. 20

(4) I crave that the Court will extend the time of 7 days within which I am required to furnish a list of all the documents which I propose to put in to a date to be fixed by this Honourable Court and that the hearing on the 21st day of November 1934 of the application of His Majesty's Attorney-General that my name may be struck off the roll of barristers and solicitors or that such order may be made as the Court shall think right may be adjourned until the judgment of the Court has been given in the action against the trustees of the will of the late H. G. N. Carr deceased. 30

Sworn at Suva in the Colony }
of Fiji this 8th day of } (Sgd.) G. F. GRAHAME.
November 1934 before me }

2/- stamp.

(Sgd.) D. R. MCDONALD

A Commissioner of the Supreme Court of
Fiji for taking affidavits.

No. 12.

Judgment dismissing Motion.

IN THE SUPREME COURT OF FIJI.

No. 57 of 1934.

IN THE MATTER of GEORGE FRIER GRAHAME of Suva a Barrister and
Solicitor of this Honourable Court.

The 13th day of November 1934.

No. 12.
Judgment
dismissing
Motion,
13th Nov-
ember, 1934.

This is a motion by G. F. Grahame, a Barrister and Solicitor of this Court, praying that investigation of certain allegations made against him in his professional capacity and which at the instance of the Attorney General he has been ordered to answer on November 21st may be postponed pending the hearing of an action which he, Mr. Grahame, instituted on November 8th, six days after delivery to him of the notice requiring him to answer the allegations aforesaid.

It is necessary to recapitulate a few of the facts. Complaint has been made to this Court that Mr. Grahame while a member of the Firm acting as solicitors to the Carr Trustees and using knowledge which he possessed as such solicitor purchased from the trustees a certain parcel of land without disclosing that he was in fact the purchaser and in the circumstances well knowing that the Trustees might have obtained a better price therefor if a certain option which Grahame utilised under cover had lapsed.

After Mr. Grahame ceased to be a member of the Firm acting for the Trustees and was in practice on his own account the alleged nature of the transactions (which at present appears somewhat complicated) came to the notice of the Trustees, who thereupon approached him on the matter and as a result of negotiation Mr. Grahame agreed to and executed a settlement of the Trustees' claim, the terms of which need not now be discussed. It is sufficient to say that in effect the whole of the parcel of land, together with the profits made on the sale of certain portions thereof has been returned to the Trustees.

These transactions have been brought to the notice of the Court and investigation has been asked for and ordered. Mr. Grahame's first reply thereto is the issue of a writ directed to the Carr Trustees seeking that the settlement above referred to may be set aside and further this motion praying that investigation of the part he has played in the transaction be postponed until after the hearing of his action.

In issuing this writ Mr. Grahame must be assumed to have good cause to show why the agreement between himself and the Carr Trustees should be set aside. That same good cause is open and available to him now in answer to the allegations preferred by the Attorney General for he has only to show to this Court the existence of a prima facie case against the Carr Trustees in order to dispel the allegations.

No. 12.
Judgment
dismissing
Motion,
13th Nov-
ember 1934
—continued.

If this motion came before the Court on the part of any uninformed layman it might carry some weight, but Mr. Grahame is a solicitor of many years standing. The Carr Trustees make certain allegations against him and he decides to compromise with them. The compromise or settlement is before the Court and it opens with the words "In consideration of your refraining for a period of 14 days from this date from issuing a writ against me" and one J. L. Hunt the alleged cover executes the settlement in so far as the settlement concerns him.

This settlement is a document assented to and executed by an experienced Solicitor after I presume due consideration of its terms and now that the document has sounded somewhat deeper than was in the original contemplation of Mr. Grahame, this Court is asked to consent to a postponement of consequential proceedings while Mr. Grahame embarks upon litigation to have it set aside. 10

Mr. Grahame's position as a private litigant will not be affected by an investigation into his conduct as a practitioner of this Court and indeed I should have thought that his chief desire would be to answer at the earliest possible moment charges of professional misconduct rather than seek to delay justification of his acts for a period occupied by litigation which may be prolonged. 20

This Court has however to consider that the allegations made by the Carr Trustees do not stand alone for the Public Trustee has also put forward certain complaints.

As I read the affidavits in which the allegations are made there emerge at least five complaints against Mr. Grahame :

(1) Purchase while a solicitor of the Trustees of a parcel of property without disclosing the fact that he was the purchaser and thereby making personal profit.

(2) Using as a cover for the transaction one J. L. Hunt with whom there appears to have been some sort of agreement. 30

(3) Making use of Vollmer Estate funds for his own purpose and wrongly charging against the estate certain fees thereon.

(4) Variation of the terms of a Vollmer mortgage to the detriment of the Trust and to his own personal relief as Trustee.

(5) Investing the Vollmer Estate Trust Funds in a contributory mortgage.

There may be and indeed I hope there is a complete answer to the several allegations, but while the first two are made at the instance of the Carr Trustees and the remaining three emanate from the Public Trustee and I am not at all sure that allegations 3 and 4 are not the most important of the whole. Mr. Grahame in his affidavit in support of his motion now before the Court appears to treat the allegations except perhaps the last as arising out of the same set of circumstances, but with that contention I cannot agree. Even if Mr. Grahame clearly disposes of the complaints 40

of the Carr Trustees the complaints of the Public Trustee require close investigation and in the affidavit referred to Mr. Grahame merely recites that he did not use the Vollmer funds for his own purpose and the investing in the contributory mortgage is not even mentioned except incidentally in a statement that the sum advanced under the mortgage was fair and proper.

No. 12.
Judgment
dismissing
Motion,
13th Nov-
ember, 1934
—continued.

Further although it did not appear in the notice of motion I am now asked to exercise my discretion in regard to the Rules for admission of Barristers and Solicitors to practice in this Court so as to allow of counsel of the Bar of New South Wales being permitted to appear for Mr. Grahame. There is no doubt that the Rules give the Chief Justice power to dispense with any particular Rule either wholly or subject to condition as he may see fit the question now is how I should exercise my discretion.

I have no doubt of the real intention of the rule requiring three months residence in Fiji and the recommendation of householders before the applicant can be admitted to practice and I have in several cases for sufficient reason reduced the period of residence. This, however, is a case in which I am asked to admit a barrister without any period of residence and in order that he may appear in one particular case. If such particular case was for example an important Admiralty action or perhaps some case of enormous commercial importance arising out of fire or earthquake I have no doubt that upon the application of a member of the local Bar I should at once admit for the purposes of the particular case any counsel specially practising in Admiralty or commercial cases in his own country. But should I exercise my discretion in favour of a private litigant making application to me to admit a counsel from outside the Colony to argue his special case and none other I say a private litigant because for the purpose of this application Mr. Grahame must be considered as such.

There are in this Colony approximately 25 practitioners with right of audience in this Court and each of whom pays a yearly fee for the right to exercise his profession. Three of them are connected with this case and if I also exclude two resident in Labasa it results that in this Island alone there are 17 or 18 practitioners any of whom could be in this Court within 24 hours of summons and every one of these gentlemen must be presumed to be well acquainted with the ethics of the profession, to be well aware of what is or is not professional misconduct.

I am of opinion that it would be a disastrous precedent for me to admit to practice at the Bar of this Colony upon the application of a private litigant Counsel from outside the Colony and especially is this so in a case in which knowledge or experience of a particular branch of law is not requisite and accordingly the application must be refused.

I will, however, add this. If the counsel referred to is present in Court on the hearing of the case and it is shown to me that he can give real assistance as to the question in issue, professional misconduct—yea or nay and more especially as there is no Bar or Law Council in this Colony, then if

No. 12.
Judgment
dismissing
Motion,
13th Nov-
ember, 1934
—continued.

he is willing as I am sure he will be but without pledging myself I may be disposed to hear him in the capacity of Amicus curiae subject of course to due consideration of any observations by the Attorney General.

I come therefore to the conclusion that this motion cannot be acceded to. It appears to me (since no ground for the institution of proceedings against the Carr Trustees are disclosed) to be designed merely to delay the process of the Court and accordingly it is dismissed with costs.

No. 13.
List of
Documents
put in
by G. F.
Grahame,
15th Nov-
ember, 1934.

No. 13.

List of Documents put in by George Frier Grahame.

IN THE SUPREME COURT OF FIJI
No. 57 of 1934

10

IN THE MATTER of GEORGE FRIER GRAHAME of Suva a Barrister and Solicitor of this Honourable Court

(1) Affidavit of George Frier Grahame sworn the 15th day of November 1934.

(2) Affidavit of George Frier Grahame sworn the 15th day of November 1934.

G. F. GRAHAME,
the 15th day of November 1934.

To The Registrar,
Supreme Court,
Suva.

20

No. 14.

**Affidavit of George Frier Grahame, sworn in the Matter of the Estate of
H. G. N. Carr, deceased, 15th November 1934, with Exhibit.**

IN THE SUPREME COURT OF FIJI
No. 57 of 1934

IN THE MATTER of the Estate of the late HARRY GRANVILLE NICHOLAS
CARR.

AND IN THE MATTER of GEORGE FRIER GRAHAME of Suva a Barrister and
Solicitor of this Honourable Court

No. 14.
Affidavit
of G. F.
Grahame
sworn in
the matter
of the
Estate of
H. G. N.
Carr,
deceased,
15th Nov-
ember, 1934.

10 I, GEORGE FRIER GRAHAME of Suva in the Colony of Fiji Barrister and
Solicitor make oath and say as follows :

(1) The document hereto annexed marked "A" is a certified copy of a
lease dated 25th day of August 1923 granted by Esther Rebecca Carr and
Frederick Charles Clapcott as Executors of the following land :

A	r	p	Name	Document	Register
86	0	0		Certificate of Title	Vol. X1/05 Fo. 241
260	0	33	Vunivisi	"	Vol. 42 Fo. 4140
100	0	0	" (part of)	"	Vol. 47 Fo. 4604

20 to John Linn Hunt of Nukuvoca, Rewa, Planter. The term of the said
lease was ten years computed from the 1st. day of May 1923 at a yearly
rental of £200 : 0 : 0.

(2) Paragraph 5 of the said lease provided that the said John Linn
Hunt should during the currency of the lease have the option of purchasing
all the right title and interest of the lessor in the freehold lands comprised
in the lease for a sum of £4000 : 0 : 0 and the Lessors covenanted that on
payment of the said £4000 : 0 : 0 they would at the cost of the lessee execute
a proper registerable transfer of the said land to the said John Linn Hunt.

30 (3) At the date of the said lease Mr. S. H. Ellis was the attorney of
the said Esther Rebecca Carr and also acted as Solicitor to the Executors of
the Carr estate.

(4) During and after 1924 Mr. John Linn Hunt was a client of me this
deponent and in October 1925 I lent the said John Linn Hunt £220 : 0 : 0
upon certain securities.

(5) In June 1925 the said John Linn Hunt endeavoured through me to
raise a loan of £360 : 0 : 0 on the security of the lease referred to in paragraph
1 hereof but I was unable to raise that amount from lenders whom I
approached.

40 (6) In January 1926 I joined the said Mr. S. H. Ellis as a partner and
thereafter we practised as Ellis & Grahame.

No. 14.
Affidavit
of G. F.
Grahame
sworn in
the matter
of the
Estate of
H. G. N.
Carr,
deceased,
15th Nov-
ember, 1934
—continued.

(7) After entering into the said partnership the said John Linn Hunt still regarded me as his advisor and the work of the Carr's Trustees was done by Mr. Ellis almost exclusively.

(8) In April 1926 at the request of the said John Linn Hunt and to the knowledge of the said Mr. S. H. Ellis my partner, I advanced to the said John Linn Hunt a further sum of £360 : 0 : 0 and he then gave me a mortgage over the Lease referred to in paragraph 1 hereof to secure £581 : 16 : 0 being the £360 : 0 : 0 and the £220 : 0 : 0 advanced referred to in paragraph 4 hereof.

(9) The document hereto annexed marked " B " is a certified copy of the Mortgage referred to in the last mentioned paragraph. 10

(10) In September 1928 I lent the said John Linn Hunt a further £240 : 0 : 0 on certain security.

(11) In January 1932 at the request of the said John Linn Hunt and to the knowledge of the said Mr. S. H. Ellis I guaranteed the said John Linn Hunt at the Bank of New South Wales, Suva, in order to assist him to obtain an advance of £1400 : 0 : 0 and to do this I had to enter into a bond with the said Bank for £2800 : 0 : 0.

(12) In September 1932 the said John Linn Hunt consulted me as to the exercise of the option to purchase the lands referred to in paragraph 1 hereof which option would expire on the 30th April 1933. Between September 1932 and the 8th November 1932 I had several interviews with the said John Linn Hunt relating to the option. 20

(13) On the 2nd November 1932 the said John Linn Hunt gave formal notice of his intention to exercise his option to purchase the said lands for £4000 : 0 : 0 and on the 3rd November 1932 Mr. Ellis suggested that if the said John Linn Hunt paid £1350 : 0 : 0 in cash he would advise the Executors to accept a mortgage for £2650 : 0 : 0 for three years at 6%.

(14) I informed Mr. Ellis that I wished to finance Mr. Hunt and would do so to the £4000 : 0 : 0 required, if necessary. 30

(15) The said John Linn Hunt suggested to me that I should assist him by advancing the £1350 : 0 : 0 required in cash and he would agree to sell the lands to me for £4000 : 0 : 0 upon the terms hereinafter referred to.

(16) The document hereto annexed marked " C " contains the terms which were suggested by the said John Linn Hunt and accepted by me and formed the basis of my transactions with the said John Linn Hunt.

(17) The position presented itself to me as follows :

(a) I should have to provide £1350:0:0 and I was still liable to the Bank of New South Wales under the Bond for £2800:0:0 referred to in paragraph 11 hereof. 40

(b) If the property sold for £7000:0:0 the said John Linn Hunt would receive £700:0:0 and I would receive £2300:0:0 over and above the amount I would have to pay for the property from which said sum of £2300:0:0 would have to be deducted the costs relating to the transaction.

(c) If the property sold for over £7000:0:0 I stood under all circumstances to gain £1600:0:0 less expenses I had to pay) over and above the amount which the said John Linn Hunt would receive.

(18) It was a condition of the said Agreement that the said John Linn Hunt should give to me a registerable transfer of the said lands free from mortgages or encumbrances on payment of the full amount due to him.

(19) The full amount to be paid to the said John Linn Hunt under the said agreement could not be ascertained until all the lands have been disposed of which it was then anticipated would take a considerable time and I did not consider that I was real the purchaser of the property until the time arrived when I could call for a transfer.

(20) Immediately prior to the 8th November 1932 namely on the 4th November 1932, Mr. S. H. Ellis left for Sydney and he did not return until the 23rd December 1932.

(21) I had been in a very bad state of health during this period and on the 31st December 1932 I left the Colony for Sydney having received two days notice from my doctor.

(22) When Mr. S. H. Ellis returned from Sydney as mentioned in paragraph 20 hereof he was unwell and only attended the office intermittently between the 27th and 31st December 1932.

(23) On the 30th December 1932 Mr. Ellis wrote the following letter to Mr. Clapcott :

30th December 1932

F. C. Clapcott, Esq.

Dear Clapcott,

re J. L. Hunt.

Hunt informs us that he is now ready to complete his purchase and mortgage. The latter will be for £2650 at 6½% interest for three years with the right to pay off not less than £200 on giving three months' notice.

I enclose for your signature

- (1) Transfer
(2) Surrender of lease

Kindly return both documents to me.

Yours sincerely,

(Sgd.) S. H. ELLIS.

(24) On the 31st December 1932 I left in my private safe :

(a) The mortgage given by the said John Linn Hunt to me over the lease referred to in paragraph 1 hereof duly discharged and a cheque for £1350:0:0 to be paid to the Executors of Carr Estate in the event of the transaction being completed in my absence.

