

IN THE PRIVY COUNCIL

No.26 of 1983

O N A P P E A L
FROM THE FIJI COURT OF APPEAL

B E T W E E N :

KHURBUR RAM LATCHAN (Plaintiff) Appellant

- and -

LESLIE REDVERS MARTIN (Defendant) Respondent

RECORD OF PROCEEDINGS

PHILIP CONWAY THOMAS & CO.
61 Catherine Place,
London, SW1E 6HB

Solicitors for the
Appellant

MACFARLANES,
10 Norwich Street,
London, EC4A 1BD

Solicitors for the
Respondent

- (f) A Garage and Tool Room built by Brunswick partnership had been transferred to Ram Kuar.
- (g) Peat, Marwick Mitchell rejected all Commissions paid to L.R.Martin - a finder's fee for finding purchaser finance for Buses sold. This was at the rate of 2½%. This only started in 1975.

EXHIBITS

No.46
Summary of
differences
between
Accounts
(Undated)

(continued)

10

There are other minor adjustments/expenses which need to be resolved. These totalled approximately \$1,000 over the 6 3/4 years.

EXHIBITS

No.46
Summary of
differences
between
Accounts
(Undated)

EXHIBITS
No.46

SUMMARY OF DIFFERENCES
BETWEEN ACCOUNTS

BRUNSWICK MOTORS

SUMMARY OF DIFFERENCES

BETWEEN L.R. MARTIN ACCOUNTS
AND RECONSTRUCTED ACCOUNTS BY PEAT MARWICK
MITCHELL & CO.

- (a) Peat Marwick Mitchell claims that the partnership of Brunswick Motors started on 1st January 1973. Martin claims it started on the date shown in the Registration, 17th February, 1971. Because of this difference of opinion, Peat Marwick Mitchell had treated all Brunswick transactions as Ram Kuar up to 31st December 1972. This will affect Martin's Share of Profits in Brunswick Motors. 10
- (b) Peat Marwick Mitchell had also charged a mark-up of 20% on Buses in stock at the end of 31st December 1972 when they were transferred back to the partnership of Brunswick Motors on 1st January, 1973. 20
- (c) Peat Marwick Mitchell had rejected interest charged by L.R.Martin for all years.
- (d) Peat Marwick Mitchell had also charged a mark-up of 10% on spares on hand at 31st December, 1972 when they were transferred back to the Brunswick partnership on 1st January, 1973. 30
- (e) Peat Marwick Mitchell charged the Brunswick partnership for :
 - Rental of Garage 3,600
 - Promotional Expenses
which is salary for
K.R.Latchan 6,000
 - Use of K.R.Latchan's
vehicle 2,400

\$12,000 per annum
===== for 6 3/4
years

1976 LEDGER BALANCESFunds Owing
to MartinEXHIBITS

	January	219,820.90	No.44
	February	218,213.37	Brunswick
	March	191,976.16	Motors,
	April	169,594.83	Cash
	May	128,886.80	Requirements
	June	118,250.28	1971-1978
	July	133,716.27	(continued)
10	August	53,202.08	
	September	84,708.64	
	October	62,313.95	
	November	66,433.10	
	December	(118,085.52)	

1977 LEDGER BALANCES

	January	(26,535.39)
	February	(51,245.52)
	March	(53,346.15)
	April	(47,650.32)
20	May	(129,194.49)
	June	(117,902.93)
	July	(115,787.36)
	August	(145,139.27)
	September	(141,117.78)
	October	(121,097.24)
	November	(60,858.17)
	December	(32,441.21)

1978 LEDGER BALANCES

	January	75,830.40
30	February	71,849.81
	March	82,251.73
	April	88,531.08
	May	62,884.11
	June	62,812.16
	July	62,858.35
	August	63,808.09
	September	64,763.25

<u>EXHIBITS</u>	<u>1972 LEDGER BALANCES</u> (cont'd)	<u>Funds Owing</u> <u>to Martin</u>	
No. 44			
Brunswick	September	65,481.73	
Motors,	October	(5,538.26)	
Cash	November	47,765.49	
Requirements	December	32,501.92	
1971-1978			
(continued)	<u>1973 LEDGER BALANCES</u>		
	January	25,369.47	
	February	35,248.59	
	March	18,189.65	10
	April	20,760.84	
	May	50,520.92	
	June	40,836.99	
	July	44,597.76	
	August	35,583.39	
	September	43,314.22	
	October	40,805.36	
	November	117,233.67	
	December	29,675.01	
	<u>1974 LEDGER BALANCES</u>		20
	January	33,302.69	
	February	46,978.74	
	March	42,771.31	
	April	53,399.21	
	May	17,970.64	
	June	27,888.39	
	July	6,610.14	
	August	6,176.65	
	September	24,525.90	
	October	30,432.47	30
	November	68,732.78	
	December	89,983.71	
	<u>1975 LEDGER BALANCES</u>		
	January	127,157.96	
	February	140,121.16	
	March	137,596.14	
	April	105,952.42	
	May	110,832.13	
	June	148,461.52	
	July	158,153.53	40
	August	232,546.83	
	September	230,447.59	
	October	229,949.98	
	November	277,976.24	
	December	262,409.80	

Plaintiff's affidavit relating to K.R. Latchan Bus Service are now the subject of an action brought by the Plaintiff and others against myself under action 118 of 1979 and not material to these proceedings.

EXHIBITS

No.43
Affidavit of
L.R.Martin
17th April
1979

(continued)

10 That by reason of the matters aforesaid the Plaintiff is not entitled to any of the Declarations and reliefs claimed in paragraphs a - 1 of the originating summons.

Take due notice that I will counter claim that in the circumstances it is just and equitable that the partnership of "Brunswick Motors" be dissolved with effect from the 30th day of September 1978 under the provisions of the Partnership Ordinance Cap.217.

20 SWORN by the said)
LESLIE REDVERS MARTIN) Sd: LR.Martin
at Suva this 17th)
day of April, 1979)

Before me,
Sd: Illegible
COMMISSIONER FOR OATHS

EXHIBITS
No.44

BRUNSWICK MOTORS, CASH
REQUIREMENTS 1971-1978

No.44
Brunswick
Motors, Cash
Requirements
1971-1978

30 BRUNSWICK MOTORS
CASH REQUIREMENTS

1971 LEDGER BALANCES

	<u>Funds Owing to Martin</u>
November	37,455.52
December	32,006.14

1972 LEDGER BALANCES

January	19,410.85
February	10,160.85
March	14,993.54
40 April	19,425.74
May	56,779.30
June	56,975.74
July	65,510.64
August	63,117.69

EXHIBITS

No.43
Affidavit of
L.R.Martin
17th April
1979

(continued)

but were charges with respect to the cost of the bookkeeping on behalf of the partnership, interest charged to the partnership and all other expenses and outgoings on account with the partnership.

- 13) I was not aware that K.R.Latchan Bus Limited was an incorporated company until sometime in late April 1978 nor that the Plaintiff intended to terminate the partnership. 10
- 14) During 1978 the Plaintiff failed to give me a full accounting and the necessary documentation of stockkeeping of the partnership to enable proper books of account to be kept for the partnership and refused to co-operate in the partnership business and purported to terminate it in or about the 30th September 1978.
- 15) From the commencement of the establishment of the said additional business until the 30th September 1978 "Brunswick Motors" was the partnership which imported the Seddon Bus Chassis and has held itself out to be so at all times during that period. All accounts balance sheets and trading and profit and loss accounts prepared with the approval of the Plaintiff and supplied to him showed this arrangement and showed the equal partnership that the Plaintiff had with myself in "Brunswick Motors". My financial involvement with the partnership "Brunswick Motors" was at no time a transaction of a money lender within the Money Lenders Ordinance Cap.210. 20 30
- 16) The Plaintiff at all times has acquiesced and actively supported and was well aware of the equal partnership arrangement my financial involvement and the financial transactions of the partnership and the Plaintiff is now estopped from denying that a full equal partnership existed on the terms on which the partnership operated as hereinbefore stated and as shown by the trading and balance sheet accounts of the partnership. 40
- 17) Furthermore certain matters for which this action is brought arose more than 6 years before the commencement of this action and are barred by virtue of the Limitation Act 1971. 50
- 18) That the matters referred to in the

is the sum alleged by the Plaintiff to be the loans referred to in paragraph 8 and 10 of his Affidavit.

EXHIBITS

No.43
Affidavit of
L.R.Martin
17th April
1979

(continued)

- 8) Since then the business has operated on this basis. The change of particulars of the partnership "Brunswick Motors" was registered with the Registrar of Business Names on the 29th December 1972 effective from 17th February 1971 (hereinafter referred to as "the partnership")
- 9) At all material times it was the partnership which imported the Seddon bus chassis as shown in its accounts and I have travelled with the Plaintiff to the United Kingdom on the partnership business arranging the ordering of such bus chassis and for the delivery financial and credit terms of such purchases.
- 10) All accounts receipts and payments relating to the partnership came through the Plaintiff who passed them on to me and after checking them with him they were accounted for or paid on behalf of the partnership. The partnership grew with profits being reinvested to extend the purchases of further bus chassis and extending the operations of the business. The only moneys ever contributed by the Plaintiff to the partnership was the said sum of \$10,000.00. All other capital expenditure and financial and credit facilities were contributed by myself including the construction cost of the garage facilities at the partnership property at Wainibokasi.
- 11) The partnership did not have the resources to finance on terms the sale of buses to various purchasers. Therefore after discussion and with full agreement of the Plaintiff it was arranged that when purchasers wished to purchase buses on credit terms I would pay to the partnership in my own right and not as Trustee from my own personal funds the full purchase price of such buses. The matter of obtaining repayment on terms under Bills of Sale of such buses from purchasers being my concern alone.
- 12) At all times during the partnership business arrangement the Plaintiff fully knew and was aware of all the financial arrangements of the partnership business, of sales arranged by myself, any payments made including accounting fees, which were not payments to me

EXHIBITS

No.43
Affidavit of
L.R.Martin
17th April
1979

(continued)

- plaintiff's mother and the Plaintiff, the Plaintiff would bring the takings of the bus business service to me for checking after which the Plaintiff would then deposit those takings with my bank on behalf of himself and his mother and later his brother. Full particulars of the amounts of each banking were at all times known to the Plaintiff and were entered in the records kept by me on behalf of the Plaintiff's mother, the Plaintiff and later his brother for the bus service operation. All accounts for the dairy and bus businesses and expenses and outgoings were supplied to me by the Plaintiff and after checking them with him were paid by me out of the funds held with respect to the two businesses. This arrangement was freely accepted by the Plaintiff's mother brother and the Plaintiff and at no time since have they intimated that they were not satisfied with this arrangement and a full accounting of the operations and funds received and outgoings was given at the completion of each year by the annual accounts. 10
- 6) The Plaintiff in or about 1971 in the name of "Brunswick Motors" commenced a separate additional business of importing "Seddon" bus chassis on which bus bodies were built for later sale as complete buses. 30
- 7) From my knowledge of the family's business affairs it was my opinion that if the Plaintiff continued with the said additional business without having capital resources or proper financial basis for this additional business then he and the family could get into serious financial difficulties. I explained this to the Plaintiff and suggested that a proper financial basis for the additional business was necessary if it was to be successful. I suggested to him and he accepted that the said business "Brunswick Motors" should be operated by us on an equal partnership basis. That he be in charge of the day to day operations of the business of importing bus chassis, building bus bodies, selling and otherwise operating the business with myself looking after the accounting and financial aspects and supplying finance and credit facilities to the partnership where necessary. That each partner contribute a sum of \$10,000.00 as capital to the venture. This was done and this the capital contribution 40 50

EXHIBITS
No.43

EXHIBITS

No.43
Affidavit of
L.R.Martin
17th April
1979

AFFIDAVIT OF L.R.MARTIN

IN THE SUPREME COURT OF FIJI

Civil Action No.12 of 1979

BETWEEN: RAM LATCHAN also known
as K.R. LATCHAN Plaintiff
A N D : LESLIE REDVERS MARTIN Defendant

A F F I D A V I T

10 I, LESLIE REDVERS MARTIN Accountant of Suva
make oath and say as follows :

- 1) I knew the Plaintiff's father a Tailevu dairy farmer, for a number of years before his death when helping him to obtain speedy payment for his dairy cream supply payments from the Rewa Dairy Company through its agent Pearce & Company and assisting him in the purchase of farm supplies from that company.
- 20 2) After the Plaintiff's father's death in about 1950 his widow RAM KUAR came to see me saying that her late husband had told her to see me and to obtain my assistance in her business affairs which at that time consisted of the operation of the family's dairy farm at Tailevu which assistance I freely gave.
- 30 3) Sometime later RAM KUAR wished to commence operating a bus service and requested my assistance, including financial assistance, in establishing this business including the purchase of a bus. This business subsequently grew and required the purchase and financing of a number of other buses.
- 40 4) When the Plaintiff was old enough to drive a bus he became one of his mother's bus drivers. He subsequently named the said buses with the name "K.R. Latchan Bus Service". I understand from the Business Names Registration Office that the business name "K.R.Latchan Bus Service" was registered in the Plaintiff's own name on the 1st June 1965 for the business of "Passenger Service Vehicle Operators".
- 5) To assist the family and to ensure that proper financial control was kept for the bus service operation, and with full agreement of the

Account No.
Sheet No.

Investments, L.R. Martin

Fiji

No. 42
Ledger Sheets
L.R. Martin Investments
1964-1974
Sheet No.

