

7, 1948

No. 48 of 1946.

In the Privy Council.

UNIVERSITY OF LONDON
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INSTITUTE OF ADVANCED LEGAL STUDIES

ON APPEAL
 FROM THE SUPREME COURT OF FIJI

44204

BETWEEN

YENKANNA (father's name Pullaiyer) (Defendant)

Appellant

AND

ACHANNA (father's name Naka Naidu) (Plaintiff)

- *Respondent.*

RECORD OF PROCEEDINGS.

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In the Privy Council.

ON APPEAL FROM THE SUPREME COURT OF FIJI.

BETWEEN

YENKANNA (father's name Pullaiyer) (Defendant) *Appellant*

AND

ACHANNA (father's name Naka Naidu) (Plaintiff) *Respondent.*

RECORD OF PROCEEDINGS.

10

No. 1.

WRIT OF SUMMONS.

No. 49 of 1944.

IN THE SUPREME COURT OF FIJI.

Between ACHANNA Father's name Nuka Naidu of
Namata in the District of Nadroga Cultivator Plaintiff

and

YENKANNA Father's name Pollaiya of Tavua
in the Colony of Fiji Cultivator Defendant.

*In the
Supreme
Court of
Fiji.*

No. 1.
Writ of
Summons,
6th
September
1944.

20 GEORGE THE SIXTH by the Grace of God of Great Britain, Ireland
and the British Dominions beyond the Seas, King, Defender of the Faith,
Emperor of India.

To Yenkanna Father's name Pollaiya of Tavua in the Colony of Fiji
Cultivator.

WE COMMAND you, That within fourteen days after the service
of this Writ on you inclusive of the day of such service you do cause an
appearance to be entered for you in an action at the suit of ACHANNA
Father's name Nuka Naidu of Namata in the District of Nadroga Cultivator
and take notice that in default of your so doing the Plaintiff may proceed
therein, and judgment may be given in your absence.

30 Witness the Honourable SIR OWEN CORRIE, M.C., Chief Justice
of Our Supreme Court at Suva this 6th day of September, 1944.

K. A. Stuart
for P. RICE
Solicitors for the Plaintiff.

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

*In the
Supreme
Court of
Fiji.*

The Defendant may appear hereto by entering an appearance either personally or by solicitor at the Registrar's office at Suva.

GENERAL ENDORSEMENT OF CLAIM.

The Plaintiff's claim is :

(1) For a DECLARATION that the Defendant holds the land containing 164 acres 1 rood 34 perches more or less known as "NAMATA (PART OF)" comprising in Certificate of Title number 6828 IN TRUST for the Plaintiff.

(2) For an ORDER directing the Defendant :

(A) To execute a registerable Transfer of the said land in 10
favour of the Plaintiff.

(B) To deliver to the Plaintiff the said Certificate of Title Number 6828.

(3) For repayment of the sum of £500.4.11 by the Defendant to the Plaintiff.

(4) Costs.

No. 1.
Writ of
Summons,
6th
September
1944,
continued.

NOTICE UNDER THE COURTS (EMERGENCY POWERS) ORDINANCE 1940 (as amended by the DEFENCE (AMENDMENT) REGULATIONS (34) of 1942.

TAKE NOTICE that under the Courts (Emergency Powers) Ordinance 1940 a person is not entitled, except with the leave of the Court to proceed 20 to execution on or otherwise to the enforcement of any judgment or order to which the Ordinance applies, and that if the Court is of opinion that the person liable to pay the debt or perform the obligation in question is unable immediately to do so by reason of circumstances directly or indirectly attributable to the present war, the Court may refuse leave to enforce the judgment or order, or may give leave to enforce it subject to such restrictions and conditions as the Court thinks proper.

AND FURTHER TAKE NOTICE that if judgment is given for the Plaintiff in this action, the Plaintiff intends to apply at the time when judgment is given for leave to proceed to execution or otherwise to the 30 enforcement of the judgment.

If you desire to take advantage of the protection afforded by the said Ordinance and appear at the trial or hearing, in person or by counsel, you will have an opportunity of shewing cause why the discretion of the Court should be exercised in your favour.

To the above named Defendant.

ENDORSEMENT OF SERVICE.

This Writ was served by me at Varoka in the District of Ba on the Defendant on Friday, the 29th day of September, 1944.

Indorsed the 29th day of September, 1944.

40

SASHI M. SINGH,
Solicitor's Clerk.
Ba.

No. 2.
STATEMENT OF CLAIM.

No. 49 of 1944.

IN THE SUPREME COURT OF FIJI.

*In the
Supreme
Court of
Fiji.*

No. 2.
Statement
of Claim,
19th
October
1944.

Writ issued the 6th day of September 1944.

Between ACHANNA Father's Name Nuka Naida of
Namata in the District of Nadroga Cultivator Plaintiff

and

10 YENKANNA Father's name Pollaiya of Tavua
in the Colony of Fiji Cultivator Defendant.

STATEMENT OF CLAIM.

The Plaintiff says as follows :—

1. The Defendant is the registered proprietor of that piece of land containing 164 acres 1 rood 34 perches more or less situated in the District of Nadroga in the Island of Viti Levu being portion of the land known as " Namata " and the whole of the land comprised in Certificate of Title Number 6828.

2. Prior to the sale referred to in the sixth paragraph hereof the said land was portion of the land containing in all 431 acres 2 roods
20 38 perches more or less comprised in Certificate of Titles No. 6656.

3. The Defendant is in possession of the said Certificate of Title Number 6828.

4. The Defendant acquired title to the said land comprised in the said Certificate of Title Number 6656 by virtue of a certain Transfer thereof from the Plaintiff who was the Defendant's immediate predecessor in title which said transfer was on the 16th day of December 1942 registered as Number 28905 subject however to three Leases of portions of the said last mentioned land registered respectively as Numbers 37/49, 28903 and 28904 and also to a certain Mortgage registered as Number 21195.

30 5. Such Transfer was made by the Plaintiff and accepted by the Defendant not absolutely but upon trust that the Defendant should pay off all moneys payable by the Plaintiff by virtue of the said Mortgage Number 21195 and that upon repayment of such moneys to the Defendant he the Defendant should re-transfer to the Plaintiff the said land comprised in the said Certificate of Title Number 6656.

40 6. All the said moneys have been paid and satisfied out of the purchase money paid on the sale of portion of the said land comprised in the said Certificate of Title Number 6656 to the Roman Catholic Mission in Fiji and the land comprised in the said Certificate of Title Number 6828 is the residue of the land comprised in the said Certificate of Title Number 6656 after deducting thereout the land so sold.

*In the
Supreme
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Fiji.*

No. 2.
Statement
of Claim,
19th
October
1944,
continued.

7. The said sale was negotiated by the Plaintiff and confirmed by the Defendant subsequent to the execution by the Plaintiff of the said Transfer Number 28905 and in consequence of such payment as aforesaid the said Mortgage Number 21195 has been discharged.

8. After payment as aforesaid of all moneys payable by virtue of the said Mortgage Number 21195 there still remains a balance of the said purchase money in the hands of the Defendant amounting to the sum of £500.4.11.

THE PLAINTIFF CLAIMS :—

(A) A declaration that the Defendant is a trustee for the 10 Plaintiff in respect of the land comprised in the said Certificate of Title Number 6828.

(B) That the Defendant be ordered to transfer the said last mentioned Certificate of Title and the land therein comprised to the Plaintiff.

(C) That the Defendant be ordered to deliver up the said last mentioned Certificate of Title to the Plaintiff.

(D) Judgment for the said sum of £500.4.11.

(E) Costs.

(F) Such further or other relief in the premises as to this 20 Honourable Court shall seem meet.

Delivered the 19th day of October, 1944.

P. RICE,
Solicitor for the Plaintiff.

No. 3.
Defence,
4th
December
1944.

**No. 3.
DEFENCE.**

No. 49 of 1944.

IN THE SUPREME COURT OF FIJI.

Writ issued the 6th day of September 1944.

Between ACHANNA Father's name Nuka Naidu of 30
Namata in the District of Nadroga, Cultivator Plaintiff
and
YENKANNA Father's name Pollaiya of Tauva
in the Colony of Fiji, Cultivator - Defendant.

DEFENCE.

1. The Defendant admits paragraphs 1, 2, 3 and 4 of the claim.

2. With reference to paragraph 5 of the claim the Defendant denies that he accepted a transfer from the Plaintiff not absolutely but upon trust that he, the Defendant, should pay off all moneys payable by the Plaintiff by virtue of Mortgage No. 21195 and that upon repayment of 40

such moneys to the Defendant he should re-transfer to the Plaintiff the said land comprised in Certificate of Title No. 6656. The Defendant further says that assuming that each and every such allegation is true :

*In the
Supreme
Court of
Fiji.*

(A) Such allegations do not constitute in law an agreement binding upon him.

No. 3.
Defence,
4th
December
1944,
continued.

10 (B) That he, the Defendant, did not sign any Declaration of Trust deed or document to the effect that he should pay off all moneys payable by the Plaintiff by virtue of Mortgage No. 21195 and that upon re-payment of such moneys to the Defendant he should re-transfer to the Plaintiff the said lands comprised in Certificate of Title No. 6656 and as he, the Defendant, is the person alleged to be charged thereby, the Plaintiff is barred in law from bringing this action and he, the Defendant, will rely upon the provisions of The Indemnity Guarantee and Bailment Ordinance No. 2 of 1881 and more especially section 59 thereof.