(25) I placed the document marked " C " annexed hereto in an open envelope and placed the said mortgage and cheque on top of the envelope in my private safe and gave the key of the safe to Mr. Forster who was then the managing clerk to Ellis & Grahame and I informed him that the mortgage

No. 14.
Affidavit
of G. F.
Grahame
sworn in
the matter
of the
Estate of
H. G. N.
Carr,
deceased,
15th Nov-
ember, 1934
—continued.

No. 14.
Affidavit
of G. F.
Grahame
sworn in
the matter
of the
Estate of
H. G. N.
Carr,
deceased,
15th Nov-
ember, 1934
—continued.

and cheque were to be used for the transfer to Mr. Hunt when the matter was ready for completion.

(26) The property was transferred by the Trustees of Carr's estate to the said John Linn Hunt for £4000:0:0 on the 15th March 1933 whilst I was in Sydney and a mortgage was given by him for £2650:0:0 at $6\frac{1}{2}\%$ the balance of the purchase money My cheque for £1350:0:0 was paid to Carr's Estate.

(27) Ellis & Grahame's receipt No. 9167 dated 16th March 1933 was issued and read as follows :

Received from G. F. Grahame Thirteen hundred and fifty 10
pounds on account of Estate late H. G. N. Carr, part purchase price of
Vunivesi by J. L. Hunt.

With compliments and thanks

ELLIS & GRAHAME
per F. G. Forster.

(28) I returned from Sydney on the 7th April 1933 and the partnership between the said S. H. Ellis and myself was dissolved on the 30th April 1933.

(29) During my absence from the Colony the said John Linn Hunt sold portion of the lands purchased from Carr's Estate namely 76 acres 4 perches for the sum of £1674:1:0. 20

(30) The Mortgage to Carr's Estate was partially discharged by the Trustees of that Estate and during the months of February and March 1933 a sum of £147:13:0 was paid into my Banking Account by Ellis & Grahame on Mr. Hunt's account.

(31) In August 1933 Mr. Ellis requested that in view of the partial discharge referred to in the last mentioned paragraph the mortgage should be reduced and on the 12th August I wrote a letter to the said Mr. S. H. Ellis in the words and figures following :

12th August 1933

S. H. Ellis Esq.,
Solicitor,
Suva.

30

Dear Sir,

J. L. Hunt to Carr Estate.

Referring to our several interviews herein and your intimation that the executors wished a further payment to be made, on which interest will cease to run, in view of their having discharged the mortgage in respect of the following areas :

A	r	p		
25	1	29	transferred to Dasrat Singh	40
11	—	1	transferred to Udit	
39	2	14	transferred to Samuel B. Sharan	
<hr/>				
76	—	4		
<hr/>				

I enclose cheque, on behalf of Mr. Hunt, for £650:0:0 which amount is computed on the following basis :

Area purchased 446a.0r.33p. at £4000—approximately £9 per acre
76a.0r.4p. (say 76 acres) discharged from mortgage at £9 per acre—
£684 (say £650)

I shall be glad to have the Executors' receipt therefor.

Yours faithfully,

(Sgd.) G. F. GRAHAME.

No. 14.
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of G. F.
Grahame
sworn in
the matter
of the
Estate of
H. G. N.
Carr,
deceased,
15th Nov-
ember, 1934
—continued.

(32) In my books I dealt with this matter through an account in my
10 Trust Ledger headed " J. L. Hunt, Vunivesi Account."

(33) On the 6th September 1933 after a consultation with the said
John Linn Hunt I wrote to Mr. Ellis as follows :

6th September 1933

S. H. Ellis Esq.
Solicitor,
Suva.

Dear Sir,

J. L. Hunt to Carr Estate.

I am instructed by Mr. J. L. Hunt that it is his intention to pay off
20 the whole of the principal sum viz., £2,000:0:0 secured by his mortgage
No. 3943, on the 15th day of December 1933, on which date the amount will
be paid and a transfer of the mortgage submitted for execution by the
Executors.

Yours faithfully,

(Sgd.) G. F. GRAHAME.

(34) On the 15th December 1933 I drew my own cheque for £2036:14:0
and paid the same into my Trust Account to the credit of the " J. L. Hunt
Vunivesi Account " and on the same day I drew a cheque for £2036:14:0
30 against my Trust account and paid the same to the said S. H. Ellis for the
transfer of the mortgage from Carr's Estate to myself as Managing Trustee
of the Estate of J. H. F. Vollmer deceased. The transfer of the mortgage
was registered on the 9th January 1934.

(35) On the 18th December 1933 there was lying to the credit of the
Vollmer Estate a sum of £822:5:9 in the Bank of New Zealand current
account. On the 26th September 1933 I had received notice that a mortgage
of £1300:0:0 held by the Vollmer Estate from the Trustees of the Church
of England would be paid off on 31st December 1933 and it was because
I would then have upwards of £2000:0:0 of the Vollmer Estate funds
40 uninvested that I took a transfer of the Carr's Estate mortgage to myself
as Managing Trustee of the Estate of J. H. F. Vollmer deceased and I
financed the matter until the moneys came to hand.

No. 14.
Affidavit
of G. F.
Grahame
sworn in
the matter
of the
Estate of
H. G. N.
Carr,
deceased,
15th Nov-
ember, 1934
—continued.

(36) On the 18th December 1933 I advanced £800:0:0 to the Vunivesi Trust Account from the Vollmer Estate and on the same day I took the following memorandum from the said John Linn Hunt:

I, JOHN LINN HUNT hereby acknowledge that I have agreed with G. F. Grahame as Managing Trustee of the estate of J. H. F. Vollmer deceased that in consideration of his advancing to me £2000:0:0 at 5½% I will execute a mortgage over Certificates of Title No. 4140, 4604 and Certificate of Title X1/05/241 "Vunivesi" on the same terms as mortgage 3943 thereover save that I shall have the right to pay off the whole or any part thereof not being less than £100 at any time. 10

Dated this 18th day of December 1933.

(Sgd.) J. L. HUNT.

(37) On the said 18th December 1933 I repaid to myself from the Vunivesi Account £700:0:0 on account of the loan of £2036:14:0 referred to in paragraph 34 hereof.

(38) The mortgage of £1300:0:0 to the Vollmer Estate referred to in paragraph 35 hereof was not repaid on the 31st December 1933 in accordance with the notice given but was repaid on the 4th April 1934.

(39) To carry out the terms of the Memorandum signed by the said John Linn Hunt on the 18th December 1933 referred to in paragraph 36 hereof I, on the 8th January 1934 drew a variation of Mortgage which was registered on the 12th February 1934 as No. 9134. 20

(40) On the 8th March 1934 I withdrew from the Government Savings Bank as Managing Trustee of the Vollmer Estate the sum of £1000:0:0 and paid the same to the credit of the current account of the said Estate at the Bank of New Zealand and on the said day I drew £1200:0:0 from the Vollmer Estate and paid it into my Trust account to the credit of the J. L. Hunt Vunivesi account, making the total of £2000:0:0 secured by the mortgage transferred to me by Carr's Trustees as Managing Trustee of the Vollmer Estate. 30

(41) On the said date I drew from my trust account J. L. Hunt Vunivesi Account £1200:0:0 which I repaid to myself on account of the £2036:14:0 which I had advanced to that account on the 15th December 1933.

(42) Between 11th July 1934 and the 18th September 1934 certain of the Vunivesi lands were transferred to purchasers and the money received from them was paid into my Trust account to the credit of the J. L. Hunt Vunivesi account. Partial discharges of the Mortgage held by me as Managing Trustee of the Estate of J. H. F. Vollmer deceased were given releasing from the security 87 acres 3 roods 5 perches. 40

(43) The total area of the Vunivesi lands subject to the Carr's estate mortgage was 446 acres 33 perches. 77 acres 3 roods 24 perches were discharged from the original mortgage prior to the transfer of the mortgage to me as Managing Trustee of the Vollmer Estate.

(44) I signed partial releases of the said 87 acres 3 roods 5 perches and left subject to the mortgage 282 acres 2 roods 4 perches. Of this 282 acres, 103 acres 2 roods 29 perches remained unsold; the other portion of the lands had been sold but the purchase moneys not paid. The unpaid purchase money amounted to £3204:2:1.

(45) In July 1934 when the first transfer was signed by John Linn Hunt and partial discharge signed by me I informed my Managing Clerk Mr. McFarlane that the money received from the transferees for which partial discharges were given should be paid into my Trust Account until the end of the quarter and should then be paid to the Vollmer estate account.

(46) The usual quarter days for mortgage interest are the last days of March, June, September and December and I made a practice in my office for the books to be balanced on those days.

(47) In the normal course of events the moneys paid up to the 30th September 1934 would have been paid out of my Trust account to the Vollmer Estate in reduction of the mortgage but on the 29th September 1934 Mr. S. H. Ellis interviewed me and stated that he had seen the said John Linn Hunt and that he was instructed by the Trustees of the Carr Estate to demand from Hunt and myself all moneys received in excess of £4000:0:0 and a transfer to his clients of the Vunivesi lands.

(48) After this interview I instructed Mr. McFarlane to hold up any further transactions regarding Vunivesi.

(49) On the 29th September 1934 after the interview referred to in paragraph 42 hereof I communicated my position by cable to Sydney for Counsel's opinion and I was advised by cable on the 4th October 1934 to settle.

(50) On the 4th October 1934 I attended on Mr. Ellis with the said John Linn Hunt and I informed Mr. Ellis that I had agreed with the said John Linn Hunt to purchase the said land from him on certain terms including 10% commission on sales up to £7000:0:0 and half of sales over £7000:0:0 and in view of Counsel's opinion on my position I entered into a settlement copy of which is annexed to Mr. Ellis' affidavit of the 22nd October 1934.

(51) On the 6th October 1934 I received a letter from the said Mr. Ellis in the words and figures following:

6th October, 1934.

Dear Grahame,

re Koronivia

With regard to the question of interest my attention is called to the point that since Carr Estate is asked to allow you interest at 4% on the £4000 you must allow them interest at 4% on the purchase money received as from the respective dates on receipt. This is obviously fair.

Yours,

(Sgd.) S. H. ELLIS.

No. 14.
Affidavit
of G. F.
Grahame
sworn in
the matter
of the
Estate of
H. G. N.
Carr,
deceased,
15th Nov-
ember, 1934
—continued.

No. 14.
Affidavit
of G. F.
Grahame
sworn in
the matter
of the
Estate of
H. G. N.
Carr,
deceased,
15th Nov-
ember, 1934
—continued.

(52) On the 15th October 1934 I received a further letter from the said Mr. Ellis in the words and figures following :

15th October, 1934

Dear Sir,

re Koronivia

I am now instructed by my clients to accept the agreement and undertaking contained in your memorandum to them subject to your also paying them interest at 4% on the purchase money received as from the respective dates of receipt, as mentioned in my letter to you of the 5th instant.

In order to calculate this interest, I shall require a complete list of all 10 payments, with dates. Kindly let me have this today, if possible. I shall require to verify all items from the books of account, relating to the property.

With regard to the survey fees, I shall require complete particulars of the

- (a) Amounts paid by you to the surveyor
- (b) Amounts paid by respective purchasers to you
- (c) Amounts (if any) still due by purchasers.

Kindly hand to me today the easements and crop liens (if any) which you hold with regard to the property.

Will you kindly give me access today to all documents and corre- 20 spondence in your possession, relating to the property, so that I can decide which of them I require copies of.

Yours faithfully,

(Sgd.) S. H. ELLIS.

(53) On the 15th October I wrote to Mr. Ellis a letter in the words and figures following :

15th October 1934

S. H. Ellis Esq.,
Solicitor,
Suva.

30

Dear Sir,

I am in receipt of your letter of today.

In regard to survey fees I enclose statement showing :

- (a) Amounts paid by Mr. Hunt to surveyor
- (b) Amounts paid by respective purchasers
- (c) Amounts still due by purchasers.

There are no crop liens held by Mr. Hunt or myself under the purchase agreements.

You are at liberty to have access to all documents and the account book relating to sale of the property in my possession. I have handed you : 40

- (1) List of purchasers and amounts paid
- (2) List of unsold blocks
- (3) Agreements with Mr. Hunt and purchasers
- (4) Copies of sub-division plans
- (5) Draft transfer—J. L. Hunt to your clients.

and you informed me on the 11th instant that there was no further information which you then required. I appreciate of course that the figures given you will require to be verified from the accounts.

The easements held by Mr. Hunt are over

Lot No.	D.P. No.	Purchaser
2	462	Chikki
5	462	Kabutari
17	462	Kabutari
17	461	B.S. Sharan
10 20	461	Kabutari
38	461	Kargu and Nanku

No. 14.
Affidavit
of G. F.
Grahame
sworn in
the matter
of the
Estate of
H. G. N.
Carr,
deceased,
15th Nov-
ember, 1934
—continued.

Yours faithfully,
(Sgd.) G. F. GRAHAME.

(54) On the 16th October 1934 Mr. Ellis informed me that he had obtained from Mr. Hunt on the 12th October 1934 a transfer of the said Vunivesi lands to Carr's Trustees and an assignment to the said trustees of Mr. Hunt's sale contracts with purchasers and he asked for a list of amounts received from purchasers and the dates of payment thereof which I handed to him.

20 (55) On the 18th October 1934 I paid to Mr. Ellis the sum of £1572 : 17 : 2 arrived at as follows :—

	Instalments of principal received from purchasers under contracts with Mr. Hunt	5275 : 19 : 2
	Interest thereon at 4% from date of payment	190 : 4 : 6
	Interest paid by purchasers under contracts with Mr. Hunt	316 : 15 : 11
	Survey costs paid by purchasers	160 : 2 : 10
30	Solicitors costs (S. H. Ellis) of settlement	157 : 10 : 0
	Disbursements on transfers—J. L. Hunt to Trustees of Carr Estate	5 : 17 : 6
	Stamp duty on assignment to trustees of Carr estate by J. L. Hunt of sale contracts	15 : 0 : 0
	<i>Less</i>	£6121 : 9 : 11
	Purchase price paid to trustees	4000 : 0 : 0
	Interest allowed thereon	290 : 2 : 9
40	Survey fees paid	213 : 10 : 0
	Paid to Mr. Hunt for making drains	45 : 0 : 0
		<u>4548 : 12 : 9</u>
		<u>£1572 : 17 : 2</u>

No. 14.
Affidavit
of G. F.
Grahame
sworn in
the matter
of the
Estate of
H. G. N.
Carr,
deceased,
15th Nov-
ember, 1934
—continued.

(56) The above sum of £1572 : 17 : 2 is £190 : 4 : 5 more than I had agreed to pay under the arrangement referred to in paragraph 16 of Mr. Ellis' affidavit of the 22nd October 1934.

(57) I have carried out the arrangement I made with the said John Linn as set out in exhibit "C" by paying to him £700 commission on sales and I have undertaken to pay to him a further £740 : 0 : 7 for commission on sales made by him to the date of the transfer of the properties to the Carr Estate.

(58) In my dealings with the said John Linn Hunt I was influenced by the following facts :

(a) that some years before I entered into partnership with Mr. Ellis, Mr. Hunt was in possession of a lease which gave him an option to purchase for £4000 : 0 : 0.

(b) that the lease was mortgaged to me.

(c) That in the event of non-payment I could foreclose.

(d) That Mr. Hunt was entitled to the benefits under his lease which he had held for almost ten years.

(e) That as against Mr. Hunt, Carr's Trustees could not be entitled to more than £4000 : 0 : 0 and therefore any assistance I rendered would not be to the detriment of that estate.

(f) That the arrangement between Mr. Hunt and myself was not made at my suggestion but at his.

Sworn at Suva in the Colony of Fiji }
this 15th day of November 1934 }
Before me

(Sgd.) G. F. GRAHAME.

2/- stamp

(Sgd.) J. N. LELEU

A Commissioner of the Supreme Court of Fiji for taking affidavits.

“A”

The certified copy of a Lease marked “A” referred to in the annexed affidavit of George Frier Grahame sworn the 15th day of November 1934 Before me

(Sgd.) J. N. LELEU
A Commissioner etc.