Capital in Pence & Martin			
1964	Jan 1	To Balance	96.17 93
			500 .
1968	Dec 31	By Dep. & P&L	500 .
Punamick Boston Capital			
1970	Dec 31	To Journal	10,000 .00
			9399 .42
1971	Dec 31	To Journal	1,000 .00
			933 .50
1972	Jan 1	To Balance	2.10 .
1969	Jan 1	By Balance	2.10 .

XXX

EXHIBIT

In The Supreme Court
Case No. 12
L.R. Martin v. L.R. Martin
EXHIBIT "A"
Dec. 25 - 5 - 1972

(1000 Shares) Uno Limited			
1964	Jan 1	To Balance	96.17 93
			1002 .
1966	May 30	By Sold	95.25 72
			414 .
1966	Dec 31	Balance	42 .
1969	Jan 1	By Balance	42 .
1970	Jan 1	By Balance	50 .
1970	Dec 31	By Sold	3176 .
			4764 .
(4000 Shares) Shaw & Weaver Ltd.			
1964	Jan 1	To Balance	44.17 83
			4000 .
1969	Jan 1	To Balance	4000 .
			8000 .
S.P. Forest Products Ltd.			
1971	Jan 1	To Cash	166 .64
Produce Processing Ltd.			
1967	Nov 20	To Cash	400 .
1969	Jan 1	To Balance	400 .
			800 .
1969	Jan 1	By Balance	400 .
			800 .
Natural Service Ltd.			
1970	Dec 31	To 25,000 Shares @ \$1	25000 .00

L-7241

BRUNSWICK MOTORS

EXHIBITS

P.O.Box 331, Suva, Fiji Islands

No.41
Letter,
Kato & Co.
to L.R.
Martin
26th May 1978

Sole Distributors for Seddon Bus Chassis
Truck and Spare Parts in Fiji, Samoa,
and Kingdom of Tonga and also Coach
and Motor Body Builders

To: Seddon Atkinson Vehicles 26th May, 1978 (continued)
 Limited
 Woodstock Factory,
10 Oldham,
 LANCASHIRE

We, L.R. Martin and K.R.Latchan trading as
Brunswick Motors hereby agree to give the
distributorship for Seddon Bus Chassis held
by this firm to K.R.Latchan Bus Service
Limited. We also agree that the credit terms
now available to Brunswick Motors be enjoyed
by K.R.Latchan Bus Service Ltd.

20 Sd: K.R.Latchan
 L.R.MARTIN K.R.LATCHAN

EXHIBITS

I require the above very urgently and trust you will co-operate fully.

No.40
Letter,
Kato & Co.
to L.R.
Martin
2nd May
1978

Yours faithfully,

Sd: K.R.Latchan
K.R.Latchan

(continued)

No.41
Letter,
Kato & Co.
to L.R.
Martin
26th May
1978

EXHIBITS
No.41

LETTER, KATO & CO. TO
L.R. MARTIN

K A T O & C O.
BARRISTERS & SOLICITORS

10

3rd Floor,
Ratu Sukuna House
McArthur St.
Suva, Fiji
G.P.O. Box 1443

Telephone 312644

26th May 1978

Mr. L.R.Martin,
P.O.Box 331,
SUVA

20

Dear Sir,

re - K.R.Latchan Bus Service Ltd -
Seddon Bus Chassis Distributorship Agreement

Further to the writer's telephone conversation with you yesterday, we enclose the relevant letter for signing by you and return.

Yours faithfully,
Sd: A. Kato

Encl.

Mr. Latchan has appointed Messrs. Peat Marwick Mitchell & Co., Chartered Accountants of 6th Floor, Ratu Sukuna House, MacArthur Street, Suva, to be his auditors and his letter of authority to you to make the records available to them is annexed.

EXHIBITS

No.40
Letter,
Kato & Co.
to L.R.Martin
2nd May 1978

10

The Company requires these credit facilities very urgently and we therefore request your full co-operation to have all the papers and information available. Mr. David Man of Messrs. Peat Marwick & Co., will be calling on you in a day or so to carry out the audit.

(continued)

20

There is one other important matter. We understand from Mr. Latchan that the partnership business has no bank account in its own name. If this is correct, it is very serious indeed. We think you will be aware of the many difficulties that could arise particularly as they concern our client in not having a separate bank account of the partnership business. We have pointed out to our client that this must be resolved today and that all monies received on account of the partnership as of today must be put in a new partnership account.

Yours faithfully,

Sd: A.Kato

c.c. Mr. Ram Latchan
Messrs. Peat Marwick Mitchell & Co.

30

2 May, 1978

L.R.Martin Esq.,
c/- Brunswick Motors,
SUVA

Dear Mr. Martin,

40

This is to advise that I have appointed Messrs. Peat Marwick Mitchell & Co., Chartered Accountants of Suva to be my accountants and I hereby authorise them to take a full and proper audit of our partnership business under the name and style of Brunswick Motors. Please have available all the records of the business they require to enable them to have a full and proper audit taken. The audit will cover the period from November, 1971 when our partnership business began up to the date of audit.

EXHIBITS

No.38
Mortgage,
Ram Kuar to
L.R.Martin
24th January
1951

LODGED BY
CROMPTONS,
Solicitors,
SUVA, Fiji

Date 26/1/51
Documents C.T.3580
11 a.m.

(continued)

(FOR OFFICE USE)

Mortgage No. 46458
Registered 26 Jan 1951 at 11 a.m.
Sd: E.C.Woodward
Ag. Registrar of Titles

10

No.40
Letter,
Kato & Co.
to L.R.
Martin
2nd May
1978

EXHIBITS
No.40

LETTER, KATO & CO. TO
L.R. MARTIN

K A T O & C O.
BARRISTERS & SOLICITORS

3rd Floor,
Ratu Sukuma House
McArthur St.
Suva, Fiji
G.P.O. Box 1443

Telephone 312644

2nd May, 1978

L.R.Martin Esq.,
c/- Brunswick Motors,
SUVA

Dear Sir,

re - Brunswick Motors Partnership

We act for Mr. Ram Latchan and his Company, K.R. Latchan Bus Service Limited. Mr. Latchan is currently in negotiation with his Bank for credit facilities to be extended to his Company. The amount required is substantial and for purposes of Bank's securities, the Bank requires of him to supply fully audited statement of his interest in the above firm. To this end, we write to request you to have available for his auditors all relevant records of the business from commencement of the partnership during November 1971 up to the date of audit.

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30

40

mortgagor or this security or in connection with or incidentally to the exercise of any power expressed or implied given to the mortgagee by these presents or otherwise in connection with the said premises together with interest for the same at the rate aforesaid from the time or respective times of the same having been paid or incurred shall be repaid to the mortgagee by the mortgagor on demand AND until repayment shall together with interest at the rate aforesaid be covered by this security .

EXHIBITS
No.38
Mortgage,
Ram Kuar to
L.R.Martin
24th January
1951

(continued)

10

6. The mortgagor shall have right to pay off the whole or any part of the principal moneys hereby secured at any time on the dates appointed for the repayment of the interest.

7. That this Mortgage is collateral with and intended to secure the same moneys as are secured by a certain Bill of Sale of even date herewith given by the Mortgagor to the Mortgagee.

20

AND for the better securing to the mortgagee the repayment in manner aforesaid of the principal sum and interest, the mortgagor hereby MORTGAGE to the mortgagee the land above described

IN WITNESS whereof the mortgagor hath hereunto signed her name this 24th day of January 1951

Left Thumb Mark
of
RAM KUAR

30

Signature or left thumb-mark of the mortgagor

THE signature by mark of RAM KUAR was made in my presence and I verily believe that such signature os of the proper left thumb mark of the person described as RAM KUAR (F/n Dhani) of Tailevu, Widow the Mortgagor and I certify that I read over and explained the contents hereof to the Mortgagor in the Hindustani language and the mortgagor appeared fully to understand the meaning and effect thereof

40

Sd: Illegible
Solicitor, Suva

MEMORANDUM OF MORTGAGES AND ENCUMBRANCES ETC.

Correct for the purposes of the Land (Transfer and Registration) Ordinance Cap.12a

Sd: Illegible
Solicitors for the Mortgagee

EXHIBITS

No.38
Mortgage,
Ram Kuar to
L.R.Martin
24th January
1951

(continued)

THIRDLY that the mortgagor will forthwith insure and during the continuance of this security keep insured in the name of the mortgagee against loss or damage by fire all buildings now erected or which may hereafter be erected on the lands hereby mortgaged in the full insurable value thereof and will duly and punctually pay all premiums in respect of such insurance when due and will deliver to the mortgagee the policy or policies of such insurance and all premium receipts 10 immediately upon the issue thereof And in the event of the mortgagor failing to effect such insurance or to pay any premium on the due date the mortgagee may effect or pay the same and all moneys so paid 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 repayable by the mortgagor to the mortgagee and shall until repayment be covered by this security. 20

PROVIDED ALWAYS AND IT IS HEREBY AGREED AND DECLARED :-

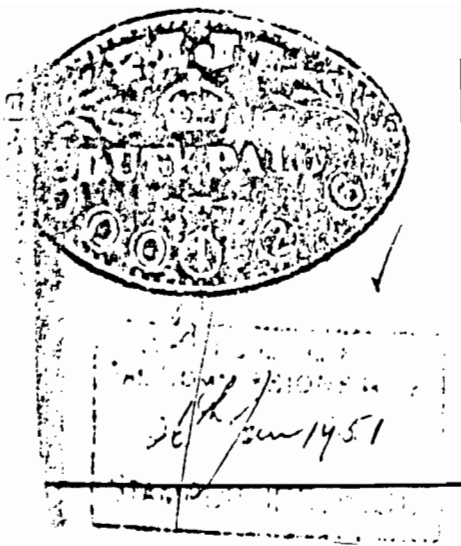
1. That any interest remaining unpaid after the due date shall be capitalised as from the date upon which it ought to have been paid and thereafter shall bear interest as part of the principal sum owing Provided that nothing herein contained shall prejudice or affect the rights powers and remedies of the mortgagee on default in payment of any interest on the due date: 30

2. That the period of one month mentioned in Section 61 of the Land (Transfer and Registration) Ordinance 1933 is for the purposes of this security expressly reduced to and fixed at seven days.

3. That in the event of sale under this security if the land hereby mortgaged shall fail to realise the amount due at the date of the sale and all costs charges and expenses incidental thereto the mortgagor shall forthwith pay to the mortgagee such balance as shall then remain unpaid. 40

4. That neither this security nor anything herein contained shall extinguish merge prejudice or affect any other security which the mortgagee now hold or may hereafter hold for any moneys intended to be secured by this mortgage or by any other security.

5. That all moneys costs and expenses legal and otherwise which shall be paid or incurred by the mortgagee in connection with the account of the 50



EXHIBITS
No.38

MORTGAGE, RAM KUAR
TO L.R. MARTIN

EXHIBITS

No.38
Mortgage,
Ram Kuar to
L.R.Martin
24th January
1951

No. 46458

Registration Fees		
	£	s d
Lodgment	10	0
Memorial	2	6
Total	12	6

Revenue Receipt
No.9270
Initials

In The Supreme Court Of Fiji	
Case No.	12/194
LATCHUM V	MARTIN
EXHIBIT "38"	
Date	24-1-52

F I J I

MORTGAGE

The Land (Transfer and Registration) Ordinance 1933

RAM KUAR (F/n Dhani) of Tailevu, Widow hereinafter called the mortgagor being proprietor subject to such leases mortgages and encumbrances as are notified by Memorandum underwritten or endorsed hereon of the following land :-

20

Title: C.T.
Number: 36/3580
Description: "Waidalici" (part of)
Province or Island: Vitilevu
District or Town: Tailevu
Area: A 200 R - P -
(One undivided third share)

30

in consideration of the sum of £900.00 (NINE HUNDRED POUNDS) this day lent and advanced to the mortgagor by LESLIE REDVERS MARTIN of Suva, Public Accountant (hereinafter called "the mortgagee") (the receipt of which sum the mortgagor doth hereby admit and acknowledge) DOTH HEREBY COVENANT with the mortgagee that she will pay to the mortgagee the above sum of £900.00 (NINE HUNDRED POUNDS) on the 24th day of January, 1952

40

SECONDLY that the mortgagor will pay interest on the said sum at the rate of Six pounds (£6.0.0) by £100 in the year as follows: Quarterly on the 24th days of the months of April, July, October and January in every year the first payment of interest to be computed from the 24th day of January, 1951

EXHIBITS

No.37
Mortgage,
Khurbar to
L.R.Martin
15th May
1948

(continued)

or incidentally to the exercise of any power expressed or implied given to the mortgagee by these presents or otherwise in connection with the said premises together with interest for the same at the rate aforesaid from the time or respective times of the same having been paid or incurred shall be repaid to the mortgagee by the mortgagor on demand AND until repayment shall together with interest at the rate aforesaid be covered by this security
AND for the better securing to the mortgagee the repayment in manner aforesaid of the principal sum and interest, the mortgagor hereby MORTGAGE to the mortgagee the land above described

10

IN WITNESS whereof the mortgagor hath hereunto signed his name this 15th day of May 1948

Sd: Khurbar

Signature or left thumb-mark of the mortgagor

THE signature "KHURBUR" was made in my presence and I verily believe that such signature is of the proper handwriting of the person described as KHURBUR (Father's name Jangali) of Waidalici in the district of Tailevu in the Colony of Fiji Overseer the Mortgagor and I certify that I read over and explained the contents hereof to the Mortgagor in the Hindustani language and the mortgagor appeared fully to understand the meaning and effect thereof.