(C) That there was no consideration for he the Defendant re-transferring the said land to the Plaintiff.

20 (D) That the alleged agreement or undertaking to re-transfer the said land to the Plaintiff is void for uncertainty as it does not state who was to repay the Defendant, when or how the moneys were to be repaid to him ; who was to pay the interest under the mortgage and who was to pay the costs of transfer discharge of Mortgage etc.

3. With reference to paragraph 6 of the claim the Defendant says he is unable to reply with certainty to this paragraph as it is not clear what the Plaintiff refers to in the expression the "said moneys." The Defendant admits that he sold part of the land comprised in Title No. 6656 to the Roman Catholic Mission in Fiji and that part of the proceeds of such sale were used by him to discharge his liability under Mortgage 30 No. 21195 and that Title No. 6828 which he now holds is the balance title.

4. The Defendant denies that the said sale was negotiated by the Plaintiff and confirmed by the Defendant, subsequent to the execution by the Plaintiff of the said Transfer No. 28905 and in consequence of such payment as aforesaid the said Mortgage No. 21195 has been discharged. The Defendant admits that such sale was negotiated and completed subsequent to the execution by the Plaintiff of the said Transfer No. 28908 but says it was not negotiated by the Plaintiff but the Plaintiff through his Solicitor had notice of such sale.

40 5. The Defendant denies that after payment of all moneys payable by virtue of the said Mortgage No. 21195 there still remains a balance of the said purchase money in his, the Defendant's hands, amounting to the sum of £500.4.11.

6. The Defendant says that the Transfer by the Plaintiff to the Defendant of the lands comprised in Title No. 6656 was a genuine dealing and that he, the Defendant, had an indefeasible title to the lands comprised in the said Title and now has an indefeasible title to the lands comprised in Title No. 6828 and will rely upon the provisions of the Land (Transfer and Registration) Ordinance 1933 and more especially upon Section 10 and 14 thereof.

*In the
Supreme
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Fiji.*

No. 3.
Defence,
4th
December
1944,
continued.

7. The Defendant says that the lands transferred to the Defendant by the Plaintiff were part of the lands comprised in Title No. 4085A. The said Title contained an area of 456 acres 2 roods 38 perches and was sold by Mr. J. T. Mackie to the Plaintiff for the sum of £700.0.0 vide Transfer No. 8759 registered on the 4th December 1933.

8. The Defendant says that the Plaintiff borrowed £700.0.0 from Vatu Investments Limited on the security of the land he had purchased from the said J. T. Mackie.

9. The Defendant says that the Plaintiff sold portion of the lands and received balance Title No. 6656. 10

10. The Defendant says that in or about the year 1942 the Plaintiff was unable to meet his liability under the said Mortgage and sold the lands comprised in Title No. 6656 to the Defendant subject to the said Mortgage and other registered encumbrances, for a nominal consideration. The exact amount then owing under the Mortgage was not known but the Defendant was advised and accepted it as a fact that the amount owing was about £600. And he further says that he paid all legal costs connected with the transfer of Title No. 6656 by the Plaintiff to him; the costs of discharging the said mortgage; incidental costs in connection with the sale by him to the Roman Catholic Mission of part of the land 20 and interest payable under the said mortgage.

11. That since the date of the Transfer by the Plaintiff to himself of the land comprised in Certificate of Title No. 6656 he, the Defendant, has received all the rents and profits from the land as registered proprietor of the same.

12. The Defendant says that it was not incumbent upon him to sell the whole or any portion of the land comprised in Title No. 6656 to meet his liability, as transferee, under Mortgage No. 21195 as he was possessed of other freehold and leasehold lands and moneys and was at all times in a position to meet his liabilities under the said Mortgage. 30 That he sold about 267 acres which said land is comprised in Title No. 6827 to the Roman Catholic Mission because it was poor class land and for the most part not suited for agricultural purposes and the price agreed upon was attractive and far in excess of its productive value as agricultural land. The Defendant further says that he based his value of the land in part upon the fact that the Plaintiff had sold 25 acres of the same class of land as he the Defendant had sold to the Roman Catholic Mission, for the sum of £32.0.0 vide Transfer No. 26055.

COUNTERCLAIM.

1. The Defendant repeats paragraphs 1 to 12 of the Defence and 40 says that following upon the transfer by the Plaintiff to the Defendant of the lands comprised in Title No. 6656 the Defendant permitted the Plaintiff to occupy and use portion of the said land free of rent as a tenant at will.

2. The Defendant says that he has demanded possession from the Plaintiff of the premises occupied by him and that the Plaintiff has

neglected and/or refused to give up possession of the said premises to the Defendant.

*In the
Supreme
Court of
Fiji.*

THE DEFENDANT CLAIMS :—

(A) That the Plaintiff be ordered to deliver up to the Defendant forthwith the said premises.

(B) Costs.

(C) Such further or other relief in the premises as to this Honourable Court shall seem meet.

No. 3.
Defence,
4th
December
1944,
continued.

Delivered the 4th day of December, 1944.

10

N. S. CHALMERS,
Solicitor for the Defendant.

No. 4.

REPLY AND DEFENCE TO COUNTERCLAIM.

No. 49 of 1944.

IN THE SUPREME COURT OF FIJI.

Between ACHANNA father's name Nuka Naidu of
Namata in the district of Nadroga Cultivator Plaintiff

and

20 YENKANNA Father's name Pollaiya of Tavua
in the Colony of Fiji Cultivator Defendant.

No. 4.
Reply and
Defence to
Counter-
claim,
11th
December
1944.

REPLY AND DEFENCE TO COUNTERCLAIM.

The Plaintiff says that :—

1. As to the second paragraph of the Defence :

(A) He joins issue upon the allegations in the first sentence of such paragraph but will further object in law that the Defendant's plea in such sentence is evasive within the meaning of Order 19 Rule 19.

30 (B) He will object in law that no provision in " The Indemnity Guarantee and Bailment Ordinance No. 2 of 1881 " nor in section 59 thereof can operate to prevent the proof of the matters pleaded in the fifth paragraph of the Statement of Claim delivered herein.

2. As to the fifth paragraph of the Defence he will object in law that the plea therein is evasive within the meaning of Order 19 Rule 19.

3. As to the sixth paragraph of the Defence he will object in law that no provision of " The Land (Transfer and Registration) Ordinance 1933 " nor of Section 10 and/or 14 thereof can operate so as to defeat the Plaintiff's claim as pleaded in the said Statement of Claim.

*In the
Supreme
Court of
Fiji.*

No. 4.
Reply and
Defence to
Counter-
claim,
11th
December
1944,
continued.

4. As to the seventh paragraph of the said Defence the area of the title therein referred to was 465 acres but save as aforesaid he admits the allegations contained in the said seventh paragraph.

5. As to the eighth and ninth paragraphs of the said Defence he admits the allegations therein contained but further alleges that the sale therein referred to was the subject of an agreement entered into prior to his borrowing the sum of £700.0.0 therein mentioned.

6. As to the tenth paragraph of the said Defence he admits :

(A) That he was at the time of execution of transfer number 28905 unable to meet his liability under Mortgage Number 21195. 10

(B) That the defendant paid all legal costs connected with the transfer of title 6656 and also the costs of discharging Mortgage No. 21195 which said latter costs were paid out of the purchase money received by the Defendant out of the sale referred to in the sixth paragraph of the said Statement of Claim.

Save as aforesaid he denies the allegations contained in the said tenth paragraph.

7. He admits the allegations contained in the eleventh paragraph of the said Defence but further alleges that the rents and profits therein referred to were received by the Defendant as registered proprietor in law though not in equity of the land therein referred to and furthermore that he the Plaintiff has at all material times been and still is in possession of the said land. 20

8. He denies the allegations contained in the twelfth paragraph of the said Defence.

9. He admits that he has at all material times occupied and that he still occupies the land referred to in the first paragraph of the Counterclaim delivered herein but save as aforesaid he denies each and every allegation contained in the said first paragraph and further alleges that he has occupied and continues to occupy such land as an equitable owner. 30

10. As to the second paragraph of the said Counterclaim he admits that the Defendant has demanded from him possession of the premises therein referred to and that he the Plaintiff has refused to give up such possession but save as aforesaid he denies the allegations contained in the said second paragraph.

11. As to the Defendant's claim in the said Counterclaim he the Plaintiff will object in law that such a claim cannot be joined with his the Plaintiff's claim as set forth in the said Statement of Claim.

12. Generally he joins issue upon the allegations contained in the said Defence and Counterclaim. 40

P. RICE,

Solicitor for the Plaintiff.

Delivered the 11th day of December 1944.

No. 5.
JUDGE'S NOTES.

*In the
Supreme
Court of
Fiji.*

No. 49 of 1944.

IN THE SUPREME COURT OF FIJI.

ACHANNA

Plaintiff

and

YENKANNA

Defendant.

No. 5.
Judge's
Notes.