No. 14.
Affidavit
of G. F.
Grahame
sworn in
the matter
of the
Estate of
H. G. N.
Carr,
deceased,
15th Nov-
ember, 1934
—continued.

FIJI Register of Leases Book 46 Folio 38
DUTY STAMP
00001-0-0

10 STAMP DUTY ASSESSED AT
one...../no/no

£1.....

FIJI

H. W. Harcourt

Commissioner of Stamps

Fiji 27/8/23
1198

FORM OF LEASE

Exhibit
“A.”

Copy lease,
E. R. Carr
and F. C.
Clapcott as
executors to
J. L. Hunt,
25th August,
1923.

WE, ESTHER REBECCA CARR and FREDERICK CHARLES CLAPCOTT as Executors being registered as proprietor subject, however, to such mortgages and encumbrances as are notified by memorandum underwritten or endorsed hereon of all that piece of land containing in the aggregate an area of 446 acres and 33 perches be the same a little more or less and being those several pieces of land situated in the district of Toga, island of Vitilevu and known as “VUNIVISI” as the same are more particularly described and set out in the Schedule following :

SCHEDULE

ac.	Area		Name	Document	Register	
	roods	perches			Vol.	Folio
86	0	0	<p>CANCELLED 20 April 1933 at 2.30 p.m. by Surrender No. 3987 D. F. McDonald Ag. Registrar of Titles</p>	Certificate of Title	X1	241
260	0	33			05	
100	0	0			42	4140
			(part of)	47	4604	

do hereby LEASE to JOHN LINN HUNT of Nukuvoca, Rewa, Planter, all the said lands to be held by him the said John Linn Hunt as tenant for the space of Ten (10) years computed from the 1st day of May 1923 at a yearly rental of £200 (Two hundred pounds) payable as follows: Half-yearly in advance on the 1st day of May and the 1st day of November in each and every year of the said term :

(1) The Lessee shall pay the rent hereinbefore mentioned at the times and in manner hereinbefore stipulated for payment thereof.

No. 14.
Affidavit
of G. F.
Grahame
sworn in
the matter
of the
Estate of
H. G. N.
Carr,
deceased,
15th Nov-
ember, 1934
—continued.

Exhibit
" A. "

Copy lease,
E. R. Carr
and F. C.
Clapcott as
executors to
J. L. Hunt,
25th August,
1923—con-
tinued.

(2) The Lessee shall during the continuance of this lease pay all rates taxes and assessments whatsoever payable in respect of the said land or any part thereof.

(3) The Lessee will cultivate.

(4) The Lessee will comply with any and every Ordinance which is now or which may hereafter become law relating to noxious weeds and will within two years from the commencement of this lease clear the whole of the said lands (except such part thereof comprising 150 acres more or less being the back or western portion of the said land lying on the western side of the line of the road marked out by the Government leading from Navasa in a direct line behind the house of Mrs. Annie Gaspard to the Suva-Rewa Road) of noxious weeds, including lantana, guava, Kosters' curse and water hyacinth and will keep the said land (except such part comprising about 150 acres above described) so cleared during the term of this lease and the Lessors hereby covenant and agree with the lessee that provided the lessee shall on or before the 1st day of May 1925 have completely cleared the said lands (except such part thereof comprising 150 acres above described) of noxious weeds including lantana, guava, Kosters' curse and water hyacinth, to the satisfaction of the Lessors that they the lessors will forthwith refund to the lessee the sum of £200 . 0 . 0 (Two hundred hundred pounds) as consideration for such clearing.

(5) It is further declared and agreed by and between the lessors and the lessee that the lessee shall during the currency of this lease have the option of purchasing all the right title and interest of the lessors in the freehold lands hereby demised for the sum of £4000 . 0 . 0 (Four thousand pounds) free from all mortgages and encumbrances and upon the lessee exercising such option before the termination of this lease and paying to the lessors the sum of £4000 . 0 . 0 as aforesaid together with all rent due at such date the lessors will forthwith at the cost of the lessee execute and sign a proper registerable transfer of the said land to the lessee.

I, JOHN LINN HUNT of Nukuvoca, Rewa do hereby accept this LEASE of the above described lands to be held by me as tenant and subject to the conditions restrictions and covenants above set forth.

	as Executor	
F. C. CLAPCOTT		Lessors
E. R. CARR as Executrix		
by her attorney		
S. H. ELLIS		
J. L. HUNT		Lessee

Dated this 25th day of August 1923

Signed by the said lessors in the }
presence of : }
Signed by the said Lessee in the }
presence of : }

F. G. FORSTER

F. G. FORSTER

10

30

40

The Signature of J. L. Hunt F. C. Clapcott and S. H. Ellis were made in my presence and I verily believe that such signatures are of the proper handwriting of the persons described as John Linn Hunt of Nukuvoca Rewa, Planter Frederick Charles Clapcott as Executor and Samuel Howard Ellis the duly appointed attorney of Esther Rebecca Carr respectively

F. G. FORSTER
Law Clerk
Suva
Fiji

No. 14.
Affidavit
of G. F.
Grahame
sworn in
the matter
of the
Estate of
H. G. N.
Carr,
deceased,
15th Nov-
ember, 1934
—continued.

No. 137 Mortgage of Lease 46/38 Registered 30 Apr 1926 at 12 o/c
10 John Linn Hunt to George Frier Grahame for £581:16:0 at 10% till
31 Dec. 1926.

DISCHARGED 20 April 1933
at 2.30 p.m.
R. D. McDonald
Discharge No. 3986

No. 948 Extension of Mortgage No. 137 registered 15 Nov. 1927 at
noon for 4 years from 2 Nov. 1927

R. C. HIGGINSON
Registrar of Titles.

Exhibit
"A."
Copy lease,
E. R. Carr
and F. C.
Clapcott as
executors to
J. L. Hunt,
25th August,
1923—con-
tinued.

DECLARATION BY ATTESTING WITNESS.

20 Appeared before me at Suva the 27th day of August 1923 FRANCIS
GEORGE FORSTER of Suva in the Colony of Fiji Law Clerk the attesting
witness to this instrument and declared that he personally knew Frederick
Charles Clapcott, Samuel Howard Ellis and John Linn Hunt the persons
signing the same and whose signatures the said Francis George Forster
attested and that the names purporting to be the signatures of the said
Frederick Charles Clapcott, Samuel Howard Ellis and John Linn Hunt
are their own handwriting and that they are the persons therein described
as Frederick Charles Clapcott as Executor and Samuel Howard Ellis as
attorney for Esther Rebecca Carr as Executrix and John Linn Hunt of
Nukuvoca, Rewa, Planter.

GEO. S. PARKER

30 A Commissioner of the Supreme Court
of Fiji for taking affidavits.

Registered on 27th August 1923 at 11 o/c before noon
See Register of Leases Book 46 Folio 38

GEO. S. PARKER L.S.

“ B ”

No. 14.
Affidavit
of G. F.
Grahame
sworn in
the matter
of the
Estate of
H. G. N.
Carr,
deceased,
15th Nov-
ember, 1934
—continued.

This is the copy Mortgage marked “ B ” referred to in the annexed Affidavit of George Frier Grahame Sworn the 15th day of November 1934 Before me

(Sgd.) J. N. LELEU
A Commissioner &c.,

R. P. Dealing No. 137

STAMP DUTY ASSESSED AT

£——fifteen/ ——no

(Sgd.) K. G. Nicholson

for Commissioner of Stamp

Duty 30. 4. 36

Exhibit
“ B.”

10

FIJI
DUTY STAMP
15/-

FIJI

FORM OF MORTGAGE

REAL PROPERTY ORDINANCE 1876

(Must be in duplicate, one copy to be filed and the other to be retained by the Mortgagee)

(The Crown Grant or Certificate of Title must be presented herewith in order that this Mortgage may be noted thereon)

I, JOHN LINN HUNT of Nukuvoca, Rewa, Planter (who together with his heirs executors administrators and assigns except where the context requires a different construction is hereinafter more particularly referred to as and included in the term “ the Mortgagor ”) being registered as proprietor as lessee

subject / however to such mortgages and encumbrances as are notified by memorandum underwritten or endorsed hereon of ~~that--piece--of--land~~ containing those pieces of land containing in the aggregate an area of 446 acres 33 perches be the same a little more or less situated in the district of Toga, island of Vitilevu and known as “ Vunivesi ” (exclusive of roads intersecting the same, if any, viz. :)

being the whole of the land comprised in Lease Registered in Register of Leases Book 46 Folio 38

IN CONSIDERATION of the sum of (5581:16:0) Five hundred and eighty one pounds sixteen shillings and sixteen pence the Mortgagor by GEORGE FRIER GRAHAME of Suva, Solicitor, doth hereby acknowledge the receipt of which sum the Mortgagor doth hereby acknowledge doth hereby covenant with the said George Frier Grahame (who together with his heirs executors administrators and assigns except where the context requires a different construction is hereinafter more particularly referred to as and included in the term “ the Mortgagee)

Copy
Mortgage,
J. L. Hunt
to G. F.
Grahame,
28th April,
1926.

1933 at 653086
MORTGAGE
REGISTERED
BY
SOLICITOR
GENERAL
OF
FIJI

FIRSTLY that the Mortgagor will pay to the Mortgagee the said sum of £581:16:0 ~~the above sum of~~ on the 31st day of December 1926 provided however that the Mortgagor shall be entitled at any time after the expiration of six months from the date hereof to pay off the whole of the said sum or any part thereof not being less than £100 upon giving to the Mortgagee one month's prior notice in writing of his intention so to do.

No. 14.
Affidavit
of G. F.
Grahame
sworn in
the matter
of the
Estate of
H. G. N.
Carr,
deceased,
15th Nov-
ember, 1934
—continued.

10 SECONDLY—The Mortgagor will pay interest on the said sum at the rate of Ten pounds (£10:0:0) by the £100 in the year as follows:—by half-yearly payments calculated from the date hereof provided that interest on all or any amounts paid off in reduction of the said sum as hereinbefore provided shall abate accordingly as from the date of payment.

THIRDLY—The Mortgagor will continue to pay interest under this mortgage after the expiry of the term of this mortgage should the principal moneys hereby secured be not paid and any interest accruing due after such term shall be deemed to be secured by this mortgage.

Exhibit
" B. "

FOURTHLY—The Mortgagor further agrees that all interest unpaid by him at due date shall be added to the principal sum and carry interest after the rate aforesaid provided always that nothing contained in this paragraph shall take away the powers of foreclosure for non payment of interest.

Copy
Mortgage,
J. L. Hunt
to G. F.
Grahame,
28th April,
1926—con-
tinued.

20 FIFTHLY—The Mortgagee shall have the right to hold the title deeds of the lands hereby mortgaged until all sums due by the Mortgagor to the Mortgagee are fully paid up with interest.

SIXTHLY—In the event of foreclosure and sale under this security if the property hereby mortgaged shall fail to realise the amount due for principal and interest at such date together with the costs charges and expenses of such foreclosure the Mortgagor will forthwith pay to the Mortgagee such balance of principal and interest and costs charges and expenses as shall be required to pay the same in full.

30 SEVENTHLY—It is hereby agreed that the term " one calendar month " referred to in Sections 63 and 64 of the Real Property Ordinance 1876 shall for all purposes of this security be reduced to " seven days. "

40 EIGHTHLY—The Mortgagor will insure and keep insured against fire storm hurricane and tempest during the continuance of this mortgage in the name of the Mortgagee the buildings erected on the said land in their full insurable value in some Insurance Company to be approved by the Mortgagee and will punctually pay the premiums thereon when due and will hand the receipts for same to the Mortgagee immediately upon the issue thereof and the Mortgagor agrees that in the event of his failing to pay the said premiums or any of them the Mortgagee may in his absolute discretion pay the same and all moneys so paid by the Mortgagee shall be covered by this security and bear interest at the rate aforesaid until repaid to the Mortgagee. The Mortgagor agrees that in the event of loss or damage

No. 14.
Affidavit
of G. F.
Grahame
sworn in
the matter
of the
Estate of
H. G. N.
Carr,
deceased,
15th Nov-
ember, 1934
—continued.

Exhibit
" B. "

Copy
Mortgage,
J. L. Hunt
to G. F.
Grahame,
28th April,
1926—con-
tinued.

by fire storm hurricane or tempest of any buildings now or at any time hereafter upon the said lands the Mortgagee shall alone have full power to settle and compromise any claim against any insurance company or companies under any policies now or hereafter to be in existence and the amounts so received or obtained on account of such insurance shall be applicable either in or towards repairs or rebuilding or shall be credited to the Mortgagor at the option of the mortgagee.

NINTHLY—The Mortgagor will at all times during the continuance of this security duly and punctually pay all rents rates taxes charges duties assessments and all other impositions whatsoever now charged or which may hereafter be charged upon the said mortgaged premises or any part thereof or upon the owner or occupier in respect thereof or any part thereof and in case the Mortgagor shall at any time fail to keep the said premises in good tenantable repair and order or to duly or punctually pay all such rents rates taxes charges duties assessments or other impositions as aforesaid it shall be lawful for but not obligatory upon the Mortgagee to execute pay effect and keep up all such repairs rates duties assessments and impositions as aforesaid. And all moneys paid in respect thereof shall be debited and charged to the Mortgagor and bear interest after the rate of aforesaid from the date of payment and shall immediately thereupon be and become payable by the Mortgagor to the Mortgagee and shall until repayment be covered by this mortgage.

TENTHLY—The Mortgagor hereby agrees that nothing herein contained shall extinguish the right or claim of the Mortgagee against the Mortgagor as a simple contract Creditor nor in any way merge abridge or otherwise prejudice any rights remedies powers claims or demands at law or in equity of the Mortgagee under or by virtue of any other security or securities heretofore or to be hereafter given to the mortgagee or which the Mortgagee at any time or times hereafter may have for any moneys intended or expressed to be hereby secured against the Mortgagor.

AND for the better securing to the Mortgagee the repayment in manner aforesaid of the principal sum and interest the Mortgagor doth hereby MORTGAGE to the Mortgagee the ~~land above described~~ lease of the land above described.

IN WITNESS whereof I have hereto signed my name this 28th day of April 1926.

J. L. Hunt.

The Signature " J. L. Hunt " was made in my presence and I verily believe that such signature is of the proper handwriting of the person described as John Linn Hunt of Nukuvoca, Rewa, Planter.

R. Parmeshwar
Clerk & Interpreter
Suva.

10
20
30
40

No. 14.
Affidavit
of G. F.
Grahame
sworn in
the matter
of the
Estate of
H. G. N.
Carr,
deceased,
15th Nov-
ember, 1934
—continued.

is extended for a period of four (4) years from that date on the same terms and conditions.

DATED this 12th. day of November 1927.

The Signatures " J. L. Hunt " and " G. F. Grahame " were made in my presence and I verily believe that such signatures are of the proper handwriting of John Linn Hunt of Nukuvoca Rewa Planter and George Frier Grahame of Suva Solicitor.

J. L. Hunt Mortgagor

J. N. Leleu
Solicitor, Suva.

10

Exhibit
" B. "

Copy
Mortgage,
J. L. Hunt
to G. F.
Grahame,
28th April,
1926—con-
tinued.

REAL PROPERTY DEALING No. 948
registered 15 Nov. 1927 at noon
on ~~Certificate of Title No.~~

~~and Crown Grant No. 4~~ Lease 46/38

L.S. (Sgd.) R. C. HIGGINSON.
Registrar of Titles

The within MORTGAGE registered Real Property Dealing No. 948 ¹³⁷ G.F.G. is hereby wholly and completely DISCHARGED.

20

DATED this 19th day of April 1933.

The Signature " G. F. Grahame " was made in my presence and I verily believe that such signature is of the proper handwriting of George Frier Grahame of Suva Solicitor the Mortgagor

G. F. GRAHAME

S. H. ELLIS
Solicitor, Suva.

variation and
Certified true copy of original/ discharge endorsed on
Mortgage No. 137

30

L.S. (Sgd.) D. R. McDonald

Deputy REGISTRAR OF TITLES

6th November, 1934.