20

Sd: P.A.Crompton
Solicitor, Suva.

30

MEMORANDUM OF MORTGAGES AND ENCUMBRANCES ETC.

N I L

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

Sd: P.A.Crompton
Solicitors for the Mortgagee

(FOR OFFICE USE)
Mortgage No.40491
Registered 21 MAY 1948
at 11.30 a.m.
Sd: E.C.Woodward
Dep. Registrar of Titles

LODGED BY
CROMPTONS
Solicitors,
SUVA, Fiji
Dated 21/5/48

aforsaid on the moneys for the time being remaining due on this security.

EXHIBITS

NO.37
Mortgage,
Khurbar to
L.R.Martin
15th May
1948

10

THIRDLY that the mortgagor will forthwith insure and during the continuance of this security keep insured in the name of the mortgagee against loss or damage by fire all buildings now erected or which may hereafter be erected on the lands hereby mortgaged in the full insurable value thereof and will duly and punctually pay all premiums in respect of such insurance when due and will deliver to the mortgagee the policy or policies of such insurance and all premium receipts immediately upon the issue thereof And in the event of the mortgagor failing to effect such insurance or to pay any premium on the due date the mortgagee may effect or pay the same and all moneys so paid shall be debited and charged to the mortgagor and bear interest after the rate

(continued)

20

aforsaid from the date of payment and shall immediately thereupon be and become repayable by the mortgagor to the mortgagee and shall until repayment be covered by this security.

PROVIDED ALWAYS AND IT IS HEREBY AGREED AND DECLARED:-

30

1. That any interest remaining unpaid after the due date shall be capitalised as from the date upon which it ought to have been paid and thereafter shall bear interest as part of the principal sum owing Provided that nothing herein contained shall prejudice or affect the rights powers and remedies of the mortgagee on default in payment of any interest on the due date

40

2. That the period of one month mentioned in Section 60 of the Land (Transfer and Registration) Ordinance 1933 is for the purposes of this security expressly reduced to and fixed at seven days

3. That in the event of sale under this security if the land hereby mortgaged shall fail to realise the amount due at the date of the sale and all costs charges and expenses incidental thereto the mortgagor shall forthwith pay to the mortgagee such balance as shall then remain unpaid

50

4. That neither this security nor anything herein contained shall extinguish merge prejudice or affect any other security which the mortgagee now hold or may hereafter hold for any moneys intended to be secured by this mortgage or by any other security

5. That all moneys costs and expenses legal and otherwise which shall be paid or incurred by the mortgagee in connection with the account of the mortgagor or this security or in connection with

EXHIBITS

No.37
Mortgage,
Khurbar to
L.R.Martin
15th May
1948

EXHIBITS

No.37

MORTGAGE, KHURBAR TO
L.R. MARTIN

In The Supreme Court Of Fiji
Civil Case No. 12/29
LATCHAN v MARTIN
EXHIBIT "37"
24-5-82



No. 40491

Registration Fees

	£	s	d
Lodgment	10	-	
Memorial	2	6	
Total	12	6	

10

Revenue Receipt No.79690
Initials

F I J I

MORTGAGE

The Land (Transfer and Registration) Ordinance
1933

KHURBUR (Father's name Jangali) of Waidalici
in the district of Tailevu in the Colony of Fiji
Overseer hereinafter called the mortgagor being
proprietor subject to such leases mortgages and
encumbrances as are notified by Memorandum
underwritten or endorsed hereon of the following
land :-

20

OFFICE OF
THE COMMISSIONER
18 MAY 1948
NOTICE

Title : C.T.
Number: 3580
Description: "Waidalici" (part of)
Province or Island: Vitilevu
District of Town: Tailevu
Area: A 200 R - P -

in consideration of the sum of £670.0.0 (Six
hundred and seventy pounds) this day lent and
advanced to the Mortgagor by LESLIE REDVERS
MARTIN of Suva in the Colony aforesaid Accountant
DO HEREBY COVENANT with the mortgagee that he
will pay to the mortgagee the above sum of
£670.0.0. (Six hundred and seventy pounds) on
the 16th day of May 1949
SECONDLY that the mortgagor will pay interest
on the said sum at the rate of Six pounds
(£6.0.0.) by the £100 in the year as follows:
on the date appointed for the repayment of the
principal sum as aforesaid the first payment
of interest to be computed from the 15th day of
May 1948 AND should the principal sum not be
paid on the due date that the mortgagor will
continue to pay interest at the rate and times

30

40

already aroused.

Our best regards to you,

Yours truly,

Sd: L.R.Martin

P.S. We are seeking a name for our company.
Have you a suggestion which could
incorporate your good name please?

EXHIBITS

No.35
Letter,
Pearce &
Martin to
Seddon
Motors Ltd.
25th January
1971

(continued)

No. 36

LETTER, K.R. LATCHAN TO
L.R. MARTIN

P.O.Box 2427,
Government Buildings,
SUVA

No.36
Letter,
K.R.Latchan
to L.R.
Martin
2nd October
1978

2nd October, 1978

Mr. L.R.Martin,
42 Robertson Road,
S U V A.

Dear Sir,

I refer to our recent discussions concerning the
business affairs of our partnership, Brunswick
Motors and our personal differences arising
therefrom. During our discussions on Friday, 29th
September, 1978 I advised you that I wished to
dissolve our partnership as from 30th September, 1978
and that I wanted you to draw up our partnership
accounts as at that date.

The purpose of this letter is to formally record
in writing my instructions to you. Please have the
required accounts prepared by noon on Monday, 9th
October, 1978 so that the partnership assets may
be properly distributed as mutually determined by
ourselves or as determined by a court of law.

Yours faithfully,
Sd: K.R.Latchan
K.R.LATCHAN

EXHIBITS

No.35
Letter,
Pearce &
Martin to
Seddon
Motors Ltd.
25th January
1971

EXHIBITS

No.35

LETTER, PEARCE & MARTIN TO
SEDDON MOTORS LTD.

PEARCE & MARTIN

Commission & Insurance Agents - Manufacturers
Representatives - Accountants - Auditors -
Financiers - Valuers

42 Robertson Road
Suva, Fiji

10

Your ref: SM/HA/DAD/JAE 25th January 1971

Messrs. Seddon Motors Ltd.,
P.O.Box 223, Standard House,
Finsbury Square,
London, E.C.2.

Dear Sirs,

You have not known that the young man who has written all previous correspondence, K.R.Latchan by name, is a very capable bus operator. He has nine buses on his scheduled route, and is anxious to enlarge his business. The writer, hitherto unknown to you, had met his father in business some 25 years ago, and when he died I found that I had 'inherited' his family. From a small beginning with one bus I have built his knowledge of business, and expanded his experience, so that he now has - at 30 - a very fine business. I am prepared to join with him in this venture as it is to be expected that bigger business will make demands on his small capital. I submit the names of the Manager and Deputy-Manager, Mr. Barlow and Mr. Blanchard respectively, of the Bank of New Zealand, Queen Victoria Street, London; or Mr. K.Sare, the Manager of the Bank of New Zealand Suva, Fiji, all of whom know me personally and will be happy to inform you of my standing in the Bank.

20

30

It is my intention sometime later in the year to visit you on my way to the National Olympic Committee Meeting in Munich - I think September - but if it is necessary to come sooner I would be pleased if you would tell me, for I am anxious to meet you and let you see with whom you are dealing.

40

We are anxiously awaiting the arrival of our two buses for there is a great deal of interest

22) No representative of the Concessionaires shall have authority to waive any of the printed provisions or terms of this Agreement unless same are made in writing and signed by a Director or Secretary of the Concessionaires.

EXHIBITS

No.32
Distributors'
Agreement
1st November
1972

23) The Concessionaires reserve the right to supply vehicles direct to any user customers in the Distributor's territories, should the need arise, where such customers insist on direct purchase, or purchase through their Head Office and/or Associates outside of the territories. The Distributors, however, will be advised in advance and covered for a minimum commission of 7½%.

(continued)

10

As WITNESS the hands of the parties hereto the day and year first before written

Signed on behalf of the)
Concessionaires in the) For and on behalf of
Presence of) B. ASHWORTH & CO.(OVERSEAS)
LTD.

20

Witness's Name: Sd: Illegible
Sd: D.E.Price (Director or Secretary)

Address: 2 Wiggshall Rd

Occupation: Executive

Signed by the said)
Distributor in the) For and on behalf of
presence of) BRUNSWICK MOTORS also
trading as K.R.LATCHAN
BUS SERVICE
Witness's Name: Sd: K.R.Latchan
Sd: B.Chang (Director or Secretary)

30

Address: 42 Robertson Road
Suva, Fiji

Occupation: Clerk

EXHIBITS

the Concessionaires and the Distributor from time to time.

No.32

Distributors' Agreement
1st November 1972

(continued)

15) The Distributor agrees not to solicit orders directly or indirectly to persons residing in any territory which is allocated to a Seddon Distributor and the Distributor agrees to abide by the decision of the Concessionaires in cases where controversy arises between other Distributors or Dealers and himself on definition of territory.

16) The Concessionaires shall supply to the Distributor such of their standard circulars, catalogues and printed matter as shall be necessary to assist the Distributor in selling such Vehicles and Chassis. 10

17) The Distributor will provide free of charge for any vehicles or chassis sold by him when same shall have covered a distance of approximately 500 miles if required by the purchaser such service as is usual and necessary after new vehicles have been run in, provided that this undertaking shall not release the Manufacturers from any obligations under the terms of their guarantee. 20

18) (a) The Distributors appointment will last 3 years with the option of renewal at the end of this period.

(b) The Concessionaires shall have the right without prejudice to any other remedy they may have against a Distributor for breach or non performance of this Agreement summarily to terminate the same. 30

(1) On the Distributor committing any breach of any of its provisions.

(2) On the Distributor committing any act of bankruptcy or being a limited company going into liquidation.

19) The benefit of this Agreement shall not without the Manufacturer's consent in writing be assignable by the Distributor. 40

20) This Agreement shall be construed in all respects as a Contract made in England and in accordance with English Law.

21) This Agreement shall commence on NOVEMBER 1st 1972 and will be continued until terminated in accordance with the provisions of this Agreement.

as per Engine Manufacturers price list on a nett/
nett basis.

EXHIBITS

No.32
Distributors
Agreement
1st November
1972

8) It is understood that the Concessionaires reserve the right to change the selling prices to the Distributor and its retail prices or discounts at any time by telegram, cable or letter.

(continued)

10 9) The Concessionaires shall not be liable to the Distributor for any loss or damage to Vehicle, Chassis or Spare Parts whilst in transit after shipment as the Concessionaires responsibility shall cease upon delivery of goods on board ship. All claims for shortage must be made by the Distributor within fourteen days after receipt of shipment on which shortages are claimed and no claim will be considered after the expiration of the said fourteen days.

20 10) The Distributor shall appoint Dealers as are in the opinion of the Concessionaires necessary to promote the sale of Seddon Vehicles in the territories. If the Distributor fails to do so the Concessionaires shall have the right to appoint such Dealers in the territories. In this case, all Vehicles, Chassis or Spare Parts taken by such Dealers shall be credited to the Distributor and the Distributor shall receive the difference between prices charged to such Dealers and the nett prices which the Distributor would have paid for such Vehicles if he had purchased them.

30 11) The Concessionaires shall invoice Seddon Vehicles, Chassis or Spare Parts to the Distributor at ex works prices, such prices being arrived at after deduction of the discounts stated in Clauses 7A to 7D hereof, and nothing in this Agreement shall entitle the Distributor to any further discounts, rebates or other deductions from these prices.

40 12) The Distributor undertakes to purchase a minimum of 30 (thirty) Bus Chassis or Commercial Vehicles per annum. The Concessionaires undertake to make every effort to deliver in accordance with Clause 5 of this Agreement.

13) The Distributor shall hold in stock an adequate supply of Seddon Spare Parts for the benefit of Seddon customers in the territories.

50 14) Payment for Vehicles, Chassis or Spare Parts by the Distributors shall be made in cash in London before shipment, through shippers in the United Kingdom, or by Confirmed Bankers' Credit payable in London in favour of the Concessionaires or on such terms and conditions as may be mutually agreed between

EXHIBITS

No.32
Distributors'
Agreement
1st November
1972

(continued)

and the Concessionaires may ship the vehicles comprised in them at any time during the month for which shipment is specified and during the first fourteen days of the month immediately following after which period any orders unexecuted shall continue as such unless or until they have been cancelled by the Distributor before shipment by the Concessionaires provided that orders for vehicles to nonstandard specification cannot be cancelled in any circumstances by the Distributor. Delivery dates promised are effective from the date of arrival of Letter of Credit or finalisation of alternative terms of payment as may be agreed. 10

6) The Concessionaires may at any time alter the construction or design or equipment of Seddon Vehicles or Chassis or Spare Parts without any previous notice to the Distributor notwithstanding that an order or orders for Vehicles or Chassis or Spare Parts may have been given to and accepted by the Concessionaires before the date of such alteration taking effect and the Concessionaires shall not be bound after the date of such alterations to supply Vehicles or Chassis or Spare Parts of the same construction or design as ordered by the Distributor by may in lieu thereof offer to the Distributor such altered Vehicles or Chassis or Spare Parts, but in such event the Distributor shall have the option of taking up such altered Vehicles or Chassis or Spare Parts or of cancelling the order, such option to be exercised in writing by the Distributor within 14 days from notice by the Concessionaires of such alterations and in the absence of the Distributor giving such written notice of the exercise of such option the Distributor shall be deemed to have agreed such altered Vehicles or Chassis or Spare Parts. 20 30

7A) The Concessionaires shall allow the Distributor a discount or rebate of 17½% off the current price list of each Commercial Vehicle or Chassis sold to the Distributor. 40

7B) The Concessionaires shall sell to the Distributor Bus Chassis and/or complete buses at current prices as per price list on a nett/ nett basis.