Lautoka,

Wednesday, 19th September, 1945.

10 P. Rice for Plaintiff.

N. S. Chalmers for Defendant.

RICE : The Defendant is a man of substance and is the son-in-law of Plaintiff. He never took possession of the property and the Plaintiff remained in possession.

Sec. 59 (d) of Indemnity Guarantee & Bailment Ordinance does not apply when fraud is alleged.

District Administrator of Lautoka v. Bakhtawali, Civil Action No. 98 of 1936.

Loke Yew v. Port Swettenham Rubber Co. 1913 82 L.J. P.C. 89 at p. 93.

20 Registration is not effective where fraud is proved.

CHALMERS : Fraud is not alleged on the pleadings. Para. 5 of Statement of Claim sets up a contract—not a trust.

PLAINTIFF (Sworn).

Defendant is my son-in-law. In 1942 I had difficulty in keeping up my payments under the mortgage. I received a notice from the mortgagees demanding repayment of the whole amount. I went to Defendant at Tavua. He agreed to find the money. We came to Lautoka. I asked the Defendant to pay off the mortgage and give the land back to me when that had been done. He said it was difficult to raise money at the present
30 time. He suggested that I should transfer the property to him and he would do his best to pay off the mortgage. That same day I transferred the title to him. I did this because Defendant is my son-in-law and I trusted him. Had I given it to an out-sider he would not have helped me out. It is not true that the transfer was out and out—it was on trust that after debt was paid off Defendant was to re-transfer land to me. Defendant agreed to this. Defendant has substantial means. Defendant said he would get the money from the Government Bank at a cheaper rate of interest. The property is about 25 miles from Sigatoka and I live there still. Defendant lives at Tavua. Malliappan, who lives near me
40 came to me and asked me if I wanted to sell a part of my land to the Roman Catholic Mission. I said I would sell the 300 acres on the land side of the road for £1,500 which I afterwards reduced at Malliappan's request to £1,000. The Indian Priest of the Mission came and saw me and we agreed the price and the area. Then the priest and I came to Lautoka and saw Mr. Stuart and an agreement was concluded with the Mission.

*In the
Supreme
Court of
Fiji.*
—
No. 5.
Judge's
Notes,
continued.

Defendant had nothing to do with the negotiations which were all carried out by me. After agreement was prepared, I took the priest and went to Tavua. I told the Defendant what I had agreed. I said the £1,000 would pay off my debt. Defendant said, "Very well. I was on the look out for money but since you have been able to get it, that will be all right." Defendant signed the agreement in Mr. Chalmer's office. The sale was completed by Mr. Stuart. After that I saw Defendant at Ba. I told him I wanted money and asked him to re-transfer balance of land to me so that I could raise some money on it. This was in Mr. Chalmers' office. Defendant said I could go back home and he would see me later. But he did not. I went to him twice but he did not give me any satisfaction about the balance of the money and the land. 10

So I called a Panchayat at Defendant's house.

Ghirau, Ramraj, Anandannair, Manikan, Thomas, Kathappa, Gajraj Singh, and several others were present. This is my signature on this document (Ex. B). Defendant also signed it. It is to do with the Panchayat. It was read over to me by the schoolmaster, Pertap.

Ex. B put in and read.

No agreement was reached at the Panchayat. I therefore went to my solicitor. 20

XXd. It was only after agreement for sale to Mission was prepared that I went to Defendant. The priest had the document and I went with him to Ba and Defendant was sent for from Tavua. Thereafter I left the matter to Defendant. The document is dated 21st June, 1943.

Letter of Rice 1-12-43 to Chalmers. Ex. C.

I authorised my solicitor to write this letter.

Q. You did not mention anything about balance of money ?

A. I trusted Defendant.

Letter of Chalmers 6-12-43 to Rice. Ex. D. I knew that Mr. Chalmers was acting for Defendant after the transfer to him and Mr. Rice was acting for me. My daughter went to look after Defendant's children when his wife died, and Defendant lived with her. I have now taken her away and Defendant has married another woman. When transfer was made to Defendant I did not tell my solicitor of the arrangement we had come to. 30

After I got demand for repayment of mortgage, I never went and asked for time. The demand came from Mr. Stuart. I was alarmed when demand came as I was in debt and was afraid I might lose my land. I could have raised the money elsewhere but I did not know how to go about it.

When I went to Tavua Defendant agreed to pay off the mortgage and we both went to Lautoka. 40

All the cane land was let to tenants—six with about 20 acres each. After transfer to Defendant he collected the rent. Arrears of rent due at time of transfer were paid to me. I told the tenants to pay rent to Defendant and trusted him that he would account to me for them. I did not say anything at Panchayat about being given by Defendant 20-25 acres of land (para. 16 Ex. B). I have not been served with a notice to quit.

P.W.2. KENNETH ALBERT STUART, Solicitor, Lautoka.

Practising in association with Mr. Rice.

Transfer 18th December, 1941. I prepared the original. This is a certified copy of it (Ex. E). Both Plaintiff and Defendant instructed me to prepare it. I understood I was acting for both. I registered it. After that I saw Plaintiff several times about the property, but I did not see Defendant. Plaintiff came about lessees who were taking out titles. When he came I told him about the position of the mortgage as I acted also for the mortgagees.

10 This document I originally drafted (Ex. F). It was amended by Mr. Chalmers. He struck out clause 10 and put in clauses 11 and 12. I prepared this document on the instructions of Plaintiff and Father Claudius and gave it to them. They later brought it back signed by both parties. After that I acted only for the Mission. The settlement took place I think in February 1944. The delay was due to a survey being required.

Since then I have had correspondence with Mr. Chalmers on the subject of this action—Identifies Exs. C. D. G. (22.6.44), H. (30.6.44), I. (receipt 23.3.44 for £500.4.11 balance of purchase money paid to Defendant), J. (receipt 23.3.44 £10.9.6 Chalmers' costs for acting for Defendant in sale to Mission). The mortgagees had been collecting the rents since 1939. I collected on their behalf and that arrangement continued after transfer to Defendant. The rents were applied to the reduction of the mortgage.

XXd. I never saw Defendant in connexion with the sale to Mission.

Re-Xd. In December, 1943, Mr. Chalmers asked me for a statement of the mortgage account and I sent him one.

P.W.3 RAMRAJ f/n Kalpi, Tavua, Cultivator.

30 I know both parties. I know of the Panchayat document. I was present at the meeting at Defendant's house. I saw both parties sign the document (Ex. B). It was read over to them before they signed it. The Defendant was not intimidated in any way. The clauses mentioned in document (Ex. B) (which was read to witness) were the things to be done to make a settlement. We decided that Defendant should return the property to Plaintiff. Defendant did not agree and meeting broke up. As I was going away Santokhi called me and Ghirau to come back to Defendant's house. We went. Santokhi suggested that Defendant should give Plaintiff 50 acres and the house. Defendant told us to tell Plaintiff to wait for two weeks and he would consider the matter. Plaintiff did 40 not agree. He said he wanted in addition £200 to settle. I told Defendant this but he said he would not give Plaintiff anything.

XXd. I went to Panchayat at request of Plaintiff. I had not previously known him. I went to help Plaintiff provided he was in the right. The document is an agreement on behalf of the Plaintiff and Defendant that we should discuss the matters in dispute. After a long discussion, the remainder of document after Plaintiff's and Defendant's signatures was written. This was because members of the Panchayat

*In the
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Court of
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No. 5.
Judge's
Notes,
continued.

*In the
Supreme
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No. 5.
Judge's
Notes,
continued.

thought that what was said should be written down. It contains all that was said as far as I remember.

By Court: I don't think Plaintiff's wife was there. (Para. 16 read to witness.) Achanna (Plaintiff) may have said what was attributed to his wife in this paragraph.

Re-Xd. Nil.

Close of Plaintiff's Case.

DEFENDANT.

Plaintiff's daughter lived at my house for a year after my first wife died and then I married again. Plaintiff came to me at Tavua and offered the land in dispute to me. He wanted me to buy it. He said he had bought it for £700 and there was a debt of close on £500 on it. He said he had spent money on the land in addition to the £700 he had paid for it. I offered to buy it at the amount that was owing on it and Plaintiff agreed. He told me the mortgagees had demanded the repayment of the mortgage. Having come to an agreement, the next day we went to Lautoka to Mr. Rice's office. A transfer was drawn up and Plaintiff signed it. It was left with Mr. Stuart to register. I later paid his fees through Mr. Chalmers. The allegation in para. 5 of Statement of Claim is not true. It was an outright sale. I agreed to Plaintiff remaining in his house until he could get another place—I was satisfied that rents should be taken towards liquidating mortgage. The mortgagees were glad I had taken over property and they did not demand the repayment of the mortgage from me. 10 20

The priest came to Muthusami's house in Tavua looking for me. I met him at Lomolomo. He told me he wanted a piece of land for a school. I offered him a piece and we fixed the price at £1,000—a deposit of £100 was to be paid and purchasers were to pay all costs. I told him to see Plaintiff as he was on the land and he could help with the papers. I did not see priest again until I came to sign the agreement at Mr. Chalmers' office. 30

Defendant never asked me to re-transfer balance of land after agreement for sale to Mission. I remember the Panchayat. A lorryload of people came to my house. Ramraj said Plaintiff had told them there was to be a discussion between Plaintiff and Defendant about land. I said there was nothing to discuss. They nevertheless asked for permission to discuss the matter and I agreed and signed document. I signed document because some of the people were speaking angrily. They said Plaintiff had no land and I should give him some and the house in which he was living. I refused. 40

XXd. "Transferor declares value of property does not exceed £1,500." (Extract from Transfer to Defendant in 1941.) Ex. H. "mortgage debt then considered full value of land."