REAL PROPERTY DEALING No. 3986

Registered 20 Apr 1933 at 2.30 p.m.

on Certificates of Title No. X1 4140,

Lease 05/241 4604

and ~~Crown Grant~~ No. 46/38

L.S. (Sgd.) D. R. McDONALD

ag. Registrar of Titles

40

" C "

This is the document marked " C " referred to in the annexed Affidavit of George Frier Grahame Sworn the 15th day of November 1934. Before me
(Sgd.) J. N. LELEU,
A Commissioner, etc.

I John Linn Hunt of Davuilevu, Rewa, planter hereby acknowledge that I have this day agreed to sell to G. F. Grahame of Suva Solicitor all those pieces of freehold land containing an area of 446 acres and 33 perches situated in the district of Toga island of Vitilevu as follows :

Name	Area			Certificate of Title	
	ac	r.	perches	Vol.	Folio
Vunivisi	86	0	0	xi/05	241
"	260	0	33	42	4140
" (part of)	100	0	0	47	4604

for the sum of £4000, four thousand pounds payable as follows
£1350, to be paid on the day on which the transfer of the said lands to me by the executors of H. G. N. Carr deceased is signed
£2650 to be paid on the date on which it becomes payable by me to the executors of the estate of H. G. N. Carr deceased in terms of the mortgage for that amount which I am giving to the said executors with interest at the rate payable by me to the said executors, on the said £2650 payable on the dates provided for in the said mortgage and on the following terms and conditions,

(1) The said G. F. Grahame shall employ me as his agent to subdivide and sell the said lands in blocks, areas and prices to be subject to his approval, at a remuneration being a commission of 10% on the purchase price of the blocks sold up to £7000 and half the amount of the purchase prices in excess of £7000.

(2) The said commission shall be payable to me on the amount of, and as the principal moneys are received from purchasers by the said G. F. Grahame that is to say the instalments of commission shall be computed on the instalments of purchase money received by the said G. F. Grahame and shall be payable to me when such instalments are received by him.

(3) Purchase terms shall be

one-fifth deposit
four fifths by four equal annual instalments on the anniversary of the date of sale agreement
interest to be paid on balance due at 10% per annum, annually
Purchaser to pay costs of

(a) Agreement for sale
(b) survey
(c) all transfer & other legal fees

Balance of purchase money to be secured by lien over crops of sugar cane and rice on the land.

No. 14.
Affidavit
of G. F.
Grahame
sworn in
the matter
of the
Estate of
H. G. N.
Carr,
deceased,
15th Nov-
ember, 1934
—continued.

Exhibit
" C. "

Agreement
between
J. L. Hunt
and G. F.
Grahame,
8th Novem-
ber, 1932.

No. 14.
continued.

Exhibit
"C."

Agreement
between
J. L. Hunt
and G. F.
Grahame,
8th Novem-
ber, 1932—
continued.

(4) The said G. F. Grahame shall be entitled on payment of the full amount due to me at any time to require from me a registerable transfer of the said lands free from mortgages or encumbrances to him or to such person or persons as he shall direct, in whole or parts

Dated this 8th day of November 1932.

J. L. HUNT.

I have agreed to purchase the above described lands for the price and on the terms and conditions above set out.

Dated this 8th day of November 1932

G. F. GRAHAME.

10

No. 15.
Affidavit
of G. F.
Grahame
sworn in
the matter
of the
Estate of
J. H. F.
Vollmer,
15th Nov-
ember, 1934.

No. 15.

**Affidavit of George Frier Grahame sworn in the matter of the Estate of
J. H. F. Vollmer, 15th November 1934.**

IN THE SUPREME COURT OF FIJI.

No. 57 of 1934.

IN THE MATTER of the Estate of J. H. F. VOLLMER deceased AND IN THE
MATTER of GEORGE FRIER GRAHAME of Suva a Barrister and Solicitor
of this Honourable Court.

I, GEORGE FRIER GRAHAME of Suva in the Colony of Fiji Barrister and Solicitor make oath and say as follows :

20

(1) I have perused the report of the 25th October 1934 of Mr. Robert Crompton being exhibit "A" to the affidavit of Bertie St. Julian Fisher sworn on the 29th day of October 1934.

(2) With regard to the loan of £2000.0.0 from the Vollmer Estate of John Linn Hunt the security for which was the Mortgage Real Property Dealing No. 3943 over land known as "Vunivesi" I crave leave to refer to my Affidavit sworn the 15th day of November 1934 and headed "In the matter of the Estate of H. G. N. Carr deceased."

(3) I would emphasise the facts there set out namely that I did not regard myself as the purchaser of the Vunivesi estate but as one holding an Agreement to purchase in the future when accounts could be settled between the said John Linn Hunt and myself. I did not contemplate any possibility of obtaining a transfer of the said lands until they had been completely sold and the purchase money paid or satisfactorily secured and I contemplated that this would take some years, in fact the purchase agreements entered into provided for the purchasers to have five years in which to discharge their liabilities.

(4) I entered into the Agreement with Mr. Hunt at his urgent request and with a view of helping a client of almost ten years standing.

(5) I believed and still believe that the Carr's Trustees were bound to sell the land to the said John Linn Hunt for £4000.0.0 and that nothing I did to assist him could be detrimental to that estate.

(6) Under no circumstances could the profit which I would receive on the transaction be more than £1600.0.0 in excess of the profit made by Mr. Hunt and both he and I considered that in view of the fact that the value of the land depended entirely upon the success of the sugar industry at Nausori and that I was financing him in his purchase of the land and that he was already indebted to me in a large sum the arrangement between
10 us was not unreasonable.

(7) I would like to emphasise the fact that I was already to the knowledge of Carr's Trustees, the mortgagee of the lease of the lands.

(8) I would respectfully suggest that in all the circumstances I had an equitable right under the mortgage of the said lease in the benefits which were vested in the lessee one of which was the option and that as mortgagee I was equitably entitled as of right to a share in those benefits and this view influenced me in my dealings with the said John Linn Hunt.

(9) In December 1933 it was very difficult and is difficult now to obtain first class trustee investments and I considered the security of the
20 Vunivesi lands quite substantial for the amount of £2000.0.0 which I as Managing Trustee of the Vollmer Estate advanced from the Vollmer Estate to the said John Linn Hunt.

(10) I deny that I admitted to Mr. Ellis at the end of September 1934 "that Mr. Hunt was not the purchaser of the Vunivesi property but that I was the true purchaser and that I had made use of the name of Mr. J. L. Hunt with the consent of the latter, in the transaction, as stated in the fourth paragraph on page 3 of Mr. Crompton's report.

(11) I have already set out in the affidavit to which I crave leave to refer all the facts relating to my settlement with the Carr's Trustees and I
30 have already paid £700.0.0 and agreed to pay £740.0.7 more to the said John Linn Hunt so that he will not lose by the transaction.

(12) If it is considered that the Vollmer Estate are entitled to the interest and terms set out in the original mortgage I am prepared to meet the liability.

(13) When the interest rate under the said mortgage was reduced from $6\frac{1}{2}\%$ to $5\frac{1}{2}\%$ on the 18th December 1933 as set out in paragraph 36 of my affidavit headed "In the matter of the Estate of H. G. N. Carr deceased" I did not contemplate receiving any benefit therefrom at the expense of the beneficiaries of the Vollmer Estate and I was influenced in
40 my course of action by the following factors :

(a) A reduction of interest rates made by the banks and lenders generally,

(b) The reduction of interest rates on fixed deposits at the bank,

(c) That I was providing an investment for £2000.0.0 of Estate moneys on first class security and at a rate of interest greatly

No. 15.
Affidavit
of G. F.
Grahame
sworn in
the matter
of the
Estate of
J. H. F.
Vollmer,
15th Nov-
ember, 1934
—continued.

No. 15.
Affidavit
of G. F.
Grahame
sworn in
the matter
of the
Estate of
J. H. F.
Vollmer,
15th Nov-
ember, 1934
—continued.

in excess of the interest which would be earned if the amount was placed on fixed deposit.

(14) With regard to the commission of £20.0.0 charged on the investment of £2000.0.0 the same was provided for under the sale in Schedule A of the Public Trustee Ordinance 1915.

(15) Mr. Crompton is in error when he says that I charged £10.0.0 commission on £1000.0.0 withdrawn by me from the Government Savings Bank on the 8th March 1934. The £10.0.0 referred to was charged in respect of a deposit of £1000.0.0 in the Government Savings Bank made by me on the 30th May 1934. I made no charge in respect of the £1000.0.0 drawn from the Government Savings Bank on the 8th March 1934. 10

(16) With reference to the statement in Mr. Crompton's report referring to partial discharges of the property having been executed by me and moneys received which were not paid off the mortgage, I crave leave to refer to paragraphs 45 to 48 of my affidavit headed "In the matter of the Estate of H. G. N. Carr deceased" in which I have explained that this would have been done on the interest day namely the 30th September 1934 had I not been approached by Mr. Ellis on the 29th September 1934.

(17) The money received by me was paid into my Trust account. 20

(18) Mr. Crompton referred to my having invested £2000.0.0 of Vollmer Estate money in a contributory mortgage of £6000.0.0 given by Mr. Hugh Hall Ragg. The £6000.0.0 was advanced to Mr. Ragg by me as trustee and secured by the mortgage given to me as trustee. It was not a mortgage given to two or more mortgagees and under it I am the sole person in whom the powers of the mortgagee are vested and by whom such powers can be exercised. Mr. Ragg purchased the land for £7500.0.0 pursuant to an option given to him by the Vendors in a lease of the property given to him in March 1932. In so lending the money I acted upon a valuation made by the Hon. J. P. Bayly who valued the property at present-day value at £12,000.0.0 and I respectfully submit that I acted reasonably and honestly. 30

(19) I would also refer to paragraph 13 hereof.

(20) With reference to the advance to Ramautar and Siunarain I was prompted by a desire to benefit the beneficiaries of the Vollmer Estate and in my view the property mortgaged is worth at least £700.0.0. The freehold comprised 40 acres purchased for £500.0.0 the two leases comprising 5 acres 33 perches are worth a premium of £20.0.0 per acre and the cane thereon as it stands is valued conservatively at £200.0.0 at least.

SWORN at Suva in the Colony of Fiji this } (Sgd.) G. F. GRAHAME 40
15th day of November 1934 Before me }
2/- stamp

(Sgd.) J. N. LELEU.

A Commissioner of the Supreme Court of Fiji for taking affidavits.

No. 16.

Notes of Evidence.

No. 16.
Notes of
Evidence.

FREDERICK CHARLES CLAPCOTT Sworn.

Frederick
Charles
Clapcott.
Examina-
tion.

Is your name Frederick Charles Clapcott?—Yes.

You live at Ba?—Yes. I was a planter by occupation, but I have now retired.

I believe you are an executor in the Estate of the late Carr?—When did he die?—He died some years ago. I have not looked at any documents are there any other Executors with you?—There was a Mr. Williamson, he has been dead some time. There were three appointed, Mrs. Carr Mr. Williamson and myself.

I believe I am right in saying that Mrs. Carr, the widow is still alive?—Yes.

She lives in England?—Yes.

You will remember certain negotiations in 1923 with regard to the lease of certain land?—Yes.

You gave a lease of that land to one, Mr. J. L. Hunt for 10 years?—Yes.

Do you remember what the rent was?—I cannot remember for certain.

I put it that it was about £200?—It was about £200 I think.

Do you remember anything about the option to purchase?—Yes, he had the right to purchase within ten years for the sum of £4,000.

He could purchase from the estate within any time of 10 years for £4,000?—Yes.

You know that Mr. J. L. Hunt exercised the option to purchase?—Yes.

After that option had been exercised by him was this land transferred to him?—So far as I can remember to Mr. J. L. Hunt.

You know, of course, that the allegations made by me, the Attorney General, is that although Hunt nominally bought the land that he in effect was not the real purchaser?—Yes.

When Mr. Hunt exercised his option had you an idea that there was any other person behind the scenes buying the property?—No, certainly not. I thought it was J. L. Hunt.

Did you at any time or at that time see Mr. Grahame?—I would not like to say. About that time I dare say I met Mr. Grahame three or four times on Carr Estate business. I cannot remember whether I saw Mr. Grahame or Mr. Ellis at that time. It is very difficult to say.

Can you tell us what Mr. Grahame said about this time when Hunt was purchasing the property?—The only conversation between Mr. Grahame and myself about the purchase of that property was purely that Hunt was purchasing the property.

CHIEF JUSTICE: He was dealing with the firm. I do not think it matters.

No. 16.
Notes of
Evidence.

Frederick
Charles
Clapcott.
Examina-
tion—con-
tinued.

ATTORNEY GENERAL: I want to get categorically from this witness a definite statement that he was not told that anyone else was behind the scenes.

CHIEF JUSTICE: He was at Ba, his negotiations were by letters.

ATTORNEY GENERAL: He might have been told that Mr. Grahame was purchasing.

MR. CLAPCOTT: That is all the conversation I have had with Ellis and Grahame, nobody else's name was mentioned in connection with the business except J. L. Hunt. I never expected anybody else's name.

I believe you know of the settlement between Mr. Grahame and the Trustees of whom you were one in which he agreed to pay back to the Trustees certain money which he made. You know about it?—Yes. 10

Am I right in saying that you instructed Mr. Ellis to bring the matter before the Supreme Court?—Yes, that is correct. I sent in my resignation as Trustee for the Estate. I want my name to be perfectly clear of the whole matter. That is the reason why I wanted Mr. Ellis to bring the matter up so that I could be perfectly clear of the whole business.

You are a competent valuer of land?—Well, it just depends where the land is. On the Ba and Lautoka side I think I am.

You have valued lands for some years past?—Yes. 20

Do you know some property known as Valele?—Yes.

It was bought by Mr. H. H. Ragg?—Yes.

Do you know by whom it was sold to Mr. Ragg?—I understand by the Pfeuger Estate.

Do you know the area sold by Mr. Ragg?—I do not know the total area of the whole block. I was cultivating 400 acres and the C.S.R. cultivated 400 acres.

CHIEF JUSTICE: Do you think the whole estate is 800 acres?—The boundary line is the skyline away up in the hills. I should say there were 450 to 500 acres of cane land. 30

ATTORNEY GENERAL: Can you give us your opinion as to the value of that property?—I consider that the property is worth about £9,000 without going over it again I believe from memory I should say about £9,000.

Would you say that £12,000 is too much?—Far too much.

Of course if the sugar industry were to decline the value of this land would depreciate?—Especially that class of land because none of it is good land, it is medium and poor land.

Cross-exa-
mination.

CROSS-EXAMINED

SIR HENRY SCOTT: If I can just take you to the approximate date of November 1932, you were in Ba when the option or notice of the exercise of the option by Mr. Hunt to purchase the land was delivered to Ellis and Grahame?—Yes, I would be in Fiji in November 1932 probably at Ba. 40

You have no recollection of any talk with anybody prior to that? All you heard subsequently was that Mr. Hunt had exercised his option?—Yes.

No. 16.
Notes of
Evidence.

The exercise of Mr. Hunt's option was contained, the right to exercise that option was contained in a lease from the Trustees of whom you were one, as far back as 1923?—Yes.

Frederick
Charles
Clapcott.
Cross-exa-
mination—
continued.

10 May I put it to you, correct me if I am wrong, that it was not until December 1932 according to the correspondence with Mr. Ellis, he wrote you a personal note saying that Hunt had informed him that he (Hunt) was now ready to complete negotiations? It was December 1932 when that intimation was received from Mr. Ellis of the then firm of Ellis and Grahame?—You hold the letter.

I will read it to you?—I remember that letter.

I put it to you when the matter was to be finalised in the way of transfer that was the way it was communicated to you?—Yes.

CHIEF JUSTICE: Ellis would have to get his consent before he started negotiations with Hunt.

SIR HENRY SCOTT: I am putting it to him that this was the first intimation he had had.