7C) The Concessionaires shall allow the Distributor a discount or rebate of 25% off the current list price of all Seddon Chassis Spare Parts sold to the Distributor. 50

7D) The Concessionaires shall sell to the Distributor Engine Spare Parts at current prices

EXHIBITS
No.32
Distributors' Agreement

EXHIBITS
No.32
Distributors
Agreement
1st November
1972

10 AN AGREEMENT made the FIRST day of NOVEMBER
One thousand nine hundred and seventy-two
between B. ASHWORTH & CO. (OVERSEAS) LIMITED of
STANDARD HOUSE, 15/16 BONHILL STREET, LONDON
E.C.2. acting as Sole Export Concessionaires
for SEDDON MOTORS LIMITED, of WOODSTOCK FACTORY,
OLDHAM, LANCASHIRE (hereinafter called "the
Concessionaires") of the one part and BRUNSWICK
MOTORS also trading as K.R. LATCHAN BUS SERVICE
whose place of business is G.P.O. BOX 331, SUVA
FIJI (hereinafter called "the Distributor") of
the other part

WHEREBY IT IS AGREED as follows :-

20 1) The Concessionaires grant to the Distributor
the right to purchase from the Concessionaires new
Seddon Motor Vehicles hereinafter referred to as
"Seddon Vehicles" during the continuance of this
Agreement for distribution and resale only, in
the territories hereinafter described, subject to
the terms and conditions set forth in this
Agreement which the Distributor ratifies and accepts.

30 The Concessionaires agree to protect the
Distributor in the right so granted to the extent
that except as hereinafter provided, the Concession-
aires will not knowingly sell Seddon Vehicles to
other persons in the Distributor's territories
during the continuance of this Agreement.

2) The territories covered by this Agreement
shall be FIJI, SOMOA and the KINGDOM OF TONGA.

40 3) The Distributor shall have the right to
describe himself as "Selling Agents for" or
"Distributor of" SEDDON MOTORS LIMITED but shall
not describe himself as the Agent of SEDDON MOTORS
LIMITED or of the Concessionaires except in
conjunction with the word "Selling" and nothing in
this Agreement shall be taken to confer on the
Distributor the power or authority to bind the
Concessionaires or SEDDON MOTORS LIMITED as their
Agents or otherwise in any manner whatsoever, nor to
pledge their credit.

4) The Distributor will provide and maintain at
his own expense a place of business including a
garage and workshop in the territories for
conducting sales, repairs and servicing.

5) Firm orders shall be binding on the Distributors

EXHIBITSBRUNSWICK MOTORS - PARTNERSHIP

No.30
Report of
Peat Marwick
Mitchell &
Co.
20th May
1982

PROFIT & LOSS ACCOUNT
FOR THE 3 MONTHS PERIOD (FROM 1ST
OCTOBER, 1978) TO 31ST DECEMBER, 1978

	<u>9 months</u>		\$	\$	
	\$				
		<u>GROSS PROFITS</u>			
(continued)	(1,028)	Vehicle and Components		-	
	<u>8,216</u>	Spare Parts		<u>9,275</u>	
	7,188			9,275	10
	<u>25</u>	<u>ADD - Sundry Income</u>		<u>-</u>	
	7,213			9,275	
		<u>LESS EXPENSES</u>			
	-	Administration Charges	1,800		
	130	Advertising	-		
	375	Accounting	500		
	1,053	Depreciation	245		
	497	Electricity	9		
	2,083	F.N.P.F.	162		
	403	F.N.T.C.	-		20
	157	General Expenses	15		
	5,190	Insurance	-		
	288	Stationery	-		
	20,084	Wages	2,449		
	1,491	Telephone	142		
	4,105	Travelling	-		
	428	Cartage	-		
	220	Licence	-		
	2,700	Rental Charges	900		
	6,300	Promotion Expenses	-		30
	<u>1,073</u>	Repairs and Maintenance	<u>-</u>		
	46,577			<u>6,222</u>	
	<u>\$ (39,364)</u>	NET PROFIT/(LOSS) FOR THE PERIOD		<u>\$ 3,053</u>	
		<u>SHARE OF PROFIT/(LOSS)</u>			
	\$ (19,682)	L.R.Martin	1,527		
	<u>(19,682)</u>	K.R.Latchan	<u>1,526</u>		
	<u>\$ (39,304)</u>			<u>\$ 3,053</u>	

4. Administration

In view of the firm's curtailed operations a charge of \$1,800 has been taken up as adequate supervision and administration costs for the period.

EXHIBITS

No.30
Report of
Peat Marwick
Mitchell &
Co.
20th May 1982

(continued)

BRUNSWICK MOTORS - PARTNERSHIP

TRADING ACCOUNT
FOR THE 3 MONTHS PERIOD (FROM 1ST
OCTOBER, 1978) TO 31ST DECEMBER, 1978

10	<u>9 months</u>			
	\$		\$	\$
	<u>VEHICLE AND COMPONENTS</u>			
	-	Sales		-
	2,093	Work Done		
		<u>LESS COST OF SALES</u>		
	44,590	Opening Stock	135,282	
	<u>93,813</u>	Purchases	<u>-</u>	
	138,403		135,282	
	<u>135,282</u>	<u>Less: Closing Stock</u>	<u>135,282</u>	
20	<u>3,121</u>			<u>-</u>
	(1,028)	<u>GROSS PROFIT/(LOSS)</u>		NIL
		<u>SPARE PARTS</u>		
	73,029	Sales		18,335
		<u>LESS COST OF SALES</u>		
	171,243	Opening Stock	147,500	
	<u>41,070</u>	Purchases	<u>487</u>	
	212,313		147,987	
	<u>147,500</u>	<u>Less: Closing Stock</u>	<u>138,927</u>	
	<u>64,813</u>			<u>9,060</u>
30	<u>\$ 8,216</u>	<u>GROSS PROFIT</u>		<u>\$9,275</u>
	=====			=====

EXHIBITS

BRUNSWICK MOTORS - PARTNERSHIP

No.30
Report of
Peat Marwick
Mitchell &
Co.
20th May
1982

NOTES TO AND FORMING PART OF THE ACCOUNTS
FOR THE 3 MONTHS PERIOD ENDED 31ST
DECEMBER, 1978

(continued)

1. General Statement of Accounting Policies

The accounting methods adopted by the partnership are in accord with the accounting standards required by the Fiji Institute of Accountants and/or by law. The accounts have been prepared primarily on the basis of historical costs and do not take into account changing money values.

10

Set out below is a summary of significant accounting methods adopted by Brunswick Motors, and in particular the accounting method adopted where there exists a choice between two or more acceptable methods.

2. Specific Accounting Policies

(a) Fixed Assets - Depreciation

Fixed Assets shown in the Balance Sheet comprises the following :- 20

	W.D.V. 30.9.78	Depre- ciation	W.D.V. 31.12.78	
Plant and Machinery	2,960	74	2,886	
Electrical Installation	2,192	55	2,137	
Furniture and Fittings	783	20	763	
Tip Truck	1,912	96	1,816	
	<u>\$7,847</u>	<u>245</u>	<u>7,602</u>	30
	=====	=====	=====	

Depreciation rates employed for depreciable assets are such that the assets are written off over their expected effective lives. The method of write off and the rates used are those considered appropriate to each class of asset. Plant and Machinery, furniture and fittings etc. are written off by way of systematic charge using the reducing balance method.

3. Stock on Hand

40

Stock of chassis as at 30th September, 1978 and 31st December, 1978 appear to be stated at selling price.

BRUNSWICK MOTORS - PARTNERSHIP

EXHIBITS

BALANCE SHEET AS AT 31ST DECEMBER, 1978

No.30
Report of
Peat Marwick
Mitchell &
Co.
20th May
1982

30.9.78
\$ \$ \$

CAPITAL ACCOUNT

154,530	L.R.Martin - Balance	134,848
(19,682)	b/f	
	Add - Profit/(Loss)	
	for the Period	<u>1,527</u>

(continued)

10 134,848 136,375

CAPITAL ACCOUNT

154,228	K.R.Latchan-Balance	134,546
(19,682)	b/f	
	Add - Profit/(Loss)	
	for the Period	<u>1,526</u>

<u>134,546</u>		<u>136,072</u>
----------------	--	----------------

\$269,394		\$272,447
=====		=====

Represented by :

20 7,847 FIXED ASSETS - At Cost Less
 Depreciation (Note 2) 7,602

CURRENT ASSETS

-	Cash at Bank	12,875	
37,453	Trade Debtors	42,120	
147,500	Stock on Hand -		
	Spare Parts	138,927	
135,282	Vehicle Components	<u>135,282</u>	
	(Note 3)		
<u>320,235</u>			<u>329,204</u>
328,082			336,806

30

LESS LIABILITIES

49,688	L.R.Martin-Cash A/c	49,688	
-	K.R.Latchan Buses Ltd.	2,700	
9,000	K.R.Latchan Bus Services	9,000	
-	Trade Creditors	571	
-	Lodoni Transport Co.	<u>2,400</u>	
<u>58,688</u>			<u>64,359</u>
<u>\$269,394</u>			<u>\$272,447</u>

The accompanying notes form part of these accounts.

PARTNER

EXHIBITS

No.30
Report of
Peat Marwick
Mitchell &
Co.
20th May
1982

EXHIBITS
No.30

REPORT OF PEAT MARWICK
MITCHELL & CO.

PEAT, MARWICK, MITCHELL & CO.
Chartered Accountants

Resident Partners:
Robin S.Foster-Brown
Ram Vilash

Ratu Sukuna House,
Victoria Parade,
SUVA, FIJI
P.O.Box 32
Telephone: 23856
Cables and Telegrams VIRIIAIIIM
Telex: 2348 PEATSUVA FJ

10

ACCOUNTANTS' REPORT

TO THE PARTNERS OF BRUNSWICK MOTORS - PARTNERSHIP

We have prepared the accounts of BRUNSWICK MOTORS
- PARTNERSHIP for the 3 months ended 31st
December, 1978 under the historical cost conven-
tion described in Note 1, from the books and
records of BRUNSWICK MOTORS and other information
provided by the officers of that Partnership
and at the request of and exclusively for the
use of BRUNSWICK MOTORS and its partners.

20

We have not audited the accounting records of
BRUNSWICK MOTORS or the accompanying balance
sheet and accounts and we express no opinion
on whether they present a true and fair view of
the position or of the period's trading nor do
we give any warranty of the accuracy or
reliability thereof. Neither the firm nor any
member or employee of the firm undertakes
responsibility arising in any other way whatsoever
to any person (other than BRUNSWICK MOTORS) for
errors or omissions however caused.

30

SUVA, FIJI
20TH MAY, 1982

PEAT, MARWICK, MITCHELL & CO.
CHARTERED ACCOUNTANTS

Commercial Vehicles

EXHIBITS

10 Our Works Manager advises us that your non-confirmation of the contract for the three vehicles originally entered under SV/828 is causing great problems. Apparently, the production of the fully assembled 13-Four 16-ton G.V.W. units with the heavy duty 10 cubic yard tipping body was well progressed in the production programme prior to your request being received that the vehicle should not be shipped. It is difficult to sell the heavy duty export type tipping body here in the United Kingdom.

No.29B
Letter,
Seddon
Motors Ltd.
to K.R.
Latchan Bus
Service
6th March
1973

(continued)

20 Is there any possibility at all that you could authorise us to effect shipment of this single assembled unit as per original contract and our Pro-Forma Invoice of the 17th October, 1972. Will you please be kind enough to consider this matter most carefully, and to report to us by cable. A decision in the affirmative would make things much easier as regards future collaboration with the Works Manager.

There is no problem at all about the cancellation of the C.K.D. commercial vehicles, and this matter is settled.

Bus Chassis Order SV/828

30 We hope that you have now safely received our letter of the 22nd February regarding the later delivery on these items. Would you please be kind enough to confirm to us that the necessary extension is being arranged to the Letter of Credit.

Proposed New Order

Please do let us have your instructions as quickly as you can, we hope for the two deliveries of six chassis each. This is really most essential as the production line is becoming fully booked up for months ahead due to substantially increased business at the present moment.

40 Will you please consider all points and report back as quickly as you can.

Yours truly,

Sd: D.A.Davie
D.A.DAVIE

EXHIBITS

No.29B
Letter,
Seddon
Motors Ltd.
to K.R.
Latchan Bus
Service
6th March
1973

(continued)

we negotiated the Agency Agreement the six Pennine 4-354 chassis were shipped.