I heard the transfer read over to Plaintiff before he signed it but I don't remember the passage relating to the value of land. I paid the costs including stamp duty £7.10.0 (i.e., ad valorem on £1500). I have had land dealings before. Mr. Stuart may have got this figure of £1500

from the mortgagees. Ramatar suggested I should sign Panchayat. He said nothing would come of it and I thought so too. I was not frightened by the people who came.

Adjourned to 20.9.45.

Thursday, 20th September, 1945.

Second Day.

Defendant—*XXn.*—contd.

I saw the property at Namata a few times before I bought it. I went there in connection with Plaintiff's daughter. I thought it was worth 10 £500-£600. On the sale to the Mission I asked £1,100 at first. The part of the property I have retained is more valuable than that sold. I do not know what it is worth. Ramraj's evidence was partly true and partly not. What is written in the Panchayat below our signatures was read over to me. Para. 2 of Ex. B. I must have stated that property was sold through me and not through Plaintiff. All the 14 members of Panchayat live in Tavua. Plaintiff lives 60 miles away or more. Ramautar is a friend of mine. None is an enemy of mine but I think some were prejudiced that day in favour of Plaintiff. The Panchayat did decide I should return property to Plaintiff but I did not agree. The 20 paragraph above our signatures was not read over to me before I signed and I could not read what was written. I signed because someone said if I didn't sign they would decide against me. Not all the members said I should return land. Some refused to come to a decision. I don't remember which. I have a farm at Tavua ; 10 acres from Colonial Sugar Refining Company and 35 native land. I intended to make money out of property I bought from Plaintiff, either by selling it at a profit or by letting it at a good rent. I have told people I had a property for sale but I can't remember to whom I said this. I did not mention a price.

Plaintiff was allowed to stay on property until he could find another 30 place. I expected him to look after the property. I do not know if he ever looked for another place. I let him stay from 1941 to 1944 (date of eviction notice) as it suited me to have a caretaker

Ex. H. "My client has treated Achanna in a very liberal manner . . ." I can't remember whether I told my solicitor that Plaintiff was acting as a caretaker. I don't know if Plaintiff had offered the property to anyone else before he sold it to me. He told me he had tried to raise a loan but nobody would lend. When Plaintiff came to me at Tavua he first asked for a loan but I said how could he repay me since he was unable to keep up the payments on the mortgage. He agreed with this 40 view and then offered to sell me the property.

Ex. K. Receipt for £17. I don't know if the charges were above scale if consideration was only £500. Lomolomo is about 8 miles from Nadi, about 50 miles from Tavua. My wife's parents live at Lomolomo. I went there to see them and also because I heard priest was there. The priest agreed to pay the costs when we met at Lomolomo.

By Court : My first wife died in 1938. I married again 30.1.40 (certificate produced). Plaintiff's daughter left my house about two years ago. Plaintiff took her away because of this dispute. She had been

*In the
Supreme
Court of
Fiji.*

No. 5.
Judge's
Notes,
continued.

*In the
Supreme
Court of
Fiji.*
No. 5.
Judge's
Notes,
continued.

with me for rather less than five years. It was about a month after I saw priest at Lomolomo that I signed agreement in Chalmers' office. Plaintiff came to Ba with the agreement and the priest. I suppose he did it to help me as he was in the house. I think the priest may have seen Plaintiff before he saw me at Lomolomo. Priest told me he had spoken to Plaintiff about the land and Plaintiff had referred him to me.

Re-Xd. Nil.

D.W.1. RAMPRATAP SINGH, Ba, Teacher.

In 1944 I was living at Tavua—at Defendant's house. I drew up this document (Ex. B). It was Sunday 25th June. Eleven or 12 people came and asked if they could discuss this matter of the land. Defendant refused at first when he was asked to sign but was prevailed on later to do so. Then a discussion took place which lasted about three hours. No agreement was reached. What follows signatures on document were statements made by Plaintiff and Defendant on various previous occasions and during the Panchayat. They were dictated to me by various members of the Panchayat. At the end some of the people said Defendant should give land back to Plaintiff. 10

XXd. I don't remember if I read document to Defendant before he signed. 20

By Court: I was not a member of the Panchayat. At the end the document was taken by Tambi. I was there and was asked to write and I did so.

Close of Defendant's Case.

CHALMERS: Alleged agreement was not stated in letter of 1st December, as it surely would have been had Plaintiff told his solicitor about it. It shows alleged agreement is an afterthought. There is no claim here for the balance of the purchase money.

Letter of 22.6.44 (Ex. G) is a new version to that contained in letter of 1.12.43 (Ex. C). 30

Halsbury—Vol. XIII, p. 813. "Trusts."

What Defendant was to do is quite ambiguous. Para. 5 of Statement of Claim: assuming there is a contract it cannot be enforced because (A) no consideration (B) terms incomplete, i.e., inchoate.

Goss v. Lord Nugent, 2 L.J.K.B. 127, Statute of Frauds.

Hoyle v. Hoyle & Hoyle (1893) 1 Ch. 84, 62 L.J.Ch. 182, Statutes of Frauds.

Leman & Whitley, 4 Russell 423 38 E.R. E. & E. Digest, Vol. XII, pp. 168, 1226 (practically overruled so stated in *Rochevoud v. Bowstead* (1897) 1 Ch. 196). 40

No evidence has been given of value of land. Plaintiff sold 28 acres for £35 before he sold to Defendant.

The value of £1,500 is merely quoted for purposes of stamp duty.

The mortgagees were dissatisfied with the security and they were only due £600 on it.

Plaintiff had given a bill of sale over his chattels.

The Panchayat was an attempt to get something in writing, i.e., some evidence to support Plaintiff's claim. There is no paragraph in it to support Plaintiff's present case—which is a previous agreement at time of sale.

Plaintiff has been guilty of laches. Hailsham, Vol. XIII p. 211.

RICE : Laches has not been pleaded.

This is dealt with in *Rochefouchauld v. Bowstead*.

Plaintiff's story is true—it is corroborated :—

10 (1) In 1941, amount of mortgage between £500 and £600. Transfer's declaration of value £1,500. Defendant's solicitor paid fees and stamp duty on that footing. Ex. H.

Sec. 19, Land Transfer Registration Ordinance, Transfer is Defendant's deed.

(2) Plaintiff's continued occupation.

Notice to quit came five days after Panchayat.

(3) Panchayat. Defendant would never have consented to it if Transfer had been a genuine sale. See para. (2). The members were all from Tavua.

20 (4) Plaintiff who negotiated sale to Mission. Ex. G. Why has Defendant not called Father Claudius ?

(5) Respective demeanours of Plaintiff and Defendant in witness box.

Ex. C says in effect that there was a trust for re-transfer and points to lack of corroboration apart from mortgage debt.

I do not say there was a contract but a Trust.

No. 6.

JUDGMENT.

ACHANNA f/n Nuka Naidu

Plaintiff

and

30 YENKANNA f/n Pollaiya

Defendant.

JUDGMENT.

In the year 1933 the Plaintiff bought from a Mr. Mackie a piece of land of about 456 acres in the district of Nadroga for £700 and mortgaged it to Vatu Investments Ltd. Later it appears that 25 acres were sold leaving the Plaintiff with 431 acres odd. In 1942 he had difficulty in keeping up the payments under the mortgage deed and the mortgagees called in the mortgage. In these circumstances the Plaintiff, who lived on the land in question, had resort to the Defendant who resided in the

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Supreme
Court of
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No. 5.
Judge's
Notes,
continued.

No. 6.
Judgment,
22nd
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Court of
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No. 6.
Judgment,
22nd
October
1945,
continued.

Tavua District some 60 miles or so distant, and an agreement was come to between them as a result of which the land was transferred for a nominal consideration to the Defendant subject to the mortgage. The Plaintiff says that the Defendant is a man of substance whom he regarded as his son-in-law and whom he trusted to help him out of his difficulties. Actually, the Defendant is not the son-in-law of the Plaintiff but in 1938 when the Defendants' first wife died, the Plaintiff's daughter went to live with the Defendant to look after his children, and although the Defendant married again in 1940, the Plaintiff's daughter continued to live in the Defendant's house until the year 1943 when the Plaintiff took her away 10 in consequence of the present dispute.

The agreement, according to the Plaintiff, was that the Defendant should pay off the mortgage and that when the Plaintiff should be in a position to reimburse him the Defendant was to re-transfer the land to the Plaintiff.

The Defendant, on the other hand, says that the Plaintiff came to him for a loan which was refused, whereupon the Plaintiff asked the Defendant to buy the land outright; the Defendant offered to purchase it for the sum due on the mortgage and the Plaintiff accepted his offer.