20 Prior to that, during November and up to December 1932 were you at Ba?—Yes, I would be at Ba.

And therefore any communication that was made to you would in all reasonable probability be made by Mr. Ellis in similar terms?—Yes.

This property, on this point of value, this property that is the subject of this mortgage of £6,000 and £1,600 second mortgage.

I did not know that until the other day.

You have had long experience in valuing land in Ba?—Yes.

In definitely considering this matter you value that property today at £9,000?—Yes, I think you could get £9,000 for it.

30 SAMUEL HOWARD ELLIS Sworn:

Samuel
Howard
Ellis.
Examina-
tion.

Will you take Mr. Grahame's affidavit in the matter of the Carr Estate. I will just take you shortly through certain paragraphs which have reference. Will you look at paragraph 7. Would you like to say anything about that?—That statement is perfectly correct. It is true that as a rule Mr. Grahame did Mr. Hunt's business and I did the Carr Estate. If either of us were away we naturally did both. In the matter of the Estate I would refer to Mr. Grahame in matters of special difficulty and matters of importance for his advice.

40 This lease was almost expired at the end of 1933?—The lease was due to expire on the 30th April, 1933.

Can you tell us what powers the Trustees of the Carr Estate had under the Will?—They had with regard to properties, they had the power to sell or lease properties with a discretion to postpone the sale of property in their discretion.

No. 16.
Notes of
Evidence.

Samuel
Howard
Ellis.
Examina-
tion—con-
tinued.

Were any steps taken to find a purchaser for that Estate property freehold?—Do you mean at any time before the expiration of that lease?

Yes?—Various prospective purchasers had come to our Firm, that is certainly to myself. I cannot remember if any came to Mr. Grahame enquiring about the purchase of the freehold. I remember at any rate three Indians who came to me and I told those Indians that the present lease would expire in April 1933, and that their application would be considered then. Both Mr. Grahame and I knew there were enquiries for the purchase of the freehold. Some enquiries were also made to Messrs. Cromptons with regard to the purchase of the property. 10

Can you tell us whether it would have paid the Estate if that option over it had lapsed or not?—As solicitor to the Estate I certainly hoped that the option would lapse. I think the Estate would do better in view of the improvements that Mr. Hunt effected and also the important value of cane land.

Either from the point of view of higher rent or a much bigger price than £4,000 named in the option?—Yes, I anticipated that. I may say that Mr. Hunt had applied two years ago before that in 1930 applied to the Trustees for an extension of his lease. I have his original letter. I placed the application before Mr. Clapcott and informed Mr. Clapcott that there were purchasers enquiring for the land and we refused, we replied to Mr. Hunt that we were not at that time prepared to consider extending the lease. 20

Do you remember that Mr. Grahame expressed any view to you about the lapsing or otherwise of the option?—I would say that both Mr. Grahame and I agreed that it would be to the advantage of the Carr Estate if the option lapsed. I certainly discussed that matter, that purchasers were enquiring for the property.

Something has been said about correspondence between Mr. Clapcott and the firm of Ellis and Grahame, I do not know what those letters are? —With regard to the option, perhaps I can tell what Sir Henry Scott was asking Mr. Clapcott. I received Mr. Hunt's letter exercising his option on the 3rd November. On the same day I wrote to Mr. Clapcott informing him at the same time I was leaving for Sydney and I left on the next day. On the 8th Mr. Clapcott wrote to Messrs. Ellis and Grahame approving of the proposal for a mortgage of £2,650 and our Firm, Mr. Grahame, wrote to Mr. Hunt informing him that the Trustees of the Carr Estate approved granting a mortgage of £2,650, that was on the 15th. 30

(Letters handed to Mr. Ellis.)

Are there any other letters there which the Court should know about? —Yes, the letter of the 3rd November. 40

Were any enquiries received from other Solicitors enquiring about this land?—I can only remember the enquiry from Messrs. Cromptons.

Will you once more refer to Mr. Grahame's affidavit and look at paragraph 8?—I think that is probably correct. I was not concerned at the

time with it in any way. I certainly knew generally that Mr. Grahame was financing Mr. Hunt.

Have you got Mortgage " B " there?—I know what that is.

Do you remember if you saw that?—I cannot remember at all. It was done by my Firm and I might easily have had the knowledge.

Please look at paragraph 11?—I know generally that Mr. Grahame was financing Mr. Hunt.

Do you know any of the details?—No. I was not concerned, it was Mr. Grahame's matter.

10 Can you tell the Court anything about the system under which the Bank of N.S.W. advances money?—Under the Bank Charter the Bank may not advance money on mortgage, they must advance on a bond and their practice is to take a bond with guarantor and take a mortgage and perhaps other security as collateral to that bond. That was the practice at that time.

Besides the bond did the Bank require anything else?—In this case I think the bank had a number of other securities, mortgage on lease.

Now take paragraph 13? Do you wish to say anything about that?—All that happened is that Mr. Hunt proposed, he saw me on the 3rd
20 November, he proposed to pay £1,000 cash and give a mortgage for £3,000. I suggested it should be one third and suggested £1,350 which in fact I put up to Mr. Clapcott. Mr. Clapcott approved except that he thought the interest should be $6\frac{1}{2}\%$ instead of 6% .

Paragraph 14?—Mr. Grahame's recollection is quite at fault. Mr. Grahame certainly informed me that he was going to finance Mr. Hunt. It was not £4,000 concerned it was only £1,350. He is certainly wrong when he mentioned that he was financing up to £4,000. I certainly would have been surprised if Mr. Grahame financed Mr. Hunt to the tune of £4,000.

30 Will you tell the Court what that action would have looked like to you?—I should have been surprised and should have suspected the transaction at that time.

Paragraph 24?—That is quite correct. And also paragraph 25. Mr. Grahame did actually leave various papers in the safe in the care of Mr. Forster, our Managing Clerk. Mr. Forster had his private key and he regarded that safe as confidential. He never disclosed anything to me that was in the safe. There was certainly a cheque for £1,350 in the safe because that was ultimately paid into the Firm.

40 Did Mr. Grahame leave any instructions regarding any money received from the purchase of the land?—I am somewhat vague about that. Two payments received by the Firm and they were paid to Mr. Grahame or into his bank account, of Mr. Grahame. I probably knew of them, they were done by the Managing Clerk and simply for reduction of advances made by Mr. Grahame. They did not concern me.

Mr. Grahame was away for about three months?—Yes.

Did you see Mr. Hunt during those months?—Yes, I saw Mr. Hunt numerous times about the sales of various portions of the land. He arranged

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Notes of
Evidence.

Samuel
Howard
Ellis.
Examina-
tion—con-
tinued.

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Samuel
Howard
Ellis.
Examina-
tion—con-
tinued.

a survey. I saw him about sales of various portions of the land to Indian purchasers. I saw purchasers, discussed agreements and settled agreements with them.

You dealt with him on the footing that Hunt was the purchaser of the property?—Entirely.

Did you know that Grahame was financing him?—Yes, that is so. I have no details as to the amount of the finance.

You have a letter I believe that Mr. Grahame wrote to you in Sydney on the 11th February, is that material?—I do not think so. There are two personal letters simply dealing with Mr. Hunt's finances. 10

Paragraph 50. What do you say about that?—Might I refer at the same time to the statement in Mr. Grahame's agreement for affidavit where Mr. Crompton . . .

Do they both take place on the 4th October? There is a conflict of opinion. We'll deal with both paragraphs of both affidavits if you like?—Mr. Grahame denies that he admitted to me that Mr. Hunt was not the purchaser of the property. I would now like to say that we had negotiations which commenced on Saturday 30th September I saw Mr. Grahame again on Monday for some time and again on Wednesday for a short time and again on Thursday the 4th for one and a half hours. The whole basis of the claim I made on behalf of the Carr Estate was that we had discovered that he was the purchaser of the land and not Hunt and throughout that was the basis of our claim. When Mr. Grahame consented to settle and give what we thought we were entitled to I understood that he admitted our claim on that basis. As indicating what was in my mind when Mr. Grahame was with me on the Monday the 1st October I remember saying to Mr. Grahame I do not think there is any defence and I referred to the question of a Solicitor buying property from his client. 20

CHIEF JUSTICE: Was there any other possible basis of claim?—None whatever. Mr. Grahame had bought our Client's property without disclosing the buyer. 30

ATTORNEY GENERAL: Will you swear that Mr. Grahame admitted that he was the purchaser?—I certainly said to him at one stage at the outset, "We have discovered that you are the purchaser of the property and not Hunt," and Mr. Grahame never denied that he was the purchaser and settled on the basis that he was.

Cross-exa-
mination.

CROSS-EXAMINATION:—SIR HENRY SCOTT: One question on that point Mr. Ellis. There were no particular words I put it to you that were used by Mr. Grahame to indicate he purchased from the Carr Estate and not from Mr. Hunt?—I think that would have been in the nature of a quibble. 40
When I first saw Mr. Grahame I said to him we have ascertained that you are the purchaser of that land and not Hunt. I used those words. At that time he said "I cannot say anything." Later we had a long discussion, it was always on that basis.

SIR HENRY SCOTT: The documents speak for themselves as you know. Mr. Grahame has said he purchased from Mr. Hunt on certain terms and

not from the Carr Estate?—I do not see it in the affidavits. I cannot see it anywhere.

Enclosure called "C," you have read that, Mr. Ellis?—Yes.

I am now putting it to you that that is Mr. Grahame's version of the transaction in enclosure "C."?—Mr. Grahame and I had not discussed that agreement between Mr. Grahame and Mr. Hunt. I was at that time quite vague about his terms and we did not go into them as to whether he was buying from the Carr Estate or from the Carr Estate via Mr. Hunt.

No. 16.
Notes of
Evidence.

Samuel
Howard
Ellis.
Cross-exa-
mination—
continued.

JOHN LINN HUNT: Sworn.

10 Now, Mr. Hunt, you hold a lease for 10 years expiring about April 1933?
—Yes.

Under that lease you had the option of purchase of land for £4,000?—
Yes.

Did you exercise your option to purchase that land?—I did.

When you exercised that option and from the time that you did exercise that option until the time the land was conveyed to you by deed would you tell the Court what was the state of your own personal finances? What sum did you yourself pay for the purchase of that land?—I received a sum of £1,350 from Mr. Grahame.

20 Did you supply any money yourself towards the purchase?—No.

You made an agreement with Mr. Grahame about the property?—Yes.

Would you tell the Court what exactly was your interest under that agreement?—That agreement was made at my suggestion.

CHIEF JUSTICE: What did you think was the effect of it?—I thought the effect so far as I was concerned that it was conveying the property to me with the assistance of Mr. Grahame.

ATTORNEY GENERAL: What do you mean by the assistance of Mr. Grahame?—By Mr. Grahame financing me and with that assistance I could purchase the property.

30 You knew the agreement that was made between you and Mr. Grahame?
—Yes.

Whose handwriting was that in?—Mr. Grahame's.

Can you tell us where that agreement was made?—I would say that agreement was made in Mr. Grahame's office.

Where was it signed?—I will not swear to that, but I think it was signed in Grahame's office. In fact I am almost certain.

40 Did Mr. Grahame sit down and write out the agreement while you were there or did he have it ready for you?—He did not write it to my memory. He told me that if I could see certain sales in view he would be prepared to finance me and that he would have to draw up an agreement which I had suggested.

What were those terms?—They were exactly as laid down there. I may say . . . (Witness shows signs of distress).

CHIEF JUSTICE: No one has suggested that you have done anything wrong. I do not think anyone made the suggestion that you have done

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tinued.

anything wrong. The main question we want to know is whether you saw Mr. Grahame write that document. Did you see him write it?—No I did not actually see him write it. He had written that and he tended me a copy of that memorandum. He tended me a copy prior to my signing the one that I see now.

ATTORNEY GENERAL: Have you still got that copy?—No, I had that copy and I handed it back to Mr. Grahame with my other securities.

Did you get any other benefit Mr. Hunt from that transaction except the commission of 10% and 50% profit?—No.

That was all you got?—Yes.

10

Before that did you sell the lands in blocks, sub-divide it?—I did.

You did all the work in connection with that?—Yes.

Do you consider that the bulk of the profit went to you or to Mr. Grahame?—I realised that he would get more profit than I would but things were so bad at the time that I was glad to have his assistance and that was why I made the suggestion as I did. He considered that I was too optimistic, that it would never be realised what I had suggested.

Did you pay any of the expenses relating to the transfer of the property?—You mean, did I pay cash for them?

No, expenses in connection with the transfer of the property, the mortgage?—No, I did not pay any cash or any cheque. I have an account with Mr. Grahame and he met all the charges.

Did Mr. Grahame at any time while this was going on tell you that you should have any independent advice from another solicitor?—No.

You acted on his advice?—Yes.

Did you when you made the settlement with Mr. Grahame, whereby he refunded certain monies you endorsed it by signing your statement, did you realise that any action was threatened against you?—Not against me. I may say that I do not think that Mr. Grahame would have made that settlement if it had not been for the discussions with me after receiving advice from solicitors.

30

Did you see Mr. Ellis at all?—Yes, I saw Mr. Ellis.

Did you first suggest that you were the purchaser?—Yes, I did not tell Mr. Ellis otherwise.

Did Mr. Ellis tell you that he was aware of the agreement with Mr. Grahame?—He told me that he had been told by someone, that he had a copy of an agreement which had been made between Mr. Grahame and myself. I also heard from Mr. Crompton that he had seen a memorandum that had been made between Mr. Grahame and myself.

Did you say at any time that Grahame was the real purchaser?—No, never.

Or that you would do your best to get things settled right for the Carr Estate?—No.

Did you tell Mr. Ellis that you would discuss your position with Mr. Crompton?—I did. He asked it if would not be better that I did not appear in the case at all.

SIR HENRY SCOTT: My friend asked you something about whether you had paid anything in connection with this transfer. If I understood him rightly. Did you not get a copy of the statement setting out the charges?—Yes.

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I think you have told us Mr. Hunt, I just want to make it quite sure, that you exercised this option on the 2nd November 1932 by a notice to Ellis and Grahame?—I did.

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tion—con-
tinued.

It was on the 8th November 1932 after having suggested it to Mr. Ellis that you agreed to sell this property to Mr. Grahame, the original
10 document of which is in His Lordship's hands?—Yes.

I think you went a little bit further and said it was at your suggestion entirely. I think Mr. Grahame thought you were optimistic and it was only after you went thoroughly into it he said "Very well, I will buy on those terms"?—That is so.

Supposing Mr. Hunt, let me say for argument sake that you put this suggestion up to Mr. Grahame and he had refused, would you have gone to anyone else to have helped you?—I would have. In fact I made certain attempts to get the money elsewhere.

Taking it that Mr. Grahame had said no, you are too optimistic, I will
20 not buy, what is your opinion as to your success or otherwise of being financed elsewhere?—I could have been financed elsewhere because I had a proposition put to me by an individual in Suva who said he would go half and half.

CROSS-EXAMINATION. ATTORNEY GENERAL: Can you tell us Mr. Hunt, had this deal gone through 10% and 50%, gone through to the end you would have sold all the land. Can you tell us within a £1,000 if all the sales had gone through what the amount would have been?—If all the sales had gone through I would have realised £10,000. I would have received my £700 commission and £1,500 above.

Cross-exa-
mination.

30 CHIEF JUSTICE: How much did you expect?—I did not expect to get that amount. I expected to get between £8,000 and £9,000.

ATTORNEY GENERAL: In view of your later knowledge, do you revise that, would it be up to £10,000?—I am sure that if I could have finalised the sales it would have been £10,000. I would have done that so as to keep faith by the Indians.

CHIEF JUSTICE: You realise in this document what it means when it says "I have agreed to sell"?—Yes.

Court adjourned at 12.45 p.m. until 10.0 a.m. on 22nd November, 1934.

THURSDAY, 22ND NOVEMBER, 1934.

40 GEORGE FRIER GRAHAME. Sworn.

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CROSS-EXAMINATION. MR. CROMPTON: In paragraph 3 of your Affidavit you state you advanced £581.6.2 as security for the lease to the Carr Estate?—Yes.