You will find attached herewith a photo-static copy of the Pro-Forma Invoice of the 11th August, 1972 which covered this particular business. We refer you to the second item covering six Pennine 4-V8 chassis. Having reached an agreement with you, we obviously did not effect shipment of these six Pennine 4-V8 units, although they have now become ready at the Works in C.K.D. pack. Messrs. Lal have confirmed that they do not wish to receive them. 10

The questions we wish to place with you now are as follows :

- A) Without acting detrimentally against the proposed business for another 12 chassis which you are now about to place with us, is there any way at all of your being in a position to accept delivery of the six Pennine 4-V8 vehicles.20 Alternatively, if you do come to an agreement with Lal locally for mutual collaboration, is there any way at all that you could persuade them to reinstate the order and to reinstate the Bank Guarantee.
- B) Would it be preferable if one or other of the parties in Fiji were able to take delivery, that we should extract from the C.K.D. packs the 9-ton standard rear axles and substitute these for the 10-ton heavy duty Eaton 1870 single speed rear axles. 30

It would be very much appreciated indeed if you could study most carefully the implications of these six units which could now be shipped promptly. Please also do bear in mind that the prices are last year's prices and are therefore very competitive indeed.

It would be very much appreciated after you have had the opportunity of considering the matter, and perhaps also of having a meeting with Lal, to send us a short cable on this subject. 40

Needless to say, the situation will not arise again in future now that an Agency Agreement has been signed between us. Even if a collaboration does exist between you and Lal locally, orders for chassis will only be acceptable from you.

whereby both parties can work together to maximise the intake of Seddon vehicles and to enable those buyers who require an all metal body on a Seddon vehicle to secure it. We very much hope indeed that this will be possible, and we would like to have at your earliest convenience a report on how the discussions have progressed.

EXHIBITS

No.29A
Letter,
Seddon
Motors Ltd.
to K.R.
Latchan Bus
Service
6th March
1973

10

We have sent a short letter to Lal as per attached copy just to acknowledge the visit of their Director, and perhaps you could utilise this as the first step towards a meeting locally.

(continued)

We do hope very much indeed that the meeting will be successful and will work to the benefit of us all.

Yours truly,

Sd: D.A.Davie
D.A.DAVIE

EXHIBITS
No.29B

No.29B
Letter,
Seddon Motor
Ltd. to
K.R.Latchan
Bus Service
6th March
1973

20

LETTER, SEDDON MOTORS LTD.
TO K.R. LATCHAN BUS SERVICE

SEDDON MOTORS LIMITED

WOODSTOCK FACTORY
OLDHAM, LANCS.

Please reply to:

Export Office: P.O.BOX 223, STANDARD HOUSE,
15/16 BONHILL STREET, FINSBURY
SQUARE, LONDON E.C.2.

Our ref: SM/HA/DAD/JAE

6th March, 1973

30

K.R.Latchan Bus Service,
G.P.O. Box 331,
Suva,
FIJI

Dear Sirs,

P.A. Lal & Co. Limited

We refer to our other letter of today's date regarding the above mentioned Company.

40

As you are well aware, we did have a contract with Messrs. Lal emanating from the 11th August, 1972, and as explained to you at the time when

EXHIBITS

No.29A
Letter,
Seddon
Motors Ltd.
to K.R.
Lathan Bus
service
6th March
1973

for Seddon in Fiji, and we stand by this.

During the discussions with Mr. Lal it became very obvious to us that the main interest which they have in the Seddon business is to have the opportunity of building their metal bodies onto the chassis, as opposed to what we believe are the normal timber type of body. Apparently, and we of course make no comment on this, an agreement between yourselves and Lal locally appear to be extremely difficult to reach.

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(continued)

Mr. Lal did state, and he was quite truthful about this, that the Seddon chassis are "capturing" the market from Leyland and Bedford, and that he wished to be assured that his organisation was going to receive a reasonable share of the body building onto the Seddon vehicles. We believe that this is fair enough, as from the photographs and other data which Mr. Lal showed to us, we take the opinion that their work is very good indeed.

20

Mr. Lal is apparently going onto Europe and Italy during his stay in this part of the world, and did let drop that it was his intention to discuss with continental bus chassis manufacturers the possibilities of securing an Agency for Fiji. He also lead us to believe, that this was really essential to him to ensure continuance of supplies of chassis to keep his body building activities busy.

30

The question we ask you is a very simple one indeed. Is there no opportunity at all of Lal and yourselves coming to an agreement locally to work together? You would obviously remain the Exclusive Distributor for Seddon and there is no doubt about this at all. What we would like to see is collaboration between the two parties in Fiji whereby Lal has a small profit from you on the Seddon chassis, and you have a small profit from Lal on the body which they produce. The whole object is to keep all concerned happy and to equally ensure that all concerned are busy in their work and are earning a reasonable profit.

40

We feel here, that if such an agreement can be reached, Lal now understand that we have entrusted our activities to you locally, and they should be easier to work with.

We would very much indeed like to see Lal and yourselves sitting round a table in Suva to try and thrash out a mutually acceptable agreement

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competitive nature.

EXHIBITS

No.28
Letter,
Seddon
Motors Ltd.
to K.R.
Latchan Bus
Service
16th June
1971

(continued)

10 All of your statements are of considerable interest. We are awaiting anxiously details of the next order and your comments reference the distributors agreement. We should also like your views regarding potential business in Samoa and Tonga. Meanwhile, as clearly stated in our letter of the 4th November, 1970 we consider you as our Agents in Fiji for bus chassis and this will remain until the formal agreement is signed between us.

Obviously we ask you to follow up the two local enquiries which have been received to see if additional business is possible.

We are now looking forward anxiously to your comments and are,

Yours truly,
SEDDON MOTORS LIMITED

20 Sd: D.A.Davie
D.A. DAVIE

No. 29A

LETTER, SEDDON MOTORS LTD.
TO K.R.LATCHAN BUS SERVICE

No.29A
Letter,
Seddon
Motors Ltd.
to K.R.
Latchan Bus
Service
6th March
1973

SEDDON MOTORS LIMITED

WOODSTOCK FACTORY
OLDHAM, LANCS.

Please reply to:
Export Office: P.O.BOX 223, STANDARD HOUSE,
15/16 BONHILL STREET, FINSBURY
SQUARE, LONDON, E.C.2.

30 Our ref: SM/HA/DAD/JAE 6th March, 1973

K.R.Latchan Bus Service,
G.P.O. Box 331,
Suva, Fiji.

Dear Sirs,

P.A. Lal & Co. Limited

Yesterday afternoon we received a visit from Mr. F.G.J.Lal a Director of the Company P.A.Lal & Co. Limited. We understand from Mr. Lal that he knows you very well indeed.

40 As we jointly know, we have now agreed with your Organisation that you will be the Distributors

EXHIBITS

No.28
Letter,
Seddon
Motors Ltd.
to K.R.
Latchan Bus
Service
16th June
1971

(continued)

shipping and financing is controlled by them, and they of course have final say as to whether individual shipments go forward or not strictly subject to satisfactory arrangements regarding payment.

Immediate Future Business

You have mentioned in your letter that there is an immediate need for ten more chassis. May we expect the order for this shortly? If this is so, may we strongly suggest to you that you cable us back at once giving details of the wheelbase and overall lengths of chassis wanted and any special equipment required plus delivery schedule. We can then send you a Pro-Forma Invoice on C.I.F. basis for your final consideration and acceptance. Obviously we are very anxious indeed to see the maximum quantity of chassis shipped into Fiji now that the first units have proved successful.

10

Prices

20

Since we last did business, it is unfortunate that crippling inflation here in the United Kingdom necessitated a rather substantial increase in price which became effective 1st February, 1971. You will find attached herewith a copy of our current export price list which is in respect of chassis delivered ex works Oldham in primer finish and which is strictly nett. We also attach individual technical specification sheets of each type of chassis.

30

In case complete buses are required you will find attached herewith our price list in respect of bus bodies which is again strictly nett, together with technical specification of the type of body which we construct. We would however point out to you, that whereas the delivery schedule on bus chassis is very prompt at the present moment, it is unlikely that we could offer delivery of completely assembled buses before February/March 1972 due to the fact that our order book is full until then.

40

Competition

We have noted what you say reference Albion and Bedford. Bedford does not compete with the Pennine range as it is a far lighter chassis in all respects. Albion creates no problem really for us, as this chassis is basically an adapted truck chassis and is fairly heavily priced. Even with our price increases, we know from careful investigation that we retain our

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Agency Agreement

EXHIBITS

10 As we mentioned to you in our letter of the 4th November, 1970 we have not entertained any enquiries from other parties in Fiji until such time as we had a definite decision from you. This is in spite of direct approaches received from Sunbeam Transport Limited, Burns Philp South Sea Company Limited and a U.K. company called Albert Jagger Limited. We have now written to all of these companies and copies of our letters are attached herewith. We also received a letter from Mr. L.R.Martin of Pearce and Martin Limited and a copy of our letter to him today is attached herewith.

No.28
Letter,
Seddon Motors
Ltd. to K.R.
Lathan Bus
Service
16th June
1971

(continued)

20 As regards the Agency Agreement itself, there are certain matters which we have to discuss with you, as our normal Agency Agreement covers the complete range of vehicles manufactured by us, i.e. commercial vehicles, buses and bus chassis. We are not certain whether you intend to handle the sales of our commercial vehicles, as no detailed reply has been received from the initial correspondence about this subject.

30 What we have done is to attach herewith a specimen of a distributors agreement, which was actually concluded with our dealers in Nigeria, and we have made certain alterations on this in red. Basically we require to know whether you in principle accept the terms and conditions of the agreement, and in particular we require your answers to the following:

7A - Are you going to sell commercial vehicles or not.

12 - What would be your estimate of the quantity of vehicles to be incorporated within the agreement for bus chassis, and separately for commercial vehicles if you do decide to incorporate these within the agreement.

40 23 - What are your comments here and would you accept the figure of 7½%.

With your answers to the above and your agreement in principle to the proposal we can prepare a formal document to become effective officially on the 1st July, 1971. You must however appreciate that our final acceptance of the proposal is of course subject to the sales figures which you can offer to us plus of course the very important matter of spares, service and maintenance. Ashworth's become involved in the distributors agreement, as all

EXHIBITS

framework of our agreement now already covering the bus chassis and buses.

No.27
Letter,
Seddon
Motors Ltd.
to K.R.
Latchan Bus
Service
4th November
1970

We are very interested indeed in the manner in which you have acted and we certainly hope that our future collaboration will be mutually beneficial to both of our companies. We now look forward with great interest to the arrival of the Letter of Credit covering the first two chassis.

Yours faithfully,
SEDDON MOTORS LIMITED

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(continued)

Sd: D.A.Davie
D.A.DAVIE

ENC.

No.28
Letter,
Seddon
Motors Ltd.
to K.R.
Latchan Bus
Service
16th June
1971

EXHIBITS
No.28

LETTER, SEDDON MOTORS LTD.
TO K.R.LATCHAN BUS SERVICE

SEDDON MOTORS LIMITED

WOODSTOCK FACTORY
OLDHAM, LANCS.

Please reply to:
Export Office: P.O.BOX 223, STANDARD HOUSE,
15/16 BONHILL STREET, FINSBURY
SQUARE, LONDON E.C.2.

20

SM/HA/DAD/JAE

16th June, 1971

K.R.Latchan Bus Service,
G.P.O. Box 331,
Suva,
Fiji.

Dear Sirs,

We wish to acknowledge with thanks your letter of the 7th June, the contents of which have received our very close attention indeed. We are delighted to see that the first chassis are now operating and are proving successful. We are also pleased to see that the engineer from Ray Vincent Limited helped you with the brake system assembly, and we are now certain that you will have taken note of their work and that the problem will not happen again.

30

installed in international vehicles as this in no way affects our Agency Negotiations. PERKINS are the largest manufacturers of engines in the world, and more and more vehicle manufacturers are using Perkins engines as power units. The Agency is of course offered by the vehicle manufacturer and not by Perkins themselves. It may interest you to know that we are one of the largest users of Perkins engines, and were in fact the first Commercial Vehicle Manufacturer to use Perkins engines in bulk.

EXHIBITS

No.27
Letter,
Seddon
Motors Ltd.
to K.R.
Latchan Bus
Service
4th November
1970

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AGENCY AGREEMENT: Would you please accept this letter as our confirmation that we consider your company as our exclusive distributors for the Bus Chassis and Buses in FIJI. Perhaps you would like to advise us at your earliest convenience what your intentions are as regards sales into Samoa, as we can then build an agreement for this territory into the overall agreement. We would confirm that we have no distributing arrangements in Samoa at the present moment, but obviously, we should like to know exactly what the prospects are there. We shall make no other direct contact with any other prospective purchaser in Fiji except through your medium. As soon as the first units have arrived and you have had experience with them, we would then suggest that you discuss with us again exactly how you intend to handle the agency, and we can then prepare a formal agreement between our two companies. Meanwhile, it is hoped that the present arrangement is satisfactory to you, and again you have our confirmation that you are considered as our exclusive distributor in Fiji.

(continued)

COMMERCIAL VEHICLES: We are pleased to see that you may also be interested in our range of Commercial Vehicles. Attached you will find copy of our general sales brochure together with a copy of our export price list which is in respect of vehicles delivered ex works in Primer Finish. Contrary to the system of nett prices on the bus chassis, from the Commercial Vehicles we allow our overseas distributors a discount of 17½% from ex works prices. We would also confirm that all vehicles are available in C.K.D. form for local assembly if you so wish.

