A **RAMPHAL**

v.

VILIAME NASORA

B [SUPREME COURT, 1964 (Knox-Mawer Ag. P.J.), 18th March, 1st May]

Civil Jurisdiction

Landlord and tenant—crops—outgoing tenant—right to first and second ratoon crops in terms of notice from Native Land Trust Board.

C *Native land—land required for Fijian owners—outgoing tenant—right to crops in terms of notice from Native Land Trust Board.*

The plaintiff, a tenant farmer, was required to give up possession of his land upon terms contained in a notice served upon him by the Native Land Trust Board; the notice contained the following :—

D "You may remove all improvements on the land you may, subject to the prior payment of the sum of £26-2-6 by way of rent, harvest all crops at present on the land including first ratoon cane. — You should vacate and give up possession of the said land absolutely as and when crops including first ratoon are harvested."

E The sum of £26-2-6 mentioned in the notice was duly paid. At the notice was served there were both first and second ratoon cane crops growing on the land; the first ratoon was harvested by the plaintiff but the second ratoon was harvested and sold to the South Pacific Sugar Mills Ltd. by the defendant, who had been installed in place of the plaintiff on a portion of the land. The plaintiff sought a declaration that he was entitled to the proceeds of sale of the second F to "harvest all crops at present on the land", which included the second ratoon as well as the first.

Held: The dominant meaning assignable to the words in question was that the plaintiff was to acquire, in return for £26-2-6, the right to "harvest all crops at present on the land", which included the second ratoon as well as the first.

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Indar Singh v. Native Land Trust Board [1963] 9 F.L.R. 36, distinguished.

Action for a declaration of entitlement to proceeds of cane.

A. D. Patel for the plaintiff.

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D. M. N. McFarlane for the defendant.

KNOX-MAWER Ag. P.J.:

On 18th December, 1962, the plaintiff, a tenant farmer, was served by the Native Land Trust Board, as trustee for the native owners of the land, with the following Notice (Exhibit 3):—

"4/11/2075

NATIVE LAND TRUST BOARD

RAM PHAL f/n Sukhu,
C/- Assistant Land Agent,
NADROGA.

WHEREAS you occupy a portion of Native Land known as Lot 1 Yalavu No. 1 in the tikina of Baravi as tenant from the Colonial Sugar Refining Company.

AND WHEREAS no renewal of the above lease will be granted to the said Colonial Sugar Refining Company as the land is required for the use, maintenance and support of the Fijian owners of the land.

AND WHEREAS you have received notice from the Colonial Sugar Refining Company that you should vacate the land occupied by you on 31st December, 1962.

YOU ARE THEREFORE NOTIFIED THAT you should vacate and hand over possession to the Native Owners of that portion of the leased land lying fallow at the date of receipt hereof and you should not interfere with their use and cultivation thereof. You may remove all improvements on the land you may, subject to the prior payment of the sum of £26.2.6. by way of rent, harvest all crops at present on the land including first ratoon cane. You may not however damage or destroy fruit trees and you may not after receipt hereof plant further crops of any kind. You should vacate and give up possession of the said land absolutely as and when crops including first ratoon are harvested.

DATED at Suva this 6th day of December, 1962.

Secretary,
Native Land Trust Board,

Notice served on : 18.12.62.

.....Assistant Land Agent.

Mataqali : Druadrua — £13.15.0
Noisigarua — £12. 7.6 "

The dispute in this case arose when (the Notice having been otherwise complied with and the defendant having been installed in place of the plaintiff upon a portion of this land)—the defendant, in mid-1963, harvested and sent to the Sugar Mill in his own name a crop of second ratoon sugar cane which had in fact been growing on the land when the Notice had been served on the plaintiff.

At the time when the Notice was served on the plaintiff, there was also growing on the land, alongside the second ratoon cane (then about six months old), a first ratoon crop of cane. The plaintiff was permitted by the defendant to harvest this first ratoon cane in 1963, and the plaintiff duly sent this cane to the South Pacific Sugar Mills Limited in his own name. It is in respect of the second ratoon cane harvested and claimed by the defendant that the plaintiff now seeks a declaration. The declaration sought is that he, the plaintiff, is entitled to the proceeds of this second ratoon "harvested from the said land and sold to the South Pacific Sugar Mills Limited".

Learned counsel for the plaintiff, Mr. A. D. Patel, relies in support of the plaintiff's claim upon the following portion of the Notice (Exhibit 3):—

> "you may, subject to the prior payment of the sum of £26.2.6 by way of rent, harvest all crops at present on the land including first ratoon cane."

It is agreed that the plaintiff duly paid to the Board the stipulated sum of £26.2.6. In return for this consideration, it is the plaintiff's contention that he acquired an enforceable right to harvest *all* crops growing on the land when the Notice was received (18.12.62). As I have already indicated, it is common ground that the second ratoon crop was "growing" (along with the first ratoon crop) on the land at that time. "Crop" is defined in the Oxford Dictionary as "the produce of the field either when growing or when gathered".

For the defendant, it is contended that the words "including first ratoon cane", in the Notice (Exhibit 3) imply that the second ratoon cane was excluded from the plaintiff's entitlement. I agree that this portion of the Notice could have been more explicitly drafted. Nevertheless, the dominant meaning assignable to the sentence in question is that which Mr. Patel has advanced, namely that the plaintiff was to acquire in return for £26.2.6 the right to "harvest all crops at present on the land". Any limitation to that right should have been made clearly and specifically by the Board. No such clear and specific limitation of that right was made, hence the plaintiff, having paid the £26.2.6, must be held to have acquired an enforceable right to harvest *all* crops on the land on the 18th December, 1962, i.e. both first and second ratoon cane.

Learned counsel for the defendant has relied upon the judgment of this Court in *Indar Singh v. Native Land Trust Board* (1963) 9 F.L.R. 36. However, in my view, the *ratio decidendi* in that case was based upon other grounds. There the Court was concerned essentially with the question as to whether sugar cane was a plant in respect of which a right to emblements could arise under common law. It is true that the Court in that case said (at page 5 of the judgment):—

> "These rights certainly do not include the right to the second ratoon cane crop."

On the other hand, no consideration had passed from the plaintiff in that case and so it was not necessary for the Court to advert to the issue which has concerned the Court in the present case.

In the outcome, therefore, this Court makes the declaration sought by the plaintiff in Paragraph 1 of his prayer. The plaintiff has not substantiated his claim for damages in trespass. The plaintiff is awarded his costs against the defendant. A

Declaration in terms of prayer.