In paragraph 4 you state that you made an advance of £200?—£220.

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Well, now of these two advances, they together amount to £581.6.2?
—Yes.

What securities did you hold for that?—Which, for the £580?

Yes, you see you already held securities for £220?—I do not remember, Mr. Crompton, but I think that there was mortgages with Mr. Hunt on purchase at the time I made the £220 advance and the security for that was mortgages that Mr. Hunt held.

Was that you held ample security for the £220?—at the time, yes.

And you continued to hold that security whilst agreeing to increase the amount to £580?—I am not sure on that but I think the other security at the time I advanced the £360, at the time I took over the lease. 10

Can you tell me how much of the £580 referred to in paragraph 8 was owing in November 1932?—A very small amount. I do not mean it was more than £100.

Was that £100 paid prior to the 15th March 1933?—Yes, it was.

Would it be correct if I said it was paid prior to December 1932?—Yes.

Was it in fact completely paid off in November before the agreement of the 8th November was signed?—Yes, it was.

Was that when Hunt signed the agreement of the 8th November and you signed it, there was nothing owing under the mortgage to the lease? 20
—No.

In paragraph 10 of the Affidavit you say in September 28th you lent Hunt £240, did you obtain security for that advance?—I think I did.

Well, I put it to you Mr. Grahame that amount was also paid off before the 8th November, 1932?—Yes.

Now, in January 1932 you guaranteed Hunt's account with the Bank of N.S.W. for £1,400?—He lodged securities with the Bank to cover that amount.

Was that a gradually reducing debt?—Did he gradually reduce his liability to the Bank?—He was to by quarterly reduction. 30

Did he? I put it to you Mr. Grahame that he did very materially reduce it?—I cannot say that Mr. Crompton. I do not think it was reduced in November 1932. I am not sure.

But in November 1932 you were not at all anxious were you about your guarantee to the Bank of N.S.W.?—No, I was not anxious.

Part of Mr. Hunt's securities to the Bank of N.S.W. I think consisted of Life Insurance Policies on which there were substantial amounts of surrender value?—There were I think two Life Policies in the securities.

And you know that the surrender value of those two Life Policies were substantial?—Yes. 40

So that when you were negotiating with Hunt between September and November 1932 you had nothing in your mind to scare you in regard to possible bad debt with Mr. Hunt?—I did have something in my mind.

What bad debt did you have?—I did not have any bad debt. I had a contingent liability to the Bank.

Did you know that you had substantial security at the Bank? I put it to you that during your transaction with Mr. Hunt on this land you were

not at all anxious at the financial position between Mr. Hunt and yourself?
—Everyone is anxious.

If that did not influence you will you explain to His Lordship why you knew nothing about the condition of the account that you guaranteed at November?—I did not say I knew nothing about the condition of that account.

Did you know anything about it?—Yes.

What was the condition of it then in November, 1932?—It had been reduced. I am not sure but I think it had been reduced by between £100
10 and £200.

I suppose it might have been reduced by even a larger extent than that?—I cannot say that.

But your security to the Bank had anyhow improved by £200 at that date?—Yes.

Between September, I think you have said and November 1932 you had several interviews with Mr. Hunt?—Yes.

Concerning his position with the Carr Estate?—Yes, his option.

Did those interviews take place in your office or did they take place at Mr. Hunt's house or your house?—They took place in the office.

20 Did you keep an office diary of the ordinary Solicitor's diary of the work which you do during each day?—No.

You do not keep an office diary? Did you make any entry in any diary or any book that costs would be charged on your interviews with Hunt between September and November?—I do not think so.

Are you not sure? What book did you copy from when you estimated your costs?—There was a diary kept.

By whom?—By me.

What did you mean when you said you did not keep a diary?—I am not keeping a diary now.

30 From September to November 1932 you kept an office diary?—Yes.

Did you make any entry in that office diary relating to your interviews with Hunt?—I do not think I did.

No entries were made against Mr. Hunt in respect of those visits?—No.

I would like you to refer to paragraph 15 of the affidavit (read). That is a correct statement?—Yes.

All that Mr. Hunt wanted from you was an advance of £1,350?—At the time he made that suggestion to me, it was on the 3rd November.

40 Did not you arrange all this matter before the 2nd November before he exercised his option between September and the 2nd November?—Yes, I had in as much as Mr. Hunt had asked that he got 10% on the sales up to £7,000 and half on sales above that.

That was prior to the 2nd November?—Yes.

In your transactions with Hunt all the profits you were to receive were based on this advance of £1,350 which you were to pay to Mr. Hunt?—No.

What else?—The basis was that I was to find £4,000, Hunt was to get £4,000 and 10% on the sales up to £7,000 and half of the sales over £7,000.

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You paid this money over on the 15th March 1933, you paid £1,350 to your own firm?—My cheque was left in the safe and used for that purpose.

But that was the date when the money was paid?—It was paid on the 16th according to the receipt.

It was on the 15th or 16th of March that the money was paid? You returned on the 7th April, is that so?—Yes.

You were away in Sydney from the 31st December 1932 till 7th April, 1933?—Yes.

Did you yourself prepare an account of the position of J. L. Hunt with your firm on the 27th April, 1933?—I did not prepare it myself, Mr. Forster prepared it. 10

Did you see the account yourself? Is that a copy of it?—I saw that account.

That account is correct?—Yes. That account was signed by Mr. Ellis.

You advanced that money on the 16th March and on the 27th April you received in cash I think more than you had advanced?—Yes, I think the final payment was £1,528.

Now, when you actually paid the money on the 15th March 1933 to the Carr Estate had Mr. Hunt's account been considerably reduced with the Bank of N.S.W.?—I cannot say Mr. Crompton. 20

Did you enquire?—I have no recollection as I was away between December until the 7th April.

You had been back nearly three weeks? Have you ever enquired at the Bank of N.S.W. how much Mr. Hunt owes under your guarantee?—Yes.

When did you enquire?—Some time last year.

And what was the figure when you enquired?—I cannot say.

Did you know this—that it was considerably less than the loan value of the policies which he had surrendered to the Bank?—When?

When you enquired?—I remember that Mr. Hunt did surrender one policy. 30

For how much?—That I do not know, but I think it was somewhere between £600 and £700.

May I put it to you. In March 1933 when you paid this deposit of £1,350 that you were quite content, that you would not be called upon to pay the Bank any money under your advance?

No, Mr. Crompton, I do not think that that would be putting it correctly.

Were you moderately content, were you at peace in your mind?—I do not think anyone is at peace in their minds.

Do you know how much money is now owing?—I think there is about £500. 40

Will you tell me did Mr. Hunt on several occasions between September 1932 and November 1932 explain to you that there was a big demand for this property amongst the Indians?—He told me that he had sales in sight. He could be sure of making sales to over £3,000.

And whilst you were in Sydney did Mr. Hunt write to you that he was entering into arrangements to sell to different people?—Did he give you

an indication of how well the land was going?—I do not remember whether I got a letter from him or not.

Will you tell me how did you come to fix the remuneration to Hunt at 10% up to £7,000. What was the cause of your putting £7,000 in that agreement on the 8th November, 1932?—It was Mr. Hunt's suggestion as to his terms.

Between September 1932 and November 1932 when the agreement was prepared did you visit the land?—No.

Did you visit Hunt's house?—No, not between those months.

10 You have not seen the land?—I have never gone over the land. I have seen it from Mr. Hunt's verandah.

Did you see it from Mr. Hunt's verandah before you signed the agreement in November?—No.

Was the £7,000 regarded as the minimum value for which the land would sell?—Well Mr. Hunt thought that he would get more than £7,000 when he first put it to me. I thought he was optimistic.

And so believing that he was optimistic you entered into a contract whereby you get 90% and he got 10%?—Yes.

20 I am sorry Mr. Grahame, I must ask you to reconsider a question I put to you, did not Hunt tell you that he expected to sell that land for £10,000. No, Mr. Hunt did not tell me that he expected to get £10,000. Did he give any figure about £8,000 or £7,000?—Might I refer to a note I made at the time?

(permission granted) Mr. Hunt's idea of value the minimum was £7,400.

And the maximum?—No note of maximum.

Where did you make that note, in your office?—Yes.

Is that one of the office papers?—That was office paper.

You admit the agreement Exhibit "C"?—Yes.

30 That exhibit was dated 8th November 1932. You wrote that agreement out in your own handwriting?—Yes.

Do you say that is the usual method of doing office work for original documents?—No.

And I think it is written on a scrap piece of paper, a piece which has been torn?—It was a piece of paper I kept aside in a drawer for drafts.

It was torn off at the bottom?—It was a piece of paper that had been typed on and cut off.

This agreement reads:—

Yes.

Did he on the 8th November agree to sell you this land?—Yes.

40 And you signed "I . . . Yes.

So that on the 8th November Hunt agreed to sell and you on the 8th November agreed to buy?—Yes, in terms of that agreement.

Did you endeavour to keep that document that you entered into with Mr. Hunt a secret?—I kept it in my personal papers in my own safe.

And I think you did not have it even stamped?—Yes. I mean that I did not send it to be stamped at all. There was no need to send it to be stamped. It could have been stamped by affixing a 4/- stamp on it.

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And ever since that document was signed it has been kept by you in your private safe?—Except during the period when the keys of the safe were in the hands of Mr. Forster from 31st December to 8th April.

That was your private safe?—Yes.

Do you suggest that after the 8th November 1932 Mr. Hunt had no interest whatever in Vunivesi except as an employee of yours?—Yes.

What interest had he except as an employee of yours?—He owned the land.

Is it usual Mr. Grahame four months before the purchase that was then this agreement was entered into, for the owner of the land to sign a document of this kind “ £7,000.” Do you solemnly suggest that?—Yes. 10

You said Mr. Hunt had the title?

He had a Certificate of Title to 440 acres of land. On the 8th November 1932?—No.

I am speaking of the 8th November 1932?—It is not unusual for people to enter into sales contracts when there is no owners of the title.

He sold this land to you then before he got it?—If he had exercised his option.

I say he sold it to you before he got it?—And my answer is that he agreed to sell before he got his title. 20

He agreed to sell to you for £4,000 as follows:—

. . . . Did you pay the £1,350 on that date?—My cheque was used on that date.

My receipt from Ellis & Grahame reads:—

That was the only receipt that Ellis & Grahame could possibly give?—Yes.

Did you disclose to Mr. Ellis or to Mr. Forster that you had this agreement?—No, I did not.

Did you at any time disclose to Mr. Ellis that this agreement was in existence?—No. 30

Under this agreement you were to pay the full amount which Hunt had to pay upon the same terms as he had to pay, is that so?—Yes, plus his 10% on £7,000 and half of sales over £7,000.

Now under this agreement did you employ Hunt in the capacity in which you promised to employ him by virtue of this agreement?—Mr. Hunt sold the land.

Did you employ Mr. Hunt under this agreement by virtue of this agreement?—Yes, I did.

And were you to have the control of what he sold and the areas and the prices, everything. Did you set out in Clause 3 the terms upon which Mr. Hunt could sell. 40

Yes, I did not in fact exercise any control at all.

Did he sell on those terms?—Yes.

And did you prepare all the agreements of sale on those terms?—Yes, in some cases.

So you did exercise authority?—I fixed the prices. Mr. Hunt did the selling and filing on his own.

Those properties were sold I think and a large number of others transferred.

I would not say a large number. I would say about six.

Did you inform the Trustees of the Carr Estate of the existence of this agreement?—No.

I put it to you Mr. Grahame that the meaning of this agreement is clear, that Hunt, you purchased from Hunt his option, although you do not say so, and you got all the benefits to which Hunt was entitled to under this lease, less 10%. In the result, yes.

10 Had you got that agreement already written on the 8th November before you saw Mr. Hunt?—No, the proposed rough draft.

Had you got the agreement which Mr. Hunt and you signed already written before Mr. Hunt saw you on the 8th November?—No.

Is he mistaken when he said he did?—Was it handed back after your interview of this matter?—It was before.

Why did he hand it back?—I do not know.

Is that also in your hand writing?—Yes it is an exact copy.

20 Do you agree with me Mr. Grahame assuming that Mr. Hunt had no interest whatever in this property that you could get a man to subdivide the land and sell it that 10% was quite an ordinary commission?—Assuming that I was the owner of the land and employed a man?—Yes, a man of his standing, could you get it done for less than 10%. I think I could.

What do you think you could get it done for?—7½%.

Was that Mr. Hunt's benefit by entering into this agreement with you, was that he got 2½% more than if somebody else was employed by you?—Yes, plus the half of what was coming out of the amount above £7,000.

Did you hear Mr. Hunt say yesterday that he never paid any portion of the £1,350, he never paid any of the expenses, he never paid any interest?—Yes.

30 Is that true?—He did not pay it personally.

As a matter of fact all interest paid in this matter was paid by you?—No, Mr. Crompton, all these transactions went through Mr. Hunt's account.

I know they did. And the actual account he had with you Mr. Grahame was to show how much money he had so that he could get his 10%.

The account he had with me was an Estate Cash Account showing everything received and everything paid out.

40 Under this agreement he was not concerned with anything except his 10% on the prices of the sales, is that not so? If I am wrong point out the clause under the agreement what interest he had?—Under the agreement he was entitled to 6½% on the £2,650.

Show me where he is entitled to this 6½%. (Mr. Grahame pointed it out).

And when that mortgage was paid to the Carr Estate there was no interest payable to the Carr Estate?—I think that there was.

We will come to that later.

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CHIEF JUSTICE: If the Carr Estate had not been completed you still had to give him $6\frac{1}{2}\%$ interest on the transfer mortgage?—Yes, sir.

Let me have that perfectly clear. Will you kindly read the words again and give His Lordship the exact words on which your statement lies.

Mr. Grahame read.

When that mortgage was paid off or discharged or transferred?—It was not discharged.

Well, transferred. How much payable to the Carr Estate on the terms of the mortgage and the date at which it was to have been paid. When that was paid off was the Carr Estate to receive anything?—

10

CHIEF JUSTICE: You are quite certain, you consider that, even if the mortgage was transferred to the Carr Estate?—I do, I considered it then and I consider it now, that I was liable to pay Mr. Hunt $6\frac{1}{2}\%$ received on that £2,650.

Under the agreement you said in your affidavit that your benefit amounted to £1,600 more than Hunt. Yes.

Under this agreement were you entitled to 10% interest on unpaid purchase money?—The agreement between Hunt and the purchasers provided 10% .

Under that agreement did the 10% go into your pocket?—Well, that I cannot say. 20

Come, Mr. Grahame, you are an expert accountant?—No.

Did you get 100 guineas for doing the McConnell Estate books. If you tell me no, I will produce them for you. Yes, I did.

Why did you say no?—You asked me if I was an auditor.

Were you an expert accountant to get 100 guineas for your work. Do you understand accounts perfectly?—I do not understand them perfectly.

Under that agreement I must have it, that 10% on the unpaid purchase money went into your pocket?—Under the terms of this agreement it would. 30

In dealing with Hunt you were dealing with a client?—Yes.

A client of many years standing?—Yes, that is so.

When you were entering into this agreement whereby you were taking 90% purchase money, I put it strongly, taking the lot and paying him a commission of 10% for work done, did you think it advisable from Mr. Hunt's point of view to adopt the usual course and insist upon him having some independent advice?—It never occurred to me, nor was it a question of my duty to the Carr Trustees.

Do you agree now Mr. Grahame? You have been a solicitor for how many years?—17 years. 40

Do you tell His Lordship that your duty as solicitor to Hunt did not occur to your mind?—Yes.

Do you agree now that it was your duty to inform the Carr Trustees?—No.

Your duty to advise Hunt?—Yes.

In paragraph 58 of Affidavit "A" you set out the points that influenced you in your dealing with Hunt. The first point is Yes.

You did not take any mortgage over that land until after you became a partner of the Firm Ellis and Grahame?—April 1926.