In respect of Commercial Vehicles, if you feel that there are any models likely to be of immediate interest, will you please let us know, and we shall be very happy indeed to submit C.I.F. Proforma Invoices for your final acceptance. Equally, if you feel that there is a chance of business for the Commercial Vehicles, and are prepared to place a small trial order, we would be prepared to include the agency for Commercial Vehicles within the

EXHIBITS

No.27
Letter,
Seddon
Motors Ltd.
to K.R.
Latchan Bus
Service
4th November
1970

EXHIBITS
No.27

LETTER, SEDDON MOTORS LTD.
TO K.R.LATCHAN BUS SERVICE

SEDDON MOTORS LIMITED

WOODSTOCK FACTORY
OLDHAM, LANCS.

Please reply to -

Export Office: P.O.Box 223, STANDARD HOUSE,
15/16 BONHILL STREET, FINSBURY
SQUARE, LONDON E.C.2.

10

Telephone: 01-628 7711 (20 Lines)

Telex: 887568 (ADWORTH) Cables: Stamstam, London

SM/HA/DAD/CD

4th November 1970

K.R.LATCHAN BUS SERVICE
G.P.O. Box 331
S U V A
FIJI

Dear Sirs,

We acknowledge and thank you for your two
letters of the 28th and 31st October, the
contents of which have been read with great
interest.

20

In respect of your initial order for two of
our PENNINE 4-354 Bus Chassis, we have much
pleasure in attaching herewith a Proforma Invoice
on a C.I.F. Suva Basis for this indent. We also
show on the Proforma Invoice the separate cost
if you decide to import the chassis without tyres
and tubes. As soon as we have advice from our
shipping managers B.Ashworth & Co. (Overseas) Ltd.30
that the Letter of Credit has been received by
them, the vehicles will be placed in the production
programme at Oldham for shipment at the very
earliest opportunity. We very much hope that the
Letter of Credit will be forthcoming immediately,
as we are most anxious that these initial two
units should be got into operation in FIJI with
the minimum of delay.

We are now preparing for you our recommenda-
tions as regards spare parts which should be
carried in stock, and this information will be
sent along to you within the course of the next
few days in conjunction with the bodybuilders
drawings.

40

PERKINS ENGINES: There is no need to worry
at all about the fact that PERKINS Engines are

10 It is quite true to say that at the present moment, we do not have a distributor in Fiji. In the Far East and Australia we sell the Pennine chassis and buses extensively in Australia, Indonesia, Malaysia, and Hong Kong, for example. In Hong Kong you will find many hundreds of the buses operated by The Kowloon Motor Bus Company Ltd., and this has been so, for more than 12 years now. We are very interested indeed in coming to an arrangement with a company in Fiji to look after our representation on an exclusive basis. OUR requirements are very simple. We require our dealer to always have a few vehicles in stock to meet immediate current demands, to canvass every single potential purchaser to secure business, to offer maintenance and servicing to all users, and to carry spare parts. A dealer who can offer us collaboration to meet these requirements is acceptable to us, and if you agree to do this, we shall be delighted to negotiate an agency with you. We assume that you would require the agency for the Fiji Island group and Samoa. Would you please confirm this to us, and at the same time give us brief details of how you intend to carry on the agency. Once we see sight of the first business, we will then prepare for your recommendations of spare parts which we feel you should carry in stock.

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30

We have noted that you also require a quotation for a further chassis with a Plaxton Panorama Elite body. As you know we work in very close collaboration with Plaxtons and we hope to be submitting to you an offer within the next day or so for this unit additionally.

COMMERCIAL VEHICLES

40 Are you interested additionally in commercial vehicles which we manufacture? A brochure is attached herewith.

We hope very much indeed that we shall shortly have the pleasure of receiving your confirmation of these valued orders and assure you of our willingness to collaborate with you fully.

Yours truly,
Sd: D.A.DAVIE
D.A. DAVIE

EXHIBITS

No.26
Letter,
Seddon Motors
Ltd. to K.R.
Latchan
12th October
1970

(continued)

EXHIBITS

No.26
Letter,
Seddon Motors
Ltd. to K.R.
Lathan
12th October
1970

(continued)

complete bus in primer finish only, as we have found from our experience that these are invariably scratched and damaged on route, unfortunately, which does mean re-spraying on arrival. However, should you wish us to quote you a figure for coachwork finishing the complete bus, please let us have details of your colour scheme and any lettering required, and the additional cost will be cabled to you by return.

10

You will find enclosed a further copy of our current price list together with a leaflet and specification for the Pennine 4 (V8-510). We are awaiting new literature from our printers at the present moment, and as regards full technical specifications of the chassis, we would ask you to refer to the specification dated 14th September 1970. As regards the bus body, you will also find enclosed a specification of this together with a copy of the price list for the coachwork. The whole price is shown on the coachwork list, we grant a discount of 12½% to our distributors overseas and this is shown on the Proforma Invoice.

20

As you will see, we will expect payment by Irrevocable Letter of Credit, duly confirmed in London, and we would request that the Letters of Credit be established in favour of our shipping managers, B.Ashworth & Company (Overseas) Limited. Would you please note that when establishing the Letters of Credit for fully assembled chassis and buses, that you should instruct your bankers to allow for the presentation of insurance certificates excluding R.O.D. clauses. Unfortunately, for completely assembled vehicles it is impossible to secure insurance to cover the risks of rusting, oxidisation, denting discolourisation and mechanical derangement.

30

We hope very much indeed that you will now be taking a quick decision on the first units which you wish to import. As soon as we receive your order, the matter will be given prompt priority attention, for shipment at the very earliest opportunity. Naturally, where chassis only are concerned, we shall be sending you full coach-builders drawings, well in advance of shipment. As you will appreciate, with the absolutely flat chassis members on the unit, the chassis is ideal for the body builder, and this is basically due to the fact that this unit has been designed specifically for bus purposes and is not an 'adapted' truck chassis.

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EXHIBITS
No.26

LETTER, SEDDON MOTORS
LTD. TO K.R. LATCHAN

EXHIBITS

No.26

Letter,
Seddon Motors
Ltd. to K.R.
Latchan

SEDDON MOTORS LIMITED

WOODSTOCK FACTORY
OLDHAM, LANCS.

12th October
1970

Please reply to -

Export Office: P.O.Box 223, STANDARD HOUSE,
15/16 BONHILL STREET, FINSBURY
SQUARE, LONDON E.C.2.

Telephone: 01-628 7711 (20 Lines)

Telex: 887568 (ADWORTH) Cables: Stamstam, London

OUR REF: SM/HA/DAD/TD

12th October 1970

Mr. K.R.Latchan,
K.R.Latchan Bus Service,
G.P.O. Box 331,
Suva, FIJI.

Dear Sir,

Thank you very much indeed for your letter of
the 5th inst. which we have read with considerable
interest. We are very pleased indeed to see that
you wish to purchase our chassis, and we sincerely
trust that our negotiations will be successful to
our mutual interest.

We have prepared the required Proforma Invoices
for you, on a C.I.F. Suva basis in respect of the
chassis and these are attached herewith in
quadruplicate as follows :-

- Proforma No.1 - 2 Chassis in an assembled
state.
- Proforma No.2 - 2 Chassis in C.K.D. twin-pack.
- Proforma No.3 - 2 Chassis in an assembled
state, semi-automatic gearbox.
- Proforma No.4 - 2 Chassis in C.K.D. twin-pack,
semi-automatic gearbox.

We are also attaching four copies of Proforma
Invoice No.5 which is in respect of a complete bus
at 33 feet overall length and 8 feet overall width,
fitted with three x two seating configuration giving
a total seating capacity for 61 passengers. We show
the cost of the complete bus C.I.F. Suva with a
standard E.M.V.Synchromesh Gearbox and with the
self-changing gears, semi-automatic gearbox. Will
you please take careful note that we quote for the

EXHIBITS

No.25
Letter,
Seddon
Motors Ltd.
to K.R.
Latchan Bus
Service
23rd
September
1970

and when ordering, we would ask you to specify exactly which length you require.

May we suggest that you now advise us of the models of interest, how many units are involved, any extra equipment required, and whether you wish the chassis delivered fully assembled or in C.K.D. form for local assembly. Against receipt of this information, we shall then send to you a C.I.F. SUVA Proforma Invoice for your final consideration and acceptance.

10

(continued)

From your letter we gather that your interest is solely in the chassis, and that you will be responsible for the manufacturing of the bodies locally. However, if you would like to have details of a complete bus from us, we would be very happy indeed to submit offers for your consideration. After deciding on the type of chassis required and giving us the information aforementioned, would you then please be kind enough to advise approximately the number of seats which you require and the arrangement for the entrance and exit doors.

20

As we have stated, the PENNINE range has been well tried and proven overseas, but if you do feel that you would like to visit us in the United Kingdom, we would obviously be very pleased indeed to welcome you here and to give you every opportunity of inspecting our works at Oldham. It is a great pity that your visit did not take place during this current week, as the Commercial Motor Show is now operating in London, and on our stand there you would have had the opportunity of inspecting the chassis and complete buses.

30

We look forward very much indeed to your further advice, and would respectfully request that you address us here in the London Export Sales Office.

Yours faithfully,
SEDDON MOTORS LIMITED

40

Sd: B.A.Davie
B.A.DAVIE

ENC.

EXHIBITS
No.25

LETTER, SEDDON MOTORS LTD.
TO K.R. LATCHAN BUS SERVICE

EXHIBITS

No.25
Letter,
Seddon
Motors Ltd.
to K.R.
Latchan Bus
Service
23rd
September
1970

SEDDON MOTORS LIMITED

WOODSTOCK FACTORY
OLDHAM, LANCS.

Please reply to -

Export Office: P.O.BOX 223, STANDARD HOUSE,
15/16 BONHILL STREET, FINSBURY
SQUARE, LONDON E.C.2.

Telephone: 01-628 7711 (20 Lines)

Telex: 887568 (ADWORTH) Cables: Stamstam, London

SM/HA/DAD/CD

23rd September 1970

K.R.LATCHAN BUS SERVICE

G.P.O. Box 331

SUVA

FIJI

Attention: Managing Director

Dear Sirs,

re: BUS CHASSIS

We acknowledge and thank you for your letter of the 14th inst., and certainly would be very pleased indeed to supply you with our PENNINE range of bus chassis.

Attached you will find full information on the PENNINE range of chassis which we can offer. Basically, these are the PENNINE-4 with a front-mounted engine consisting of either the PERKINS 6.354 or V8.510 Diesel Engine, and the PENNINE-5 with the similar engines mounted at the rear. As you are aware, these two engines develop 120 BHP and 170 BHP respectively @ 2800 RPM.

We are also enclosing a copy of our September 1970 £ Sterling Price List which is in respect of the chassis delivered ex works Oldham in Primer Finish, and all prices of which are strictly nett for export.

The PENNINE range of chassis has been well tried and proven here in the United Kingdom and in numerous overseas export markets, and consequently we offer it to you as a vehicle of absolute reliability. You will see from the information which we have given, the overall length and wheelbase arrangements which are available on each chassis,

EXHIBITS

No.24
Letter,
K.R.Latchan
to Seddon
Diesel
Vehicles Ltd.
14th September
1970

EXHIBITS

No.24

LETTER, K.R.LATCHAN TO
SEDDON DIESEL VEHICLES LTD.

14th September, 1970

SEDDON DIESEL VEHICLES LTD.,
WOODSTOCK FACTORY,
OLDHAM, LANCS.
ENGLAND.

Dear Sirs,

10

Seeing an advertisement in the Buyers' Guide to the Motor Industry of Great Britain, that you are interested in exporting Seddon Bus Chassis, I take this opportunity of writing to you.

I am a Bus Proprietor and I am extremely interested in importing my own Chassis from your firm and if you are interested, I shall be too happy to negotiate with you. I am even keen to pay a visit to England to discuss the matter with you.

20

Thank you,

Yours faithfully,

Sd: K.R.Latchan
MANAGING DIRECTOR.