After the transfer was completed, the Plaintiff continued to reside 20 on the land and to cultivate a small portion of it; the rents of such part of the land as was leased to tenants were paid to the agent of the mortgagees to the credit of the mortgage account as they had been before the transfer was made.

In the year 1943, according to the Plaintiff, he was approached by Father Claudius of the Roman Catholic Mission with an offer to purchase a portion of the land and the Plaintiff agreed to sell all that part comprising approximately 267 acres which lay on the land side of the main road as distinct from that portion which was on the sea side of the said road for £1,000. When the area and price had been agreed, he took Father 30 Claudius to Mr. Rice's office in Lautoka where Mr. Stuart, who practises in conjunction with Mr. Rice, on their joint instructions drafted an agreement for the sale and purchase of the land agreed to be sold. The Plaintiff and Father Claudius then took this document to Ba and sent for the Defendant who came and agreed to the sale and passed the agreement on to his solicitor, Mr. Chalmers, to approve on his behalf. Mr. Chalmers made some alterations in the document, after which the Defendant signed it and it was taken back by the Plaintiff and Father Claudius to Mr. Stuart in Lautoka, who, in addition to acting for the Plaintiff and the mortgagees, 40 was also acting for the Mission; the purchase was finally completed in February or March, 1944, some delay having been caused by a survey being required. The Defendant disputes this account of the sale; in particular, he says that it was he who negotiated the sale with Father Claudius at Lomolomo and that it was only after an agreement had been reached that he referred Father Claudius to the Plaintiff as a person who was living on the spot and could assist the Father in the preparation of the necessary documents.

After the agreement for sale to the Mission had been concluded but before the actual completion of the sale, Mr. Stuart, on the Plaintiff's instructions, wrote as follows to the Defendant's solicitor on 1st December 50 1943 :—

Lautoka,
Fiji.

1st December, 1943.

N. S. Chalmers, Esq.,
Solicitor,
Ba.

Dear Sir,

Yenkanna to R.C. Mission.

*In the
Supreme
Court of
Fiji.*

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Judgment,
22nd
October
1945,
continued.

10 I enclose Transfer for perusal, and if in order for execution by your client, kindly let me know the amount required to settle.

You will be aware, that no consideration passed on the transfer of this block from Achanna to Yenkanna, and the former now wants Yenkanna to re-transfer it to him. Of course he will have to repay your client for anything he has spent on it, and if your client agrees, I shall be glad to know what amount he will require on re-transfer.

Yours faithfully,

P. RICE,

Per : K. A. Stuart.

to which Mr. Chalmers replied on the 6th December as follows :—

20

Ba, Fiji.

6th December, 1943.

P. Rice Esq.,
Solicitor,
Lautoka.

Dear Sir,

re Yenkanna & R.C. Mission.

30 I acknowledge your letter herein of the 1st inst. The Transfer to the R.C. Mission was presented for execution some time ago and has been executed by my client Yenkanna, and will be handed over to you as soon as the account with the mortgagees is settled and the mortgage is discharged and the balance purchase price is paid.

With regard to the other Transfer my client denies that Achanna has any claim to the balance of the land and is not prepared to sign the Transfer. In any case the matter of this transfer never cropped up before the deal with the Mission was completed. The balance title should be issued in the name of Yenkanna as agreed. Achanna, if he has any claim to the land, can take action later as he may be advised.

Yours faithfully,

40

N. S. CHALMERS.

On 25th June 1944, the Plaintiff took a party of persons collected from the district in which the Defendant lives to the Defendant's house in an endeavour to settle the dispute by arbitration (panchayat); the attempt was unsuccessful. On 6th September 1944 the writ in this action was issued. At the trial the Plaintiff and the Defendant gave evidence

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Court of
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—
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Judgment,
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continued.

and each called one witness to speak as to what had occurred at the panchayat.

It is upon this material, coupled with the documents which were produced at the trial, that the Court has to pronounce, bearing in mind that the onus of proof is upon the Plaintiff.

I have come to the conclusion that the Plaintiff's account of the transaction between him and the Defendant is the true account and the Defendant's version should be rejected for the following reasons :—

(A) The Plaintiff went to the Defendant for assistance but, according to the Defendant's account, he got nothing except that he parted with the only asset of value he had in return for the Defendant's undertaking responsibility for the repayment of the mortgage ; it has been suggested that he thereby protected his other assets, i.e., his cultivation and his goats, but as these appear to have been already included in a bill of sale, they remained in jeopardy. The transaction as represented by the Defendant seems to me an improbable one. 10

(B) The Defendant says that at that time the land was not worth more than the amount due on the mortgage, say £500 to £600. Why then was there a certificate on the transfer (for purposes of stamp duty) that the value of the land did not exceed £1,500 ? The Defendant says that he knows nothing about such a certificate but both parties sent to Mr. Stuart to prepare the transfer. Either Mr. Stuart knew the value (as he might have done, being also the solicitor for the mortgagees) or he asked the question of the parties and was told what to put. Moreover, a portion of the land was sold for £1,000 not much more than a year after the transfer and, according to the Defendant, the land which remained after the sale is the more valuable. Judging from the slender evidence on the subject before me, I should say that at £1,500 the land was not over-valued. 20 30

(C) The Plaintiff continued in occupation of the property and no attempt was made to terminate his occupation until after the panchayat, i.e., three years or more after the alleged sale.

(D) On the evidence, I believe that it was the Plaintiff who negotiated the sale to the Mission, and I disbelieve the Defendant when he says that it was he who did so.

(E) As a witness the Plaintiff struck me as being honest, albeit somewhat stupid, while the Defendant I thought untruthful.

The evidence in regard to the panchayat I do not think is decisive. The Defendant appears to have signed the submission with his tongue in his cheek ; he was willing that the members should talk since they seemed intent on doing so, but quite determined not to accept their decision unless it was agreeable to him. 40

There are two matters which seem somewhat to conflict with the Plaintiff's account of his transaction with the Defendant. The first is his solicitor's letter of 1st December, 1943, which has been set out above. One would have expected that the terms upon which the transfer was alleged to have been made to the Defendant would have been expressed

with greater precision and, in particular, that instead of an inquiry as to what amount the Defendant would require on re-transfer, there would have been a statement that the Defendant was about to receive (the sale to the Mission had not then been completed) a sum more than sufficient to repay him for any money he had spent on the property and a demand for the balance. Apparently Mr. Stuart thought it sufficient to draw attention to the nominal consideration for the transfer for the rest to be implied.

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Court of
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—
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continued.

10 The second matter is the statement of the Plaintiff himself in his examination-in-chief, viz.: "The sale was completed by Mr. Stuart. After that I saw Defendant at Ba. I told him I wanted money and asked him to re-transfer balance of land to me so that I could raise some money on it." It is uncertain when it was exactly that this was said. I take it that it must have been after the agreement to sell to the Mission but before the sale had been completed. If so, it is understandable because the Plaintiff would know that the Defendant had not yet received the purchase money from the Mission and he probably would not appreciate that the Defendant could not transfer the balance of the land until the sale to the Mission had been completed.

20 The questions of law which have been raised by the defence seem to be completely answered in the case of *Rochevoucauld versus Bowstead* [1897] 1 Ch. 196 which was followed in the local case of *Administrator of Lautoka versus Bakhtawali* (Civil Action No. 98 of 1936).

I come to the conclusion that the Defendant was a trustee for the Plaintiff of the land in question subject to a charge in the Defendant's favour for any sums which the Defendant might advance in connexion with the land whether for the repayment of the mortgage or otherwise.

There will be a declaration that the Defendant held the land in question in trust for the Plaintiff and an order directing that:—

30 (A) an account be taken of the moneys received and disbursed by the Defendant as such trustee as aforesaid;

(B) the balance due upon such account be paid by the Defendant to the Plaintiff or by the Plaintiff to the Defendant, as the case may be;

(C) the Defendant do execute in favour of the Plaintiff a transfer of the land comprised in certificate of title No. 6828.

The Defendant will pay the costs of these proceedings.

C. R. W. SETON,

Chief Justice.

Suva.

40 22nd October, 1945.

*In the
Supreme
Court of
Fiji.*

No. 7.

NOTICE OF MOTION for Leave to Appeal.

IN THE SUPREME COURT OF FIJI.

No. 49 of 1944.

No. 7.
Notice of
Motion for
Leave to
Appeal,
10th
November
1945.

Between **ACHANNA (father's name Nuka Naidu)** Plaintiff
and
YENKANNA (father's name Pullaiya) - Defendant.

TAKE NOTICE that this Honourable Court will be moved on Tuesday the 20th day of November 1945 at 10 o'clock in the forenoon or so soon thereafter as counsel can be heard by Mr. N. S. Chalmers of 10 Counsel for the above-named Yenkanna for leave to appeal to His Majesty in Council from the judgment dated the 22nd day of October, 1945.

Dated the 10th day of November, 1945.

(Sgd.) **GRAHAME & CO.**

As Agent for N. S. Chalmers
Solicitor for the above-named Defendant.

To Achanna the above-named Plaintiff and his solicitor Mr. P. Rice.

No. 8.
Order,
20th
November
1945.