The second ground was that the lease was mortgaged to you. We have had it from you at that date Mr. Hunt owed you nothing on that mortgage, how could that have influenced you?—I still held a mortgage and it was collateral.

No, it was not collateral to anything.

There was no document making it collateral to the Bank.

CHIEF JUSTICE : That was a long time before?—Yes.

10 But the mortgage was held by him although it was not discharged.

The next point is

Can you foreclose on a mortgage which was paid off and received the full amount advanced?—Yes, in the event of my having to meet the liability to the Bank.

How, by what authority do you make that suggestion. You have no document which sets that out as collateral? Can you explain to His Lordship the particular point that occurs to you?—When I gave that guarantee to the Bank I stated and Mr. Hunt agreed that that mortgage was to remain.

20 Did you do anything to put that in writing?—No.

CHIEF JUSTICE : When did you make the guarantee with the Bank?—In January 1932.

The mortgage had been reduced?—The amount of £580 had been repaid I am sure by January 1932.

And the amount due to the Bank had been reduced before November 1932?—I am not so sure about that. I do not know what the position of the account was in November 1932.

30 That mortgage was signed by me on the day I went away to Sydney on the 31st December. The discharged mortgage was lying with the cheque for £1,350. On the 31st December when I went away to Sydney I signed that discharge undated and the date was inserted subsequently when the discharge was used.

You suggest that you could foreclose on a mortgage which is not collateral to anything, when the whole sum has been closed off?—I suggest that I regarded that mortgage as collateral to my guarantee to the Bank.

Paragraph (c) This is what influenced you in dealing with Hunt . . .

Yes, I regarded it part of my security for the guarantee.

Paragraph (b)

40 The only benefit you took care he got was 10% up to £7,000 for subdividing and selling the land?—Under that agreement yes, but subsequently when I came back from Sydney and Mr. Hunt told me the way the thing was going I then said, “ Well, Hunt, you have got to get more than the agreement provides.”

This is the first we have heard of that?—I do not think it is.

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continued.

But that is the position, you were very anxious that Mr. Hunt
You took care that the benefit which he got was 10% of the value to which
he would be entitled to and you got 90%?—That is in figures.

Your next point (E.)

You were solicitor for the Estate?—Yes.

Was it not to the detriment of that estate that Hunt should complete
his option—Exercising the option was to the detriment of the Estate.

On that you say that you did not see any reason why you should
disclose your reasons to the Carr Estate?—Yes.

This last ground (f) Did not you know as a Solicitor that 10
even if Mr. Hunt had offered to give you the whole thing for nothing that
it was your duty to advise him to take independent advice?—In regard
to Hunt, yes.

On the 4th October you entered into a settlement with Mr. Ellis.—Yes,
to my cost.

And you entered into that settlement after taking Counsel's advice in
Sydney?—Yes.

The consideration offered for settlement was that Mr. Ellis was not to
take proceedings against you and Mr. Hunt for a period of 14 days. What
proceedings were threatened by Mr. Ellis?—Service of writ and statement 20
of claim.

For what?—For recovery of the land from Hunt and recovery from
me of the profits.

On what grounds?—That I was the real purchaser and that I did not
disclose that I was purchasing the property.

In your paragraph 49

Yes, it arrived ten minutes before I was due to interview Mr. Ellis.

Did you submit the facts to Counsel from which the opinion could be
given?—As fully as I could by cable. Mr. Ellis refused to allow me any
time to put the whole of the thing through Counsel. 30

At the time of that settlement you yourself took the view and said on
the suggestion of Mr. Ellis that you were the true purchaser of the land and
not Mr. Hunt?—No.

What induced you to make the settlement?—That my own opinion was
wrong and Counsel view was right.

That you were the true purchaser?—No, in purchasing from Hunt I
was wrong.

That settlement had nothing to do with your purchase from Hunt
except in so far as it affected the Carr estate. You knew perfectly well
that Mr. Ellis was informing you in connection with the Carr Estate.—Yes. 40

And you knew that he was putting it to you that you had purchased
from the Carr Estate without disclosing the purchaser?—He put it to me
that I had purchased without disclosing that I had purchased.

And you accepted that position and paid it after consulting Counsel?—I
acted on the opinion given to me.

With regard to the Vollmer Estate did you suggest to Mr. Hunt or did
Mr. Hunt suggest to you that you should take the money out of the Vollmer

Estate £2,000?—I cannot answer in those terms. Hunt suggested that the money should be got cheaper than $6\frac{1}{2}\%$.

Did you point out to him that under this agreement that it did not matter to Hunt whether the interest to the Carr Estate was $6\frac{1}{2}\%$, $7\frac{1}{2}\%$ or 15% .—No.

Did it occur to him or did it occur to you that it would be a very good thing to get the money at $5\frac{1}{2}\%$ instead of $6\frac{1}{2}\%$. It occurred to both of us. Hunt put it to me that the money could be got cheaper than $6\frac{1}{2}\%$.

Did you tell him it had nothing to do with him?—No.

10 You were the Managing Trustee of the Vollmer Estate?—Yes.

And in your capacity as Managing Trustee of the Vollmer Estate did you have the control of some £5,000 or £6,000?—Yes.

Did you after the acceptance of this mortgage of the 8th November 1932 considerably after that whilst that was operative take a transfer of the Carr mortgage to yourself as Trustee of the Vollmer Estate?—Yes.

Did you on the 12th February register a variation of that mortgage?—Yes.

20 What was the effect of the variation of the mortgage?—To alter the rate of interest from $6\frac{1}{2}\%$ to $5\frac{1}{2}\%$ and to provide for the mortgage to be paid off without notice.

I put it to you that the only person to benefit by that was yourself?—No.

Well, will you explain how Mr. Hunt was benefited?—Hunt got the money at $5\frac{1}{2}\%$ — 1% less.

Will you tell me Mr. Grahame, we have got this mortgage before us, you will remember we know something of the construction of it, can you tell me that mortgage of the 8th November before you what benefit Hunt got by the reduction of that interest?—I thought Mr. Crompton and I still think he got the benefit of 1% .

30 CHIEF JUSTICE: You believe that you were still liable to pay $6\frac{1}{2}\%$ to Hunt, you benefited to the extent of 1% .—No, I considered that that agreement was binding on me notwithstanding the reduction to Hunt.

When the mortgage to the Carr Estate was transferred that the interest was reduced from $6\frac{1}{2}\%$ to $5\frac{1}{2}\%$?—As between Hunt and the Vollmer Estate he paid $5\frac{1}{2}\%$. He had been paying $6\frac{1}{2}\%$. As between Hunt and myself I still had to pay Hunt $6\frac{1}{2}\%$ on £2,650.

And who benefited by the condition that you could pay off the principal without any notice?—Hunt would benefit and I would benefit.

40 How would Hunt benefit?—Because it would enable him to give title to his purchasers.

Now were you agreed to give title to his purchasers throughout?—Yes.

And did you not hold this money paid for these properties and receive up to £3,000 without paying any back to the Vollmer Estate?—I received between July and September £2,000 from purchasers and paid in full.

No. 16.
Notes of
Evidence.

G. F.
Grahame.
Cross-exa-
mination—
continued.

No. 16.
Notes of
Evidence.
—
G. F.
Grahame.
Cross-exa-
mination—
continued.

Did you discharge?—Yes. It was with the full appreciation that the money was to go to the Vollmer Estate.

You did keep it until October?—As explained in the affidavit it would have been paid on the 30th September.

It could just as easily have been paid in in July?—Yes, loss of interest to the Estate, though.

You paid the interest at $5\frac{1}{2}$?—Yes.

You did not make any payment in respect of interest in lieu of notice?—No.

You have kept a Trust Account in your books, in your office books of the Vunivesi Estate?—Yes. 10

That Trust Account disclosed I think the lump sums which were received, no details as to how it was dealt with?—It was a cash book in the Trust Account.

Did you keep any set of books, or a cash book and ledger?—Yes.

Entirely in your own handwriting?—No.

Until after this disclosure was made are there any entries not in your hand writing?—Yes, one of my clerks, the Book-keeper.

When?—Going back to June. He made entries from June.

Was that book kept in your private safe?—No. 20

In your office?—No.

Where?—In a drawer in a cupboard with Hunt's matters.

Does that show that you received money and transferred it to yourself through that Trust Account?—Yes, when the account was in credit it went to me.

All that Hunt got was 10%?—He got more than 10%.

Well, you used to make him advances?—That is a fact. The purchase money up to September was £2,500. Mr. Hunt's commission on that would have been £500, to that date he had £700.

You realised that when you entered into this arrangement that you were the Managing Trustee of the Vollmer Estate?—Which, the mortgage? 30

Yes?—Yes.

The beneficiaries of this estate are half-castes?—Yes.

A contributory mortgage you agree is not a Trust investment?—No.

You think you had a right to make this mortgage?—This is not a contributory mortgage.

If not what does the memorandum mean which you showed that this money consisted of £2,000 included £2,000 of the Vollmer Estate—The mortgage is to me as Trustee.

I know it is and I think as Trustee you had sole control of securities? £2,000 of that money belongs to the Vollmer Estate so that you have got £2,000 of that money on a contributory mortgage, Kraft Estate, Tottenham £2,000?—Yes. 40

CHIEF JUSTICE: Are you trustee for the Kraft Estate?—I have a power of Attorney.

What would you describe as a contributory mortgage?—Where two or more mortgagees are named in the mortgage.

You have that idea . . . owners of the money have got any interest?—If I disclosed that I am a trustee.

The trustee for whom?—That is disclosed by the memorandum.

But the memorandum is a lease document, you showed it to me? Suppose for a moment that that memorandum was lost, you were out of the way, what would we know what had become of the £2,000 of the Vollmer Estate money if you could invest it in your own name?—You would know
10 it from the Vollmer accounts.

Suppose that the property would not give the value the mortgage represented?—You would . . . as against any person.

Against you?—Yes.

You know that a second or contributory mortgage is not allowed. We wanted our money what would be the position?—Well, if the Court held that it was a contributory mortgage then that would have been a breach of trust.

The suggestion of giving a contributory mortgage is professional misconduct?—In my report I said it was not. The charge against me is that
20 I invested Vollmer Estate. . . .

You know quite well Mr. Grahame that is not the real . . . of the misconduct which is referred to by the Attorney General. It is variation of mortgage?—That I have been guilty of fraud on the Vollmer Estate.

Suppose Major Tottenham wanted to foreclose his mortgage, what would be the position?—Well, I would have to give him £2,000.

SIR HENRY SCOTT: First of all with regard to this guarantee to the Bank. When Mr. Hunt borrowed certain money from the Bank your security was collateral security to the Bank?—Yes.

That money that Mr. Hunt borrowed from the Bank was borrowed at
30 call?—Yes.

And so far as the Bank and you were concerned your guarantee is still in existence?—Yes.

The other point I want to ask you about is this question of when the Carr Estate mortgage was transferred to the Vollmer Estate where was the money of the Vollmer Estate prior to it being used for paying off the Carr Estate, where was it deposited?—There was £820 in the current account of the Bank of New Zealand bearing no interest, another £1,000 in the Savings Bank bearing $2\frac{3}{4}$, 3% up to £500 and $2\frac{1}{2}$ % up to £1,000 there were two other mortgages out.

And the rate of interest that was provided for the Vollmer Estate to
40 receive was how much?— $5\frac{1}{2}$ %.

As a matter of convenience I might put it that it is usual instead of taking a new mortgage to take a transfer?—That is so.

CHIEF JUSTICE: That transfer was for only half the purchase price?—£2,000 was advanced from the Vollmer Estate that was what was owing to the Carr Estate.

No. 16.
Notes of
Evidence.

G. F.
Grahame.
Cross-exa-
mination—
continued.

No. 17.
Judgment,
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ember, 1934.

No. 17.
Judgment.

IN THE SUPREME COURT OF FIJI.
No. 57 of 1934.

IN THE MATTER of GEORGE FRIER GRAHAME of Suva a Barrister and Solicitor
of this Honourable Court.

JUDGMENT of HIS HONOUR CAPTAIN SIR MAXWELL HENDRY MAXWELL-
ANDERSON, C.B.E., K.C., R.N.(ret'd.), Chief Justice of the Supreme
Court of Fiji. Delivered the 27th day of November 1934

This is an application by the Attorney-General at the relation of the 10
Trustees of the estate of the late Harry Granville Nicholas Carr (hereinafter
call the Carr Trustees) and of the Public Trustee (as Custodian Trustee of
the estate of the late J. H. F. Vollmer) that George Frier Grahame, a
barrister and solicitor of this Court, be struck off the rolls or otherwise
dealt with as to the Court may seem fit for professional misconduct.

The facts of the case are so clearly set out in the affidavits which
accompany the Attorney-General's application, as also in Mr. Grahame's
two affidavits in reply, that there is no need to recapitulate them here.
Indeed, as was said during the course of the hearing, there is no real dispute
as to facts but only as to the inference to be drawn from them. 20

I find it proved that Mr. Grahame did in fact purchase from the Carr
Trustees the estate known as Vunivesi without disclosing to the trustees
that he was in fact the purchaser, and that at a time when he was a member
of the firm (Ellis and Grahame) of the solicitors acting for the trustees.

Whether or no such transaction may be sustainable in law is not the
question which I now have to decide. I have to look at all the circum-
stances surrounding this sale and purchase and to decide whether or no
professional misconduct is disclosed.

It seems clear that in October, 1932, Hunt was consulting Grahame
as to the exercise of his option to purchase the estate and on November 2 30
Hunt informed the firm that he intended to exercise his right to purchase.
The next day Ellis so informed Clapcott, his co-trustee, and on November 4
Ellis left Fiji for Australia, leaving Grahame in sole control of the firm.
The next step is the agreement of November 8 between Hunt and Grahame,
an agreement which the Attorney-General calls and in my view rightly
calls a secret agreement. It is impossible to believe that the terms of this
agreement had not been previously discussed in detail and practically
settled before Ellis left the Colony, and as to the position between the
parties thereto I accept Hunt's evidence. "I realised that he (Grahame)
would get more profit than I would, but things were so bad at the time 40
that I was glad to have his assistance and that was why I made the suggestion
as I did."

Hunt's evidence amounts to this : I knew that if the £4,000 could be raised there was profit to be made, and so I suggested to Grahame a scheme or plan.

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—continued.

Grahame knew full well, I must hold, that it would be to the benefit of the Carr Trustees that Hunt's option should lapse and that the trustees should reap the benefit of the enhanced value of the property. I am of opinion that he knew that his firm had received inquiries as to the sale of the land and he admits that Hunt told him that sales were in sight and that there was profit to be made, a profit which, it is only fair to add—but still a profit—which Grahame thought optimistic. Events have shown
10 that Hunt was the more correct in his estimate but be that as it may, the result is the same, namely, that Grahame entered into an agreement with Hunt, the true effect of which is, I hold, that Grahame in fact became the purchaser of the property. The terms of that arrangement are clear, viz., that upon each occasion upon which Hunt became liable to make a payment to the Carr Trustees at the same moment Grahame became liable to make an equivalent payment to Hunt, and so in fact Grahame paid. As Hunt admits in his evidence, he has never found a penny piece towards the purchase price. "No. I did not pay any cash or any cheque. I have
20 an account with Mr. Grahame and he met all charges."

It is necessary here to consider the agreement between Hunt and Grahame. The original is in Grahame's own handwriting, upon what I term "scribbling paper." It is somewhat surprising to find such a document thus drawn in the office of a busy solicitor, but no doubt some explanation might be forthcoming. It is, however, a matter for grave comment when one finds that the duplicate of the agreement is also in Grahame's own handwriting, also upon scribbling paper, and, further, the fact emerges that Grahame himself (until June, 1934, at least) kept in his own handwriting all the accounts connected with the transaction. There is only one possible
30 inference. In Grahame's view the whole business must be kept so secret or confidential that even his own staff could not be permitted to have any knowledge thereof; scarcely the view of an upright and honest man believing that all his transactions were beyond suspicion.