EXHIBITS
No.21

ACCOUNT, L.R.MARTIN TO
H.P. GOVIND

G.P.O. Box 331
42 Robertson Road,
Suva

31st December 1979

EXHIBITS
No.21
Account,
L.R.Martin
to H.P.
Govind
31st
December
1979

10

Mr. H.P. Govind
Rewa

In account with L.R.MARTIN

20

1979		1979		1979	
				Interest	
Jan,1 To Balance b/f	11366.78	Jan.31 By Cash	214.75		85.25
Oct.15 Insurance	134.20	May 15 "	649.08		250.92
		Aug.27 "	63.68		236.32
		Sept.4 "	221.71		78.29
		Oct. 4 "	223.37		76.63
		Nov. 1 "	225.03		74.97
		Dec. 2 "	225.72		74.28
		31 "	227.42		<u>72.58</u>
					949.24
					=====
		Bal. c/d			
				<u>9450.22</u>	
	\$ 11500.98		\$ 11500.98		
	=====		=====		

1980

Jan.1. To Balance
b/d \$ 9450.22

EXHIBITS

No.20B
 Schedule
 showing
 Net tangible
 Asset Value
 1971-1973
 (Undated)

EXHIBITS
 No.20B

SCHEDULE SHOWING NET
 TANGIBLE ASSET VALUE
 1971-1973

K.R.LATCHAN BUS SERVICE
(AMENDED ACCOUNTS)

SCHEDULE SHOWING NET TANGIBLE ASSET VALUE

1971

Total Assets (Including Goodwill)		95,953.25	10
Less: Deposit on Chassis	1,000.00		
Sundry Creditors	267.10		
L.R.Martin - Cash			
Account	9,839.96	<u>11,107.06</u>	
Net Tangible Assets		84,846.19	
		=====	

1972

Total Assets (Including Goodwill)		143,714.86	
Less: Sundry Creditors	5,100.44		
Basic and PAYE Tax			
Accrued	105.39		20
Deposit on Bus -			
Cautata Bus Service	1,300.00		
Shree Punjab Co.	500.00		
Cash Account -L.R.Martin			
Accountancy Fee	29,242.27		
Accrued	420.00	<u>36,668.10</u>	
Net Tangible Assets		107,046.76	
		=====	

1973

Total Assets		150,087.27	30
Less: L.R.Martin -			
Cash Account	17,865.00		
Sundry Creditors	<u>1,904.45</u>	<u>19,769.45</u>	
Net Tangible Assets		130,317.82	
		=====	

Inclusion of goodwill is on the basis that 200 acres freehold land recorded in the books at \$6,000 has a much greater market value than the \$14,206 goodwill shown in the accounts. On this basis the inclusion of goodwill in arriving at the net tangible asset value is justified

EXHIBITS
No.20A

NET TANGIBLE ASSET VALUE
1971-1973 PREPARED BY
L.R. MARTIN

K.R. LATCHAN BUS SERVICES

EXHIBITS

No.20A
Net tangible
Asset Value
1971-1973
prepared by
L.R.Martin
(Undated)

SCHEDULE OF NET TANGIBLE ASSET VALUE
AS SHOWN IN THE ACCOUNTS PREPARED BY L.R.MARTIN

1971

10	Total Assets (Including Goodwill)	\$78,230
	Less: Creditors	<u>381</u>
	Net Tangible Assets	\$77,849 =====

1972

	Total Assets (Including Goodwill)	\$79,728
	Less: Cash Overdraft	2,687
	Sundry Creditors	<u>2,219</u>
		<u>4,906</u>
	Net Tangible Assets	\$74,822 =====

1973

20	Total Assets (Including Goodwill)	\$98,696
	Less: Cash Overdraft	26,826
	Sundry Creditors	<u>1,405</u>
		<u>28,231</u>
	Net Tangible Assets	\$70,465 =====

Inclusion of goodwill is on the basis that 200 acres freehold land recorded in the books at \$6,000 has a much greater market value than the \$14,206 goodwill shown in the accounts. On this basis the inclusion of goodwill in arriving at the net tangible asset value is justified.

EXHIBITS

NET TANGIBLE ASSETS - 1972

No.19
Net tangible
Assets
1970-1973
(undated)
(continued)

A)	<u>Reconstructed Accounts</u>			
	Net Assets		107,046	
	<u>Less</u> Wheel Tax	494		
	Goodwill	<u>14,206</u>	<u>14,700</u>	
			<u>\$92,346</u>	
B)	<u>Non Reconstructed Accounts</u>			
	Net Assets		74,821	
	Less		<u>14,700</u>	
			<u>\$60,121</u>	10

NET TANGIBLE ASSETS - 1973

A)	<u>Reconstructed Accounts</u>			
	Net Assets		130,318	
	<u>Less</u> Wheel Tax	832		
	Goodwill	<u>14,206</u>	<u>15,038</u>	
			<u>\$115,280</u>	
B)	<u>Unreconstructed Accounts</u>			
	Net Assets		70,464	
	Less		<u>15,038</u>	
			<u>\$55,426</u>	20

EXHIBITS
No.19

NET TANGIBLE ASSETS
1970-1973

EXHIBITS

No.19
Net tangible
Assets
1970-1973
(undated)

NET TANGIBLE ASSETS - 1970

A) Reconstructed Accounts

Net Assets 66,977

Less Wheel Tax 326
Goodwill 14,206 14,532

10 \$52,445

B) Unreconstructed Accounts

Net Assets 61,285

Less 14,532

\$46,753

NET TANGIBLE ASSETS - 1971

A) Reconstructed Accounts

Net Assets 84,846

Less Wheel Tax 650
Goodwill 14,206 14,856

20 \$69,990

B) Unreconstructed Accounts

Net Assets 77,845

Less 14,856

\$62,989

EXHIBITS

Lodged by CROMPTONS,
SOLICITORS
SUVA, FIJI

No.16
Application
for Registra-
tion
1st June
1965

Date 1/6/65 3 p.m.

Registered 1 JUN 1965 at 3 p.m.

(continued)

Sgd: Illegible
Registrar-General

INDEX SEARCHED NO.
SIMILAR REGISTRATION

FORM 6

10

Original

No. of Certificate 5928

CERTIFICATE OF REGISTRATION

I hereby certify that a statement applying
for Registration furnished by K.R.LATCHAN
BUS SERVICE of Suva, Passenger Service Vehicle
Operators pursuant to section 4 of the
above-mentioned Ordinance was registered on
the First day of June 1965

Dated the First day of June 1965

Sd: Illegible
Actg Asst. Registrar-General

20

EXHIBITS
No.16

EXHIBITS

APPLICATION FOR REGISTRATION

No.16
Application
for Registra-
tion
1st June 1965

APPLICATION FOR REGISTRATION BY AN INDIVIDUAL
"A"

10 I the undersigned hereby apply for registration pursuant to the provisions of the Registration of Business Names Ordinance, and for that purpose furnish the following statement of particulars:-

1. The business name K.R.LATCHAN BUS SERVICE
2. The general nature of the business PASSENGER SERVICE VEHICLE OPERATORS
3. The principal place of business SUVA
4. The present Christian name (or names) and surname of the individual RAM LATCHAN (f/n Khurbur Sardar)
- 20 5. Any former Christian name (or names) or surname of the individual NIL
6. The nationality of the individual BRITISH
7. The nationality of origin of the individual, if not the same as the present nationality INDIAN
- 30 8. The usual residence of the individual WAINIBOKASI, REWA
9. The other business occupation (if any) of the individual NIL
10. The date of the commencement of the business if the business was commenced after 28th November 1923 4th May, 1965
- 40 11. Any other business name or names under which the business is carried on NIL

Dated this 1st day of June 1965

K.R.Latchan
Signature

EXHIBITS

Lodged by Mr. Ram Latchan,
G.P.O. Box 331, Suva

No.15
Registration
of Change of
Particulars
Brunswick
Motors
28th December
1972

Date....., 19.....

Registered 9.12.72 at Noon

Sgd: Illegible
Registrar General

(continued)

Form 6

Registration of Business Names Ordinance
1923

Original No. of Certificate 9979 10

CERTIFICATE OF REGISTRATION

I hereby certify that a statement of particulars
of change furnished by BRUNSWICK MOTORS of
Near Police Station, Wainibokasi, Rewa pursuant
to section 7 of the above-mentioned Ordinance
was registered on the 29th day of December, 1972

Dated the 2nd day of January 1973.

CERTIFIED TRUE COPY

Sgd: Illegible
ADMINISTRATOR GENERAL
24th May 1982

Sgd: Illegible
Administrator-General 20

	The present Christian name or names and surname of every individual who is—and the corporate name of every corporation which is—a partner in the firm	Any former Christian name or names or surname of every individual partner in the firm	The nationality of every individual partner in the firm	The nationality of origin (if other than the present nationality) of every individual partner in the firm	The usual residence of every individual who is—and the registered or principal office of every corporation which is—a partner in the firm	The other business occupation (if any) of every individual or corporation partner in the firm	Remarks as to change	Date of change
1	RAM LATCHAN F N KHURBUR SIRJAR		CITIZEN OF FIJI	U. K. + COLONIES	NEAR POLICE STATION WAINIBEKASI REWA	BUS SERVICE PROPRIETOR	CONTINUING PARTNER	—
2	LESLIE REDVERE MARTIN	—	"	"	23 BEACH ROAD SUVA POINT	ACCOUNTANT	IN COMPANY PARTNER	17/2/11
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								
13								
14								
15								

Dated this 28th day of December, 1911

1. *[Signature]* V.R. LATCHAN 7 10 13
 2. *[Signature]* R. MARTIN 8 11 14

EXHIBITS

No.15
Registration
of Change of
Particulars
Brunswick
Motors
28th December
1972

(continued)

The business name	BRUNSWICK MOTORS	Date of Change	-
The general nature of the business	IMPORTATION AND SALE OF BUS AND CARGO CHASSIS AND BODY BUILDING	-	
The principal place of the business	NEAR POLICE STATION, WAINIBOKASI, REWA	-	
The date of the commencement of the business if the business was commenced after 28th November, 1923	2ND FEBRUARY, 1971		10
Any other business name or names under which the business is carried on	NIL		20

EXHIBITS
No.15

REGISTRATION OF CHANGE
OF PARTICULARS, BRUNSWICK
MOTORS

Business Name No. 9979

Registration of Business Names Ordinance 1923
Reference to Previous Registration No.9197
Reference to Subsequent Registration No.

EXHIBITS

No.15
Registration
of Change of
Particulars
Brunswick
Motors
28th December
1972

10

STATEMENT OF CHANGE IN THE PARTICULARS
REGISTERED BY A FIRM OR AN INDIVIDUAL
TRADING UNDER A BUSINESS NAME DESIRING TO
FORM A FIRM UNDER THE SAME BUSINESS NAME
(Section 4)

DECLARATION

This Declaration is only required if the Statement
is not signed by all the individuals who are
partners and by the Director or the Secretary of
each Corporation which is a partner

20

I of the town of
in the province of in the Colony
of Fiji do solemnly and sincerely declare and affirm
that all the particulars contained in the within
statement dated the.....day of.....19...
and signed by me, which is now produced and shown
to me marked.....are true.

And I make this solemn declaration conscientiously
believing the same to be true and by virtue
of the Statutory Declarations Act 1835.

30

Declared at.....)
..... day of.....)
)
)
)
.....)
A Commissioner)

Stamp
Duty
20c

EXHIBITS

No. 14
Application
for Registration
9th December
1971

(continued)

10. The date of commencement of the business if the business was commenced after 28th November 1923 2nd February, 1971
11. Any other business name or names under which the business is carried on NIL 10

Dated this 7th day of December 1971

Sd: K.R.Latchan
Signature

Lodged by R. LATCHAN
P.O.Box 331, Suva

Registered 9/12/71 at 10 a.m.

Sd: Illegible
ADMINISTRATOR GENERAL

FORM 6

Original No. of Certificate 9197 20

CERTIFICATE OF REGISTRATION

I hereby certify that a statement applying for registration furnished by BRUNSWICK MOTORS of Near Police Station, Wainibokasi, Rewa pursuant to section 4 of the above-mentioned Ordinance was registered on the 9th day of December 1971.

Dated the 10th day of December, 1971.

Sgd: Illegible
ADMINISTRATOR GENERAL 30

EXHIBITS
No.14

APPLICATION FOR REGISTRA-
TION

Registration of Business Names Ordinance
(Cap.172)

Reference to Subsequent
Registration No. 9979

Registration
Fee \$1
R.R.No.

EXHIBITS

No.14
Application
for Registra-
tion
9th December
1971

10 APPLICATION FOR REGISTRATION BY AN INDIVIDUAL

We the undersigned, hereby apply for registration pursuant to the provisions of the Registration of Business Names Ordinance, and for that purpose furnish the following statement of particulars:-

-
- | | | |
|----|---|---|
| 1. | The business name | BRUNSWICK MOTORS |
| 2. | The general nature of the business | IMPORTATION AND SALE OF BUS and CARGO CHASSIS AND BODY BUILDING |
| 20 | 3. The principal place of business | NEAR POLICE STATION, WAINIBOKASI, REWA |
| | 4. The present Christian name (or names) and Surname of the individual | RAM LATCHAN(f/n KHURBHUR SIRDAR) |
| | 5. Any former Christian name (or names) or Surname of the individual | NIL |
| 30 | 6. The nationality of the individual | FIJI CITIZEN |
| | 7. The nationality of origin of the individual if not the same as the present nationality | " " |
| | 8. The usual residence of the individual | as above |
| 40 | 9. The other business occupation (if any) of the individual | BUS SERVICE PROPRIETOR |

EXHIBITS

No.13
Assumptions
etc. of Peat
Marwick,
Accountants
(Undated)

(continued)

B. Exclusions

1. All interest charged by L.R.Martin to Brunswick Motors, K.R.Latchan Bus Services and Baulevu Bus Service.
2. Commission charged by L.R.Martin on sale of bus chassis.
3. Payments by cheques for which no satisfactory explanations were given by L.R.Martin.
4. All journal entries which were unexplained or related to interest or commission. 10
5. All incomes and other transactions on sale and purchase of bus chassis and spare parts prior to 31 December 1972.