**No. 8.
ORDER.**

IN THE SUPREME COURT OF FIJI.
Civil Jurisdiction.

20

No. 49 of 1944.

Tuesday, 20th November, 1945.

**ACHANNA
V.
YENKANNA.**

MOTION FOR LEAVE TO APPEAL TO PRIVY COUNCIL.

ORDER.

That Appellant either deposit with the Registrar, Supreme Court, or give the said Registrar a bank guarantee for £500 (Rule 4 (a)) within three months from to-day.

30

That the Appellant be given under Rule 4 (b) four months within which to prepare and dispatch Record to England.

Rule 5. Mr. Chalmers has agreed to get his client and execute a Transfer of the land in question to the Respondent, on condition that such transfer is lodged with the Registrar, Supreme Court. accompanied by a letter signed by Chalmers or his client or Rice or his client that such Transfer is not to be registered pending the termination of this appeal, subject to Rice being responsible for paying the stamp duty thereon and also responsible to the Commissioner of Stamps for the declaration as to value. Subject to the above consent there will be a stay of execution.

40

**R. C. HIGGINSON,
P.J.**

EXHIBITS.

Exhibits.

E.—TRANSFER, Achanna to Yenkana.

E.
Transfer,
Achanna to
Yenkanna,
registered
No. 28905,
18th
December
1941.

	Stamp duty (30 5/- stamps here) £7.10.0 (Sgd.) J. JUDD, Depty. Commissioner of Stamps Lautoka. 7.1.42.	No. 28905.	
		Registration Fees.	
		Lodgment	10. 0
		Memorial	2. 6
		New Title	—
		Memo. on New Title	—
10		Total	12. 6

Certified True Copy.
(Sgd.) E. C. WOODWARD,
Dep. Registrar of Titles.
14th Sept. 1945.

Revenue Receipt No. 28953.

Initials J.P.

FIJI.

TRANSFER.

I, ACHANNA Father's name Nuka Naidu of Namata in the District of Nadi in the Colony of Fiji Planter hereinafter called the transferor, being proprietor subject however to such leases, Mortgages and Encumbrances as
20 are notified by Memorandum underwritten or endorsed hereon of the following land :—

C.T. or C.G.	Number	Description	Province or Island	District or Town	Area A. r. p.	Part or Whole
C/T	6656	NAMATA (part of)	Viti Levu	Nadroga	431.2.38	Whole

in consideration of the sum of (£- 1/-) ONE SHILLING K.A.S. this day paid to the transferor by YENKANNA Father's name Pollaiya of Tavua in the said Colony of Fiji Planter hereinafter called the transferee, the receipt
30 of which sum the transferor doth hereby acknowledge, doth hereby TRANSFER to the transferee all the right title and interest of the transferor in the said land and the TRANSFEROR declares that the value of the said land does not exceed the sum of ONE THOUSAND FIVE HUNDRED POUNDS (£1500).

In Witness whereof the transferor has hereunto subscribed his name this eighteenth day of December, A.D. 1941.

ACHANNA His left thumb
Mark.

The Signature by mark of "ACHANNA" was made in my presence
40 and I verily believe that such signature is of the proper left thumb mark of the person described as Achanna Father's name Nuka Naidu of Namata

Exhibits.

E.
Transfer,
Achanna to
Yenkanna,
registered
No. 28905,
18th
December
1941,
continued.

in the District of Nadi in the Colony of Fiji Planter the transferor, and I certify that I read over and explained the contents hereof to the transferor in the Hindustani language and he appeared fully to understand the meaning and effect thereof.

(Sgd.) K. A. STUART Solicitor,
Lautoka.

Transfer No. 28905.
Registered 16th December, 1942,
at 11 a.m.

Lodged by Ellis, Munro,
Warren & Leys, Suva.

L.S. (Sgd.) J. J. REAL,
Dep. Registrar of Titles.

10

Subject to Lease No. 37/49 to the Colonial Sugar Refining Co. Ltd.
Subject to Mortgage No. 21195 to Vatu Investments Limited.
Subject to Lease Number 28903 to Durgaia.
Subject to Lease Number 28904 to Natha Singh.

F.—SALE AND PURCHASE AGREEMENT.

SALE AND PURCHASE AGREEMENT.

Stamped
4/-
F.
Sale and
Purchase
Agreement,
21st June
1943.

AN AGREEMENT made this 21st day of June, 1943 between YENKANNA Father's name Pollaiya of Tavua in the Colony of Fiji Cultivator (hereinafter called the "Vendor") of the one part and JOHN MARY OREVE of Suva Clerk in Holy Orders trustee for the Catholic Mission in Fiji (hereinafter called the "Purchaser") of the other part. 20

Whereby it is agreed as follows :

1. The Vendor will sell and the Purchaser will buy at the price of (£1,000—) One thousand pounds shillings pence the land described in the schedule hereto.

2. The said price shall be paid as follows : One hundred pounds is to be paid as a deposit on the execution of these presents and the balance on completion.

3. Possession of the premises is to be given and taken forthwith. 30

4. (Deleted).

5. (Deleted).

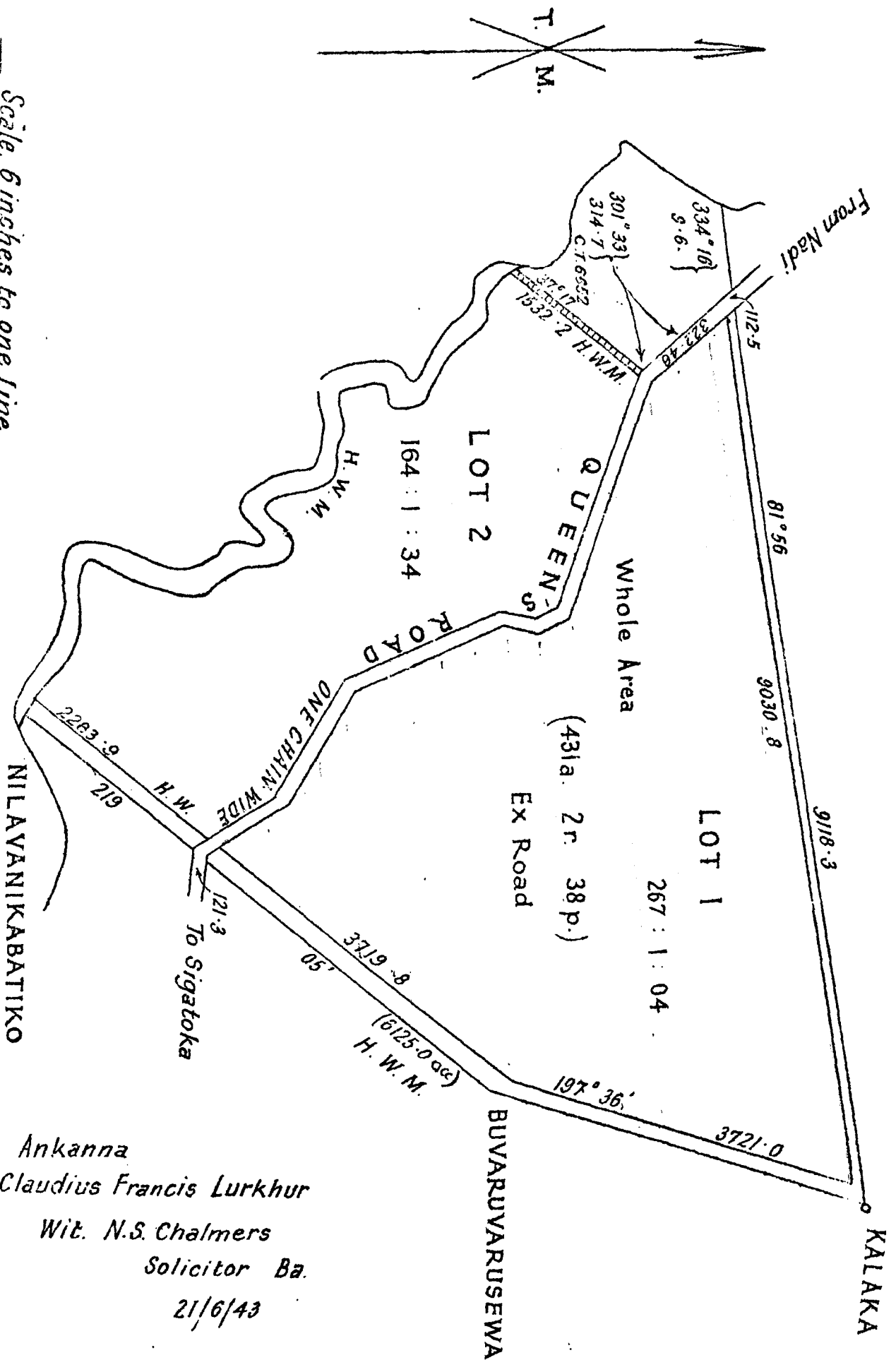
6. The Purchaser shall neither mortgage charge assign nor transfer his interest under these presents nor let sub-let or part with the possession of the said land or any part thereof nor give any lien or Bill of Sale over the crop or crops growing or to be grown on the said land without the previous written consent of the Vendor.