The Attorney-General argues that this agreement shows conclusively that Grahame was the real purchaser since one term of the agreement is that Grahame shall employ Hunt as his agent for sale on a commission basis, and he adds with considerable force that if Hunt was the true purchaser why should the agreement provide for Hunt's remuneration? The agreement was clearly for Hunt to sell and for Grahame to buy upon
40 terms which required Grahame to provide Hunt with cash as and when required for the Carr Trustees but leaving Grahame at all times in complete control of the property, with Hunt as his agent. It is a further matter for comment that Grahame admits now that he kept no record of his interviews with Hunt and made no charges therefor, a somewhat peculiar proceeding if Hunt was consulting him professionally as the owner in regard to sales of his (Hunt's) own property.

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ember, 1934
—continued.

In paragraph 58 of the Carr affidavit Grahame states that he was influenced by certain considerations of which it is only necessary to refer to three.

(d) That Mr. Hunt was entitled to the benefits under his lease which he had held for nearly 10 years.

(c) That as against Mr. Hunt, Carr Trustees could not be entitled to more than £4,000 and therefore any assistance I rendered would not be to the detriment of that Estate.

(b) That the arrangement between Mr. Hunt and myself was made not at my suggestion but at his.

10

It is proved beyond dispute that Hunt himself was not in a position to exercise his option, and that it would have been to the benefit of Carr's Trustees if the option lapsed. Grahame states (paragraph 14) that he informed Ellis, his partner, that he wished to finance Hunt; there is dispute as to what extent, but I accept the Ellis version that if £4,000 had been mentioned, he (Ellis) would have been suspicious.

It appears to this Court that whatever may have been said Grahame never disclosed to Ellis the extent to which he was interesting himself in the matter, an extent which is disclosed in the agreement between Grahame and Hunt, an agreement which not only made Grahame the actual purchaser, entitled to demand a transfer of the property from Hunt, as set out in the agreement, but further made Hunt, Grahame's agent to resell on a commission basis, of which up to at least £7,000 Hunt was to receive 10 per cent. and Grahame himself 90 per cent. of the proceeds. Grahame also receiving 10 per cent. interest on unpaid balances, a fact which is not taken into consideration in calculating the profits as set out in paragraph 17 of the Carr affidavit.

20

Even, when giving evidence, Grahame still maintains that he owed no duty to the Carr Trustees, and in paragraphs 5 and 8 of the Vollmer affidavit he sets out his views of the position, but he has admitted now that the mortgage of the lease was fully discharged before the date of the agreement.

30

I can only comment that to me it seems deplorable that any solicitor of long standing and experience, especially one who possesses the knowledge which this Court knows Grahame to possess, should be able to work himself into such a frame of mind and to conduct himself as Grahame has done throughout this transaction. I was far from being impressed by Grahame's attitude when giving evidence; despite his admission that he was advised by counsel in New South Wales that his position was untenable, despite the settlement he entered into with the Carr Trustees, despite the secret nature of his arrangements with Hunt, he now pretends that he did not know that at the time of the settlement Ellis was dealing with him on the footing that he (Grahame) was the real purchaser and he puts forward a view of the law for which he is unable to quote any authority. It is with deep regret that I comment on Grahame's attitude under cross-examination

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which impressed me as designed to enter into argument with counsel rather than to answer the questions put to him.

The impression induced in the Court by this part of the case was that Grahame, seeing an opportunity to make personal profit out of a transaction so far forgot his duty to his clients, the Carr Trustees (and incidentally to Hunt, but that is no part of this case), as to place himself in a position which was wholly wrong from a professional point of view.

The second part of this painful case is in regard to the Vollmer Estate. Here again the facts are fully disclosed in the affidavits and the evidence, 10 but it is relevant to note that of the cestui que trust, Mrs. Vollmer is a native Fijian and the other beneficiaries are half-castes.

Holding as I do that Grahame was, in fact, the real purchaser of the Vunivesi property, it must follow that the dealings with the Vollmer trust funds were for his own account, and especially that the variation of mortgage was made for his own personal benefit and to the detriment of the cestui que trust. It is of some importance to note in the accounts of the Vollmer Estate that this Vunivesi mortgage is the only one in which money is advanced at so low a rate of interest as $5\frac{1}{2}\%$.

I am not impressed with the reasons given in paragraph 13 of the 20 Vollmer affidavit for the variation of the rate of interest, and in any event if Grahame really believed, as he stated, that he was, even after the Carr Trustees were paid off, bound to pay Hunt $6\frac{1}{2}$ per cent. it must result that the reduction to $5\frac{1}{2}$ per cent. enured to Grahame's benefit. And it may be relevant to state that in any event he does not appear to have paid Hunt either $6\frac{1}{2}$ per cent. or $5\frac{1}{2}$ per cent.

It appears to me that the Vollmer Estate is entitled to receive some —perhaps a substantial amount—moneys in respect of profits made personally by Grahame while using the estate moneys for his own purposes, which he, in fact, did by advancing moneys on mortgage from Vollmer funds, 30 nominally to Hunt, but actually to himself. I acquit Grahame of perpetrating a fraud on the Vollmer trust—but I again repeat that it is to my mind wholly deplorable that a man in his position should have been led to adopt the course he pursued.

It now becomes requisite to consider whether the acts of Grahame in these transactions amount to professional misconduct and if so, painful as it is to consider further to what extent censure and punishment should go.

I adopt mutatis mutandis the definition drawn up by the Master of the Rolls, Lopes and Davey, L.JJ., as set out in—*In re a Solicitor Ex parte The Law Society* (1912 I.K.B. 302): “If it is shown that a solicitor in the 40 pursuit of his profession has done something with regard to it which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency then it is open to say that he is guilty of professional misconduct.”

I have said that I acquit Grahame of fraud, but I am bound to hold in all the circumstances, especially as disclosed in his own affidavits, that he has been guilty of what (for reasons which will hereinafter appear) I term grave forgetfulness, very serious and very grave forgetfulness of the

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duty he owed to his clients concerned in these transactions, viz., the Carr Trustees and the Vollmer beneficiaries, as also of the duty owed to his partner Ellis.

Grave forgetfulness in the sense I use the term may in my view be not inaptly compared to negligence.

Neither is a crime *par se*, but just as negligence may in certain cases be so gross, as to render the acts complained of criminal, so may grave forgetfulness under certain circumstances amount to misconduct in the exercise of a profession.

In re a Solicitor 63 L.J. (Q.B.D.) 313, was a case in which it was alleged 10 that the Solicitor had combined the functions of professional adviser and borrower and although the solicitor was absolved of fraud, Mr. Justice Wills said : “ It cannot be permitted that those at the head of the profession should allow themselves looser moral notions than those lower down. How can a standard of professional conduct be maintained if those high up are allowed with impunity to set an example of grave forgetfulness of all that ought to be present to a right-minded man ? ”

Further, this Court must have regard to the circumstances of this Colony. In the case of *Macauley v. Judges of the Supreme Court of Sierra Leone* (1928 A.C. 344) which case, by the way, is an authority for the 20 proposition that it is professional misconduct to demand a fee out of all proportion to the work to be done, Lord Warrington of Clyffe, in delivering the judgment of the Privy Council, after referring with approval to a passage in the judgment of the Chief Justice of that Colony, which runs thus : “ It is a startling proposition . . . that people holding the peculiar views which Mr. Macauley apparently does hold with regard to the relations or otherwise of solicitor and client should be allowed to run loose in such ‘ an Alsatia ’ as the Sierra Leone Protectorate,” proceeded to say : “ It is essential that the people should be brought to feel the greatest 30 respect, not only for the impartiality and independence of the tribunals, but also for the honesty and integrity of those who practise before them,” and may I add, in my opinion, not only the people, but the Courts have a right to expect the utmost integrity in the practitioner.

It is impossible for this Court to disregard the fact that Fiji may also be likened to an Alsatia for solicitors. A large number of those who seek the advice and assistance of practitioners in this Court, are ignorant and semi or wholly illiterate natives and Indians. I use the description in no offensive sense to the coloured community, but merely to indicate their position vis-a-vis the solicitor.

I cannot but ask myself the question whether when, in a case where 40 the parties are practically all Europeans, such conduct as that of Mr. Grahame, has occurred it does not become desirable that the whole community should be protected.

“ It is for the interest of suitors that the Court shall interpose and prevent a man guilty of misconduct from acting as an attorney of the Court ” (per Lord Cockburn. *In re Hill* L.R. Q.B. 543).

Much as it is to be regretted I can come to no other conclusion than that Grahame has been guilty of professional misconduct.

It is not a question of punishing Mr. Grahame for what he has done. The sole question is the protection of the community and to decide what is right and proper in the circumstances becomes all the more difficult in the case of one who hitherto has been held in respect by his fellow citizens and occupied the highest place among them.

I come to the conclusion that, since I have absolved him of fraud, it is not necessary to strike Grahame off the rolls, but serious as the results
10 must be to him, I can do no less than suspend him from practice for a lengthy period, and the order will be that he be suspended from practice until July 1, 1936.

The operation of this order may be suspended until December 8th, to allow to Mr. Grahame an opportunity of settling his professional affairs.

Mr. Grahame must also pay the costs of this application.

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—continued.

No. 18.

Order.

IN THE SUPREME COURT OF FIJI.

No. 57 of 1934.

20 IN THE MATTER of GEORGE FRIER GRAHAME of Suva A Barrister and Solicitor of this Honourable Court.

TUESDAY THE 27TH DAY OF NOVEMBER, 1934.

Upon reading the application of His Majesty's Attorney General for the Colony of Fiji dated the 31st day of October 1934 and upon hearing the applicant in person and Mr. Robert Crompton K.C. of counsel for the Public Trustee and Sir Henry M. Scott K.C. of counsel for the said George Frier Grahame and upon reading the Affidavit of Samuel Howard Ellis sworn the 22nd day of October 1934 and filed in Civil Action No. 49 of 1934 the Affidavit of Bertie St. Julian Fisher sworn the 25th day of October
30 1934 the affidavit of Bertie St. Julian Fisher sworn the 29th day of October 1934 and the Affidavit of George Frier Grahame sworn the 15th day of November 1934 and filed herein it is ordered that the said George Frier Grahame be suspended from practice as a Barrister and Solicitor of this Honourable Court until the 1st day of July 1936 such suspension to take effect from the 8th day of December 1934 and it is further ordered that the said George Frier Grahame pay the costs of this application and the costs of the Public Trustee incidental thereto.

By the Court,

L.S. B. ST. J. FISHER,

Registrar.

40

No. 19.
Order in
Council
granting
special
leave to
appeal to
His Majesty
in Council,
20th De-
cember,
1935.

No. 19.

Order in Council granting special leave to appeal to His Majesty in Council.

AT THE COURT AT BUCKINGHAM PALACE

The 20th day of December, 1935

PRESENT

THE KING'S MOST EXCELLENT MAJESTY

LORD PRESIDENT
LORD COLEBROOKE

SIR LANCELOT SANDERSON
SIR KINGSLEY WOOD

Whereas there was this day read at the Board a Report from the
Judicial Committee of the Privy Council dated the 18th day of November 10
1935 in the words following viz. :—

“ Whereas by virtue of His late Majesty King Edward the
Seventh's Order in Council of the 18th day of October 1909 there
was referred unto this Committee a humble Petition of George
Frier Grahame of Suva a Barrister and Solicitor in the matter
of an Appeal from the Supreme Court of Fiji setting forth (amongst
other matters) that the object of the Petition is to obtain special
leave to appeal to Your Majesty in Council from an Order of the
Supreme Court of Fiji made on 27th November 1934 by His Honour 20
Captain Sir Maxwell Hendry Maxwell-Anderson the Chief Justice
of such Court whereby it was ordered that the Petitioner be
suspended from practice as a Barrister and Solicitor of the Court
until 1st July 1936 such suspension to take effect from 8th December
1934 and that the Petitioner do pay the costs of the application
upon which such Order was made and the costs of the Public
Trustee incidental thereto: that prior to the date of the Order
the Petitioner had practised for 17 years as a Barrister and
Solicitor in Fiji and had as stated by the Chief Justice in giving
his reasons for the Order ‘been held in respect by his fellow 30
citizens, and occupied the highest place among them’: that on
the 31st October 1934 Your Majesty's Attorney for the Colony gave
notice to the Registrar of the Supreme Court making application
that the Petitioner might be required to answer the allegations
contained in the affidavits which accompanied the application and
that his name might be struck off the roll of Barristers and
Solicitors of the Supreme Court or that he might be suspended
from practice on the ground that the facts stated in the affidavits
constituted professional misconduct on the part of the Petitioner
and on 1st November 1934 notice of the application was given to
the Petitioner by the Registrar: that the affidavits which accom- 40
panied the application were (1) an affidavit of Samuel Howard Ellis

(hereinafter referred to as 'Ellis') sworn the 22nd October 1934 (2) an affidavit of Bertie St. Julian Fisher Public Trustee sworn the 25th October 1934 (3) a further affidavit of the Public Trustee sworn 29th October 1934: that in answer to the application two affidavits were sworn by the Petitioner on the 15th November 1934: that the application was heard by the Chief Justice and oral evidence was given on both sides: that at the conclusion of the hearing the Chief Justice reserved judgment, and, at the same time said 'It is only right to say at once that I absolve Mr. Grahame of any charge of fraud; I am satisfied that his intentions were not fraudulent': that judgment was delivered by the Chief Justice on the 27th November 1934: that he acquitted the Petitioner of fraud but held that he had been guilty of grave forgetfulness amounting to misconduct and made the order for suspension: that the matters in respect of which the Chief Justice found that the Petitioner was guilty of misconduct are (1) the purchase by the Petitioner from John Linn Hunt (hereinafter referred to as 'Hunt') of an estate known as Vunivisi and (2) the lending by the Petitioner to Hunt of £2,000 part of certain trust funds referred to as 'the Vollmer trust funds' on the security of a mortgage of the Vunivisi estate carrying interest at the rate of 5½ per cent. per annum: and reciting the facts of the transactions leading up to the charges in question: that the Petitioner submits that the Order of the Chief Justice finding that he was guilty of professional misconduct and suspending him from practice was based on a mistaken view of the facts and the law and of the duty of a Solicitor in circumstances such as the present: that moreover he allowed his mind to be affected by the statements and opinions contained in a report thereinbefore referred to: And humbly praying Your Majesty in Council to grant him special leave to appeal from the Order of the Supreme Court dated the 27th November 1934 or for such further or other Order as to Your Majesty in Council may seem just:

"The Lords of the Committee in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal against the Order of the Supreme Court of Fiji dated the 27th day of November 1934 upon depositing in the Registry of the Privy Council a bond entered into by the Bank of New South Wales Threadneedle Street in the City of London guaranteeing the payment of £400 in the event of the Petitioner being ordered to pay the costs of the proceedings:

"And Their Lordships do further report to Your Majesty that the authenticated copy under seal of the Record produced by the

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Petitioner upon the hearing of the Petition ought to be accepted (subject to any objection that may be taken thereto by the Respondent) as the Record proper to be laid before Your Majesty on the hearing of the Appeal."

HIS MAJESTY having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor or Officer administering the Government of the Colony of Fiji for the time being and all other persons whom it may concern 10
are to take notice and govern themselves accordingly.

M. P. A. HANKEY.

No. 20.

No. 20.

Security Bond, 24th January, 1936.

(Not printed.)

In the Privy Council.

No. 87 of 1935.

ON APPEAL FROM THE SUPREME COURT
OF FIJI.

BETWEEN

GEORGE FRIER GRAHAME - *Appellant*

AND

THE ATTORNEY GENERAL OF
FIJI - - - - - *Respondent.*

RECORD OF PROCEEDINGS.

KIMBERS WILLIAMS & Co.,
34, Nicholas Lane, E.C.4.
Solicitors for the Appellant.

BURCHELLS,
5, The Sanctuary,
Westminster, S.W.1.
Solicitors for the Respondent.

EYRE AND SPOTTISWOODE LIMITED, EAST HARDING STREET, E.C.4.