C. Inclusions

1. In respect of services rendered to Brunswick Motors by K.R.Latchan, \$6,000 for each year. (\$4,500 for 1978) 20
2. In respect of use of Mr. Latchan's private car on Brunswick Motors business, \$2,400 for each year (\$1,800 for 1978)
3. In respect of rent for garage and workshop at Wainibokasi, \$3,600 for each year. (\$2,700 for 1978)
4. Stocks of spare parts and bus chassis at 31/12/72 were taken into Brunswick Motors books at cost plus 10% for spare parts and cost plus 20% for bus chassis respectively. 30

D. Amended Accounts

The Amended Accounts as at 30 September 1978 prepared on the basis of items A-C above show a cumulative loan liability owing to L.R.Martin of \$47,992.57 compared with \$69,677.63 shown in the accounts prepared by L.R.Martin. 40

EXHIBITS
No.13

ASSUMPTIONS ETC. OF PEAT
MARWICK, ACCOUNTANTS

EXHIBITS
No.13
Assumptions
etc. of Peat
Marwick,
Accountants
(Undated)

A. Assumptions

1. Claims made in K.R.Latchan's affidavit have been included in the amended accounts except the sale of bus chassis in 1973 and 1974.
- 10 2. Brunswick Motors and K.R.Latchan Bus Services accounts in L.R.Martin's private ledger have been treated as a customer account in a bank.
3. Garage building built on land belonging to K.R.Latchan, have been taken as built by K.R.Latchan from loan given by Brunswick Motors.
- 20 4. L.R.Martin became a 50% partner in Brunswick Motors from 1st January 1973 by virtue of amendments in the business names registration effected on 28 December 1972.
5. Payments made by cheques and accepted by us to have been properly authorised were assumed to have been correctly allocated to respective accounts.
- 30 6. In practice bus chassis were sold by K.R.Latchan as employee of Brunswick Motors, direct to customers on deposit of a sum of money. For the balance of purchase price L.R.Martin took a Bill of Sale from the customer and gave credit for the amount to Brunswick Motors in the ledger.

For accounting purposes all sale of chassis and constructed buses have been treated as cash sale.
- 40 7. Non-cash items such as Debtors, Creditors, Assets Depreciation and stocks of spares and chassis have been taken without change, from the accounts prepared by L.R.Martin.

EXHIBITS

No.1
Notes
prepared
by Ram
Vilash
4th October
1979

(continued)

8. One such Bill of Sale in the amount of \$15,832 - made in Oct/Nov. 1975 was not credited to Brunswick Motors account at all.
9. Examination of a copy of Bill of Sale No.18417 of 20th May, 1975 showed that \$5,370 interest was charged on a Bill of Sale for \$23,000.
10. A test addition of Ram Kuar's ledger account showed a suppression of \$5,760.38 credit balance. This amount was further charged with interest for all the years thereafter. 10
11. There seems to be short accounting of cash as actually received and credited to the ledger accounts - This can only be verified by a detailed checking.
12. I was not given free access to the journal from which substantial number of entries originated, while each entry was shown to me upon request - to go through the whole ledger it is not possible to ascertain the validity of such an entry in isolation. 20
13. Accounting entries indicate that "Brunswick Motors Partnership" was operating from November, 1971 - but the partnership was not registered until 29th December, 1972, in fact the particulars of change makes the changes effective from 19th February, 1971 when Brunswick Motors was not even existing. 30
14. A listing of monthly ledger balances of Ram Kuar and Brunswick Motors showed that while substantial debit balances existed in the books, there was no corresponding overdraft in the bank account.
15. Perusal of the cash book showed that in most months bulk of the cash was contributed by K.R.Latchan group of companies i.e. Ram Kuar, K.R.Latchan Bus Services and Brunswick Motors. 40

RAM VILASH
12th October, 1979.

private ledger being treated in the same way as debit or credit balance in a bank account.

EXHIBITS

Many income as well as expense items were journalised even though they were cash items e.g. payments of insurances were accounted for by journal entries although they could have been paid cash. Examination of the bank statement showed no shortage of funds.

No.1
Notes
prepared
by Ram
Vilash
4th October
1979

10 Because of this complicating system of keeping accounts which could cause a lot of errors of both omission and commission, I would need much more time than 3 or 4 days in which to make a meaningful examination of the records in order to satisfy myself that all information were fully and correctly recorded. (continued)

In view of this I was only able to make a most cursory examination of the cash books and ledgers which showed the following :

- 20 1. While Mr. Martin charged interest when Brunswick Motors account was in debit he allowed no interest when the same account was substantially in credit.
2. The Brunswick Motors account was periodically debited with "Commission for financing and sale of buses".
3. Mr. Martin's cash book regularly showed receipts of principal and interest from several different persons, apparently as repayment of loans given to them.
- 30 4. A look through the cheque butts showed large sums of monies given to various people as "Advances", e.g. Niranjana Autoport Limited was advanced \$22,000 by two separate cheques one for \$14,000 and one for \$8,000.
5. A perusal of the bank statement showed big sums of monies transferred to "Managers Account" one such transfer was of \$29,000.
- 40 6. Comparison of a schedule of buses sold from 1971 to 1977, showed that in most cases customers would pay a small "deposit" and the balance was financed by a Bill of Sale given by the purchaser to Mr. Martin.
7. Mr. Martin would then credit Brunswick Motors account with the Bill of Sale amount and presumably debit the purchasers account in his private ledger to indicate his financing of the purchase by the customer.

EXHIBITS

No.1
Notes
prepared
by Ram
Vilash
4th October
1979

EXHIBITS

No.1

NOTES PREPARED BY RAM
VILASH

BRUNSWICK MOTORS

4/10/79

On receiving instruction from Mr. Latchan I accompanied him to the Law Offices of Messrs. Mitchell Kiel & Associates to examine the books and records of one Mr. L.R.Martin. 10

On arrival, we met Mr. Kiel and Mr. Martin. I introduced myself to Mr. Martin and asked him if he could explain the accounting procedures he followed in writing up the records of Mrs. Ram Kuar, K.R.Latchan Buses and Brunswick Motors, by showing me how the entries flowed through the books. He attempted but could not explain and suggested we come back in the afternoon when he will get his secretary "Miss Claire" who did all the writing up to show us the procedures. 20

We went back at 2.30 p.m. - Mr. Martin was not present Miss Claire - an elderly lady explained as follows :-

The accounts are maintained in much the same way as a bank does. That is all the monies received were put through one cash book and deposited in one bank account and all payments were entered in the one payments book. All cheques were drawn on the same account. Like the bank Mr. Martin was then separating records for each client from various receipts and payment vouchers and posted to their account in his private ledger. The individual balances in this ledger would show monies owing to or owing by Mr. Martin. Like a bank Mr. Martin was using these funds accumulated in his account to advance monies to other people, such as for purchasing buses from Brunswick Motors. Similarly like a bank he charged interest on all accounts in debit but allowed no interest when these accounts ran into credit. 30 40

All these entries were again repeated in a set of books kept for each individual client and from these information their annual accounts were prepared. Balances in Mr.Martin's

Court of Appeal of Fiji dated 9th November 1983 and for further or other relief:

No.39

Order granting special leave to appeal to H.M. in Council from the judgment of the Court of appeal in Fiji dated 9th November 1983

10 "THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the matter of 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 (1) leave ought to be granted to the Petitioner to enter and prosecute his Appeal against the Judgment of the Court of Appeal of Fiji dated 9th November 1983 and (2) pending the hearing of the said Appeal (a) there should be a stay of execution of the Judgment of the Court of Appeal dated 23rd March 1983 and (b) *the Respondent should be restrained* from exercising the power of sale under a mortgage granted pursuant to an Order of the Supreme Court made on 13th October 1982.

18th November 1983
(continued)

30 "AND Their Lordships do further report to Your Majesty that the copy of the Record in the said pending Appeal ought to be accepted (subject to any objection that may be taken thereto by the Parties) as the Record proper to be laid before Your Majesty on the hearing of this Appeal."

HER MAJESTY Queen Elizabeth The Queen Mother and His Royal Highness The Prince Charles Prince of Wales being authorised thereto by the said Letters Patent have taken the said Report into consideration and do hereby by and with the advice of Her Majesty's Privy Council on Her Majesty's behalf approve thereof and order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

40 WHEREOF the Governor-General or Officer administering the Government of Fiji for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

N. E. LEIGH

Order granting special leave to appeal to H.M. in Council from the judgment of the Court of appeal in Fiji dated 9th November 1983

18th November 1983

Order granting special leave to appeal to H.M. in Council from the Judgment of the Court of Appeal in Fiji dated 9th November 1983

AT THE COURT OF SAINT JAMES

The 18th day of November 1983

PRESENT

THE COUNSELLORS OF STATE
IN COUNCIL

10

WHEREAS Her Majesty in pursuance of the Regency Acts 1937 to 1953 was pleased by Letters Patent dated the 3rd day of November 1983 to delegate to the six Counsellors of State therein named or any two or more of them full power and authority during the period of Her Majesty's absence from the United Kingdom to summon and hold on Her Majesty's behalf Her Privy Council and to signify thereat Her Majesty's approval for anything for which Her Majesty's approval in Council is required:

20

AND WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 16th day of November 1983 in the words following viz:-

30

"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 Khurbur Ram Latchan in the matter of a pending Appeal from the Fiji Court of Appeal between the Petitioner (Appellant) and Leslie Redvers Martin Respondent (Privy Council Appeal No. 26 of 1983) setting forth that the Petitioner prays for special leave to appeal to Your Majesty in Council from a Judgment of the Fiji Court of Appeal dated 9th November 1983 dismissing an application by the Petitioner that the Respondent provide good and adequate security to the satisfaction of the Court pursuant to section 6 of The Fiji (Procedure in Appeals to Privy Council) Order 1970: And humbly praying Your Majesty in Council to grant the Petitioner special leave to appeal from the Judgment of the

40

50

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeying and carried into execution.

10 WHEREOF the Governor-General or Officer administering the Government of Fiji for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

No. 38
Order
dismissing
application
for special
leave to
appeal to
H.M. in
Council
against stay
of execution
27th July
1983
(continued)

N.E. LEIGH

No. 38
Order
dismissing
application
for special
leave to
appeal to H.M.
in Council
against stay
of execution
27th July
1983

No. 38
Order dismissing application
for special leave to appeal to
H.M. in Council against stay
of execution.

AT THE COURT AT BUCKINGHAM PALACE

The 27th day of July 1983

10

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY
IN COUNCIL

WHEREAS there was this day read at the
Board a Report from the Judicial Committee of
the Privy Council dated the 26th day of July
1983 in the words following viz:-

"WHEREAS by virtue of His late Majesty 20
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 Khurbur Ram Latchan praying
for special leave to appeal to Your Majesty
in Council from the Order of the Fiji Court
of Appeal dated 3rd May 1983 dismissing an
application by the Petitioner that pending
the hearing of an Appeal to Your Majesty in
Council (Now registered as Privy Council 30
Appeal No. 26 of 1983) between the Petitioner
(Appellant) and Leslie Redvers Martin
Respondent from an Order of the Court of
Appeal dated 23rd March 1983 execution of
the said Order of 23rd March 1983 might
be suspended:

"THE LORDS OF THE COMMITTEE in obedience
to His late Majesty's said Order in Council
have taken the matter of the humble Petition
into consideration and having heard Counsel 40
in support thereof Their Lordships do this
day agree humbly to report to Your Majesty
as their opinion that the said Petition
ought to be dismissed."

"AND in case Your Majesty should be
pleased to approve of this Report then
Their Lordships do direct that there be
paid by the Petitioner to the Respondent
his costs of opposing the said Petition
the amount of such costs to be hereafter 50
taxed and certified."

the trial such costs reduced by one-quarter, and to be taxed, if not agreed;

(iii) that the appellant do pay to the Respondent his costs of trial as aforesaid, also costs of the Cross Appeal.

In the Court of Appeal

No.36
Order
23rd March
1983

(continued)

BY THE COURT

Sd: S.M.Hassan
REGISTRAR

10

No. 37

ORDER GRANTING FINAL LEAVE
TO APPEAL

IN THE FIJI COURT OF APPEAL No.56 of 1982

BETWEEN: KHURBUR RAM LATCHAN Appellant
A N D: LESLIE REDVERS MARTIN Respondent

BEFORE THE HONOURABLE MR. JUSTICE ROONEY

Dated the 29th of April 1983

THE Appellant having complied with the conditions imposed by Order made herein on the 8th day of April 1983 IT IS ORDERED that the appellant do have final leave to appeal to Her Majesty in Council from the decision of this Court.

20

BY THE COURT

Sd: Illegible
REGISTRAR

No.37
Order
granting
Final Leave
to Appeal
29th April
1983

In the Court
of Appeal

No. 36

ORDER

No.36
Order
23rd March
1983

IN THE FIJI COURT OF APPEAL No.56 of 1982

BETWEEN: KHURBUR RAM LATCHAN Appellant

A N D : LESLIE REDVERS MARTIN Respondent

DATED and ENTERED the 23RD DAY OF MARCH, 1983

UPON reading the Appellant's Notice of Motion dated 18th October, 1982 and the appellant's Notice of Additional Grounds of Appeal AND UPON READING the Respondent's Notice of Cross Appeal and UPON HEARING S.M.Koya, Esq., and G.P.Shankar, Esq., of Counsel for the Appellant and E.D.Lloyd, Esq., Q.C. of Counsel for the Respondent 10

IT IS ORDERED:
ON APPELLANT'S APPEAL

1. THAT the decision dated 23rd March, 1983 of Mr. Justice Kermode in the Supreme Court of Fiji whereby the learned Judge ordered the appellant to pay to the Respondent the sum of \$257,387.73 be affirmed in all respects, except a minor variation that the partnership between the appellant and the Respondent commenced on 2nd November, 1971, and NOT on 2nd February, 1971 as held by the learned trial Judge. 20
2. THAT the Appellant's appeal be dismissed with costs of appeal to the Respondent.

ON CROSS APPEAL 30

3. THAT the Respondent's Cross appeal in respect of disallowance of accountancy fee and costs of the trial by the learned trial Judge, be allowed AND IT IS ORDERED:-
 - (i) that the Respondent be allowed