7. The Vendor shall be at liberty at all reasonable times by the Vendor or by the Vendor's servants or agents to enter the said land and every part thereof and inspect the same. 40

8. (Deleted).

9. Upon payment of the said price the Vendor will transfer to the Purchaser the said land and will make do execute and perfect all acts deeds and things necessary to vest the said land in the Purchaser. The Purchaser's costs and the incidental disbursements of the transfer including

Rough Sketch of Namata



Scale, 6 inches to one Line

Ankanna
 C. Claudius Francis Lurkhur
 Wit. N.S. Chalmers
 Solicitor Ba.
 21/6/43

costs of survey shall be paid by the Purchaser to the Purchaser's solicitors who shall prepare and register the transfer.

10. (Deleted).

11. The Purchaser shall pay the following costs: (A) All costs, including the survey and discharge of the existing encumbrances on the title (B) his own and the Vendor's solicitors costs (C) the costs of providing the Vendor with a balance title.

12. The Purchaser shall pay all interest due and payable by the Vendor as Mortgagor under a mortgage registered on the Vendor's title to the said lands as from the 30th day of June, 1943, provided however that anything to the contrary herein contained or implied notwithstanding the Purchaser shall have the right to apply the said purchase price in the first place in or towards satisfaction of the moneys payable in respect of such mortgage upon approval of the quantum of the Mortgagee's account.

Lastly (A) In these presents where the context admits the expression Vendor and Purchaser shall include their and each of their executors administrators successors liquidators and assigns and the said expression where the Vendor and/or the Purchaser consist of more than one person shall include jointly and severally each and all of the persons constituting the Vendor and/or the Purchaser and the provisions of these presents shall be construed accordingly.

(B) If the Purchaser does not observe or perform all the agreements and provisions herein contained or implied and on the Purchaser's part to be observed or performed the Vendor may without waiting any time or making any demand or serving any notice:

(i) Re-enter upon the said land and thereupon this agreement shall be wholly discharged and all moneys received by the Vendor on account of the said price shall be forfeited to the Vendor; or

(ii) Re-sell the said land at such time and in such manner and subject to such conditions as the Vendor may think fit and any deficiency in price and all charges attending the re-sale (less moneys already received) shall immediately afterwards be paid by the Purchaser to the Vendor and in case of non-payment shall be recoverable in liquidated damages.

THE SCHEDULE hereinbefore referred to.

All that land comprising 320 acres more or less being all that piece of land to the eastern or landward side of the Queen's Road and marked red on the plan annexed hereto and signed by the parties, and being part of the land known as "Namata" comprised and described in C/T 6656.

In witness whereof the parties hereto after these presents had been carefully read over translated and explained to them have executed the same.

Sgd. ANKANNA

JOHN MARY OREVE per

CLAUDIUS FRANCIS LURKHUR.

Witness:

N. S. CHALMERS,
Solicitor, Ba.

Exhibits.

F.

Sale and
Purchase
Agreement,
21st June
1943,
continued.

C.
Letter,
P. Rice to
N. S.
Chalmers,
1st
December
1943.

C.—LETTER, P. Rice to N. S. Chalmers.

Received
3.12.43.

P. Rice,
Barrister & Solicitor.
Commissioner for Oaths.

Offices at :
Lautoka, Ba, Nadi and
Nadroga.

Lautoka,
Fiji.
1st December, 1943.

N. S. Chalmers, Esq.,
Solicitor,
Ba.

10

Dear Sir,

Yenkanna to R.C. Mission.

I enclose Transfer for perusal, and if in order for execution by your client. Kindly let me know the amount required to settle.

You will be aware, that no consideration passed on the transfer of this block from Achanna to Yenkanna, and the former now wants Yenkanna to re-transfer it to him. Of course he will have to repay your client for anything he has spent on it, and if your client agrees, I shall be glad to know what amount he will require on re-transfer.

Yours faithfully,

P. RICE.

per :

(sgd.) K. V. STUART.



D.—LETTER, N. S. Chalmers to P. Rice.

Exhibits.

Recd.

8.12.43.

D.
Letter,
N. S.
Chalmers
to P. Rice,
6th
December
1943.

N. S. Chalmers
Barrister & Solicitor.

Chambers,
Ba, Fiji.

6th December, 1943.

P. Rice, Esq.,
10 Solicitor,
Lautoka.

re Yenkanna & R.C. Mission.

Dear Sir,

I acknowledge your letter herein of the 1st inst. The transfer of the R.C. Mission was presented for execution some time ago and has been executed by my client, Yenkanna, and will be handed over to you as soon as the account with the mortgagees is settled and the mortgage is discharged and the balance purchase price is paid.

20 With regard to the other Transfer my client denies that Achanna has any claim to the balance of the land and is not prepared to sign the transfer. In any case the matter of this transfer never cropped up before the deal with the Mission was completed. The balance title should be issued in the name of Yenkanna as agreed. Achanna, if he has any claim to the land, can take action later as he may be advised.

Yours faithfully,

(Sgd.) N. S. CHALMERS.

*Exhibits.***M.—LETTER, P. Rice to N. S. Chalmers.**

M.
Letter,
P. Rice to
N. S.
Chalmers,
11th
February
1944.

P. Rice
Barrister & Solicitor
Commissioner for Oaths.

Lautoka, Fiji.

11th February, 1944.

Offices at
Lautoka, Ba, Nadi and
Nadroga.

N. S. Chalmers, Esq.,
Solicitor,
Ba.

10

Dear Sir,

Yenkanna & Roman Catholic Mission.

I thank you for your letter of the 28th ultimo herein. All rents collected by me last year have been paid to the mortgagees, and are included in the sum of £162.5.1 which included the following amounts paid to me since Yenkanna took over :

Durgaiya rent 1942	..	..	..	£13.11. 0	
Karniamma rent 1942	..	..	..	15. 0. 0	
Natha Singh rent 1943	..	..	..	19.11. 0	20
Kishin Singh balance premium	..	..	..	6.19.11	

Yours faithfully,

P. RICE,

per

(Sgd.) K. V. STUART.

I.
Receipt for
£500 4s.11d.
23rd
March
1944.

I.—RECEIPT, N. S. Chalmers to P. Rice.

23.3.1944.

No. 90

RECEIVED from P. Rice, Esq. Ltka. the sum of Five hundred.....
pounds four.....shillings eleven.....pence being for Re sale by 30
Yenkanna to R.C. Mission " Namata (part of)."

N. S. CHALMERS

per A. J. ABRAHAM.

£500.4.11.

(Stamped 2d.

23.3.44)

J.—RECEIPT, N. S. Chalmers to P. Rice.

Exhibits.

23.3.1944.

No. 78

J.
Receipt for
£10 9s. 6d.,
23rd March
1944.

RECEIVED from P. Rice, Esq., Lautoka the sum of Ten.....
pounds nine.....shillings six.....pence being for costs re Yenkana
to R.C. Mission.

N. S. CHALMERS

per A. J. ABRAHAM.

(Stamped 2d.

23.3.44)

£10.9.6.

10

K.—RECEIPT, P. Rice to A. G. Abraham.

K.

10th January, 1942.

Receipt
for £17,
10th
January
1942.

No. 615.

RECEIVED from Mr. A. J. Abraham, Ba, the sum of Seventeen.....
poundsshillings.....pence being on account Costs Transfer
of Title &c.—Achanna of Namata to Yenkana of Tavua.....

P. RICE, Lautoka

Per A. M. PRASHAD.

(Stamped 2d.

20.1.42.)

£17.0.0

20

*Exhibits.***A.—CERTIFICATE OF TITLE No. 6828.**

A.
Certificate
of Title
No. 6828,
25th April
1944.

YENKANNA (f/n POLLAIYA)
of Tavua, Cultivator.

Pursuant to Request No. 32125 is now proprietor subject to the provisions and reservations contained in Crown Grant No. 1064 and subject to such leases mortgages and encumbrances as are notified by memorial underwritten or endorsed hereon of that piece of land known as Namata (part of) and containing one hundred and sixty-four acres, one rood, thirty-four perches be the same a little more or less and situate in the district of Nadroga in the Island of Vitilevu and being Lot two on deposited plan 10 No. 1329 and shown in diagram hereon.

In witness whereof I have hereunto signed my name and affixed my seal.

Suva 25th April, 1944.

(Sgd.) E. C. WOODWARD,
Dep. Registrar of Titles.

(Plan.)

LEASE

No. 37/49 Registered 23 Sept. 1914
at 12 p.m.

20

To The Colonial Sugar Refining
Company Limited for 99 years from
1 Jany, 1910.

As to E. C. WOODWARD,
31a. Or. 24.7p. Dep. Registrar of
Titles.

LEASE

No. 28903 Registered 16 Dec. 1942
at 11 a.m.

30

To Durgaiia (f/n Maddala Ramaya)
for 21 years from 25 Jany., 1935

As to E. C. WOODWARD,
31a. 1r. 12p. Dep. Registrar of
lot 2 on D.P.1262 Titles.

LEASE

No. 28904 Registered 16 Dec. 1942
at 11 a.m.

To Natha Singh (f/n Pratap Singh)
for 21 years from 12 Feby. 1937.

As to 19a. E. C. WOODWARD,
lot 1 on D.P. 1201 Dep. Registrar of
Titles.

40

G.—LETTER, P. Rice to N. S. Chalmers.

Exhibits.

P. Rice.
Barrister & Solicitor.
Commissioner for Oaths.

Offices at :
Lautoka, Ba, Nadi and
Nadroga.

Lautoka,
Fiji.

22nd June, 1944.

G.
Letter,
P. Rice to
N. S.
Chalmers,
22nd June
1944.

Mr. N. S. Chalmers,
Solicitor,
10 Ba.

Dear Sir,

Yenkanna and Achanna

Further to my letter of the 1st December last and your reply of the 6th idem I am now instructed to make a formal request to Yenkanna to convey to Achanna the balance of the land transferred to Yenkanna in 1942. I have already pointed out that no money passed in respect of this land, but that it was transferred to Yenkanna upon the understanding that he was to pay off the mortgage, and that when any money advanced by him was repaid, he would reconvey the land to Achanna. In the
20 result, of course, part of the land was sold to the Roman Catholic Mission— and I emphasise that it was Achanna who conducted all the negotiations— and it was not necessary for Yenkanna to put his hand in his pocket at all. Yet he has received the purchase price, and now not only does he refuse to refund any part of that to Achanna, but he insists on retaining the land. I understand that a panchiyat was recently held at Tavua and that Yenkanna was ordered to reconvey to Achanna, and to return him the balance of the purchase money, and I should be glad if you would kindly see him and arrange for this to be done.

I may say—quite without prejudice, of course—that I am prepared
30 to advise Achanna to make some allowance to Yenkanna to reimburse him for the responsibility he undertook, and other many attendances and journeyings he has, no doubt, made.

Yours faithfully,

P. RICE,

per

(Sgd.) K. V. STUART.

*Exhibits.***B.—PANCHAYAT STATEMENT.**

B.
Panchayat
Statement,
25th June
1944.

(Translation).

25 June, 1944,
Toko, Alendro,
Tavua.

Achanna Father's name Nuka Naidu, Namata Nadi and Yenkanna who is a resident of Alendro Father's name Pullaiya. With reference to the matter of the land between these two we authorise the under mentioned persons to effect a settlement. We both give such permission.

ACHANNA Father's name Nuka Naidu (Tamil) 10

Signature (ACHANNA).

YENKANNA Father's name Pullaiya

Signature in Hindi (YENKANNA).

Names of the Members :

- | | | |
|---------------------|-------------------|----|
| 1. Babu Gajra Singh | 6. Ramraj | |
| 2. Kalappa Dewar | 7. Ghirau | |
| 3. Ramadu | 8. Munisami Naidu | |
| 4. Manikam | 9. Govind Raju | |
| 5. Anand Nair | 10. Thomas | |
| | 11. Tambi | 20 |
| | 12. Ram Autar | |
| | 13. Naur | |
| | 14. Pratap Singh. | |

1. Yenkanna states that he purchased the land from Achanna for the original price (i.e. price paid for land by Achanna presumably when he purchased from Mackie).

2. Land was given (sold) to Padre through Achanna (320 acres £1,000).

3. It is approximately 3 years since Yenkanna purchased the land. Yenkanna says so. 30

4. Achanna states that it is approximately two years ago (since land purchased).

5. Yenkanna states that interest of the land has been paid yearly (£70.0.0).

6. Achanna states that the interest is £92.0.0.

7. Yenkanna states that the interest is £90.0.0.

8. Achanna states that Ellis holds a mortgage over the land payable on demand.

9. Achanna and Yenkanna state that Achanna lives in the house on the land free of rent.

10. Yenkanna states that Achanna lives on the land as his father in-law.

Achanna states "I am going to get back my land" that is why he is still living in the house that is, he will get back the land after the debt has been paid off.

11. Yenkanna admits that he has received two notices from Achanna "but I did not give any reply to them." He found this out through his solicitor Mr. N. S. Chalmers.

12. Achanna states that he has not received any reply to the notices so far. First notice was given asking for accounts. In the second the question of return of the land was asked—when the land was sold then.

13. Yenkanna gave a bill through the lawyer after (receipt of) notice.

14. Achanna asked his solicitor Mr. Rice if he had received a reply to the notice and he received the reply "not yet."

15. Yenkanna states that he gave an authority to Mr. Rice to collect rents as he was doing before.

16. It is learnt through Achanna's wife that Yenkanna sent a message through Murgesan that he will purchase 20-25 acres of land for his mother in law and father in law for their upkeep and livelihood.

17. Achanna states that the C.S.R. Company offered him £4,000 for the land before the title was transferred in Yenkanna's name but he (Achanna) refused the offer.

18. If Achanna had received £6,000.0.0 he would have sold the land.

H.—LETTER, N. S. Chalmers to P. Rice.

N. S. Chalmers,
Barrister & Solicitor.

Chambers,
Ba, Fiji,

30th June, 1944.

P. Rice, Esq.,
Solicitor,
Lautoka.

H.
Letter,
N. S.
Chalmers
to P. Rice,
30th June
1944.

re Yenkanna and Achanna.

Dear Sir,

With reference to your letter herein of the 22nd instant my client says very definitely that there was no such arrangement, as you suggest, between Achanna and himself. My client says that he took over the land for the mortgage debt which was then considered the full value of the land. My client has no intention whatsoever of transferring the balance of the land to Achanna or paying him any money. When my client signed the Transfer to the Roman Catholic Mission our arrangement

Exhibits.

 H.
 Letter,
 N. S.
 Chalmers
 to P. Rice,
 30th June
 1944,
continued.

was that you would obtain a balance title in the name of my client Yenkanna but at the cost of your client, the R.C. Mission, and hand me the balance title. The application therefor being drawn up and signed by me, as Solicitor for the applicant, my client Yenkanna, in your office, I must ask you to adhere to that arrangement.

I note what you say with reference to a panchayat. The word "panchayat" is synonymous with our word "arbitration." There was no such thing as "arbitration" in this matter. My client instructs me that a number of persons were brought to his home at Tavua by Achanna; that these persons tried to intimidate him into recognising, in some way, 10 that your client had certain interests in the land in question. Notwithstanding that my client was more or less alone he informs me that he would not submit to such intimidation and refused, on pressure, to recognise that your client had any interest whatsoever in the land.

My client has treated Achanna in a very liberal manner since he took over the land from him—allowing him to live rent free on the land. My client has now decided however, that it would be in his best interests if your client left the land. I enclose a notice of demand for possession which I would be glad if you would hand to your client. I arranged with you to collect the rents from the lands on behalf of my client. 20 Would you please let me have an account of these collections ?

Yours faithfully,

(Sgd.) N. S. CHALMERS.

To ACHANNA Father's name Nuka Naidu,
 Namata,
 Nadroga.

TAKE NOTICE that I demand from you the possession of the premises now occupied by you as my tenant at will and situate on my freehold known as Namata.

Possession must be given to me or my agent Mr. N. S. Chalmers on or 30 before the last day of July 1944 failing which I shall take action for ejection.

Dated the 30th June, 1944.

Yenkanna by his Solicitor and Agent,

(Sgd.) N. S. CHALMERS.

L.—LETTER, N. S. Chalmers to P. Rice.

Exhibits.

25.10.44.

A.M.P.

L.
 Letter,
 N. S.
 Chalmers
 to P. Rice,
 23rd
 October
 1944.

N. S. Chalmers,
 Barrister & Solicitor.
 Commissioner for Oaths,
 Fiji, New Zealand &
 New South Wales.

10

Chambers,
 Ba, Fiji,

23rd October, 1944.

P. Rice, Esq.,
 Solicitor,
 Lautoka.

re Yenkanna and Achamma.

Dear Sir,

I refer to the concluding paragraph of my letter to you herein of the 30th June last which reads as follows :—

20 “I arranged with you to collect the rents from the lands on behalf of my client. Would you please let me have an account of these collections.”

So far you have not replied to this part of my letter. I again called your attention to this matter in my letter of the 25th August last in reply to yours of the 21st August but so far I have received no reply. I would be obliged if you would let me have a statement of all rents received on account of my client and also a cheque covering the amount so received less the usual costs of collection.

Yours faithfully,

(Sgd.) N. S. CHALMERS.

*Exhibits.***N.—LETTER, P. Rice to N. S. Chalmers.**

N.
Letter,
P. Rice to
N. S.
Chalmers,
27th
October
1944.

P. Rice,
Barrister & Solicitor.
Commissioner for Oaths.
Offices at :
Lautoka, Ba, Nadi and
Nadroga.

Ba, Fiji,
27th October, 1944.

N. S. Chalmers, Esq.,
Solicitor,
Ba.

10

Dear Sir,

Yenkanna to Achanna.

I have your letter of the 23rd instant and in reply have to state that the only rent I have received is the sum of £13.11.3 from Durgaiya. I therefore enclose my cheque for £12.17.8 being the above amount after deduction of 5% for costs of collection.

Having regard to the fact that litigation has been commenced between our respective clients I think it would be inconsistent with my position 20 as Achanna's solicitor further to continue as Yenkanna's agent for collection. I must therefore give you notice that as from this date I have determined the agency.

Yours faithfully,

(Sgd.) P. RICE.
