

IN THE SUPREME COURT)  
OF THE TERRITORY OF )  
PAPUA AND NEW GUINEA)

No. W.S. 19 of 1957

Between:

HARRY OCKENDEN FLETCHER

Plaintiff

- and -

HAROLD FREDERICK JAMES

Defendant

THE UNIVERSITY  
OF  
PAPUA & NEW GUINEA  
THE LIBRARY

REASONS FOR JUDGMENT

This is a claim to recover from the Defendant £10,000 and interest thereon under an agreement dated 1st May 1954. There appears to be no answer to the claim.

The Defendant does not appear to have disputed liability until Court proceedings were taken, and he then brought forward a defence of no substance and a counterclaim for damages for fraud. Such a late assertion of an allegation of fraud naturally gives cause for suspicion and calls for close scrutiny. It does appear, however, that Defendant told Plaintiff's solicitor something about misrepresentations in April 1957, a month before the action commenced, and some three days after the money was due.

Looking at all the circumstances of the case I think I cannot draw many inferences from conduct. Before the money fell due it was obvious to all that the Defendant could not pay and equally obvious that the plantations in question were worth a great deal less than was hoped.

The Plaintiff was in a hurry to press his claim and his attitude became somewhat hard and hostile. The Defendant had to face the predicament in which he found himself and could gain nothing by delay.

The Defendant is a solicitor practising in Rabaul. In 1952 he was employed by the Plaintiff to form Los Negros Industries Limited, was given £500 shares in the company as a director's qualification, and thereafter acted as Solicitor and Director for the Company.

The Plaintiff, Mr. Fletcher, who wanted the Company formed so as to consolidate his various plantation interests, became Governing Director of the Company.

After a very short and very unbusinesslike career the Company was placed in liquidation in October 1953 and Mr. James was appointed liquidator. Thereafter he endeavoured to sell the assets of the Company as a going concern and succeeded in doing this in April 1954. The best price he could get fell short of the £60,000 desired, and with the consent of both sets of interested parties he borrowed £10,000 from the Plaintiff for three years, to enable him to become one of the purchasers and increase by that sum the purchase price. The plantations came under new management by much more efficient means than before, but failed to produce anything like what was expected, and the new Company failed and went into liquidation.

Having heard both the main actors in this drama I was quite satisfied that Mr. James acted honourably in the matter, and that he was in fact misled by the production figures (Exhibit 2) into forming such a favourable picture of the investment that he was led into undertaking liabilities which he could not possibly meet on the true facts. The question which appeared to me to be more difficult to decide was whether Mr. James had been deceived by himself or by the Plaintiff; or had perhaps misunderstood or misheard something said to him.

After full reflection I am satisfied that the Plaintiff did make the representation alleged. Mr. James in his evidence was moderate and fair, and answered questions frankly even when it appeared that he had been very foolish. There was nothing vindictive in his evidence, but I got an entirely different impression of Mr. Fletcher. The Plaintiff blames Mr. James for a whole series of adverse events many of which were the direct responsibility of himself as Governing Director. He was glad enough of Mr. James' help at the time and I think that his present attitude is unjust. I think that in blaming Mr. James for Paisley's appointment as Manager and for putting the Company into liquidation he is unreasonable and his attitude is not supported by the facts.

Generally I prefer Mr. James' account of the production figures, and I disbelieve Mr. Fletcher's statement that they were brought into existence after April 1954. I think that they were brought into existence at about the time of the liquidation and for the purpose stated by Mr. James. I take the Plaintiff's letter of 1st February 1954 to be a reference to these figures, a copy of which Mr. Fletcher had not retained,

but he remembered that the effect of them was over 70 tons per month. I take it that some information had been conveyed to Mr. Fletcher, probably by the individual referred to as "Buck" indicating that Mr. James was doubtful about the figures given to him, perhaps in the light of current payments from the Board. Mr. Fletcher had been very ill for some time and had not been able to supervise the plantation properly. I take the letter of 1st February to be an implied admission that current figures were down below what Mr. Fletcher had stated and an assertion that they would soon return to above 70 tons. Properly understood I think this letter entirely supports Mr. James, but Mr. Fletcher seized upon it as proof that Exhibit 2 was a statement of "Potential production" only.

I was not satisfied either with Mr. Fletcher's explanation of the reasons for making such a statement nor of the basis upon which he made an assessment of "potential" production. He referred to "soil condition", "soil type" and "experience" without giving any details. The plantations are old and running down, and have no potential from replantings, and it appeared that the only room for improvement lay in more efficient collection, and prevention of thefts. This would not be assisted by any claimed knowledge or experience of soil types or condition.

I find that Mr. Fletcher did make the representation alleged. There is no doubt that it was untrue to his knowledge. Mr. James acted on it to his detriment. Was the representation made to Mr. James? I think it was. It was given to Mr. James for the express purpose of enabling him to pass on the information to prospective purchasers. Later when Mr. James became an intended purchaser himself he became one of the persons to whom the representation was addressed. He was induced (foolishly I think but still induced) to apply for the shares and make himself liable for £10,000 and interest.

The question of damages is difficult. The present position gives a fair idea of the actual value of the investment in 1954. When Mr. James tried to get £60,000 for the assets he thought that the true value was much more, and £60,000 was the sum needed to get back the capital of the Company in full. Mr. James as liquidator guaranteed an output of 50 tons per month, subject to deduction of £250 in purchase price for every 1 ton per month below 50. This, of course, is

a warranty as to the future not a representation as to the past, but it suggests a figure of £12,500 for the property which appears to be too low.

The new purchasing syndicate thought they were getting a bargain, allowing £30,000 for the value of land producing something over 75 tons per month.

I think that I should find that the actual value of this property to purchasers knowing its true production figures would be not more than £15,000, which would give a total price for the assets of £45,000. Mr. James' share of one-sixth would on this footing be worth £7,500 when he acquired it and his loss is therefore £2,500.

In fact the total assets were probably worth less than £45,000. The promoters of Los Negros Industries put no money into the Company and £60,000 represented their own valuations of their assets. On the true production record of the Company, I think the liquidator would have been lucky to get £45,000 for the Company's assets.

If the representations had been true the assets might have been worth more than £60,000 but there is no real basis upon which I can so find.

The result is that the Defendant is entitled to Judgment on the Counterclaim for £2,500 plus a proportionate adjustment of interest which is a consequential loss. I will set off one Judgment against the other and the result is as follows:

Principal	£10,000	
Interest 1/5/54 to 1/5/57 @ 8%	2,400	
	<hr/>	£12,400
Interest Paid	2,400	
Counterclaim	2,500	
Interest on £2,500 @ 8% 1/5/54 to 1/5/57	600	
	<hr/>	£ 6,900
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There will be Judgment for the Plaintiff for £6,900. Having regard to the issues pleaded and those contested on the hearing I think that no order should be made on either side as to costs.

11.7.58

Alan Mann, C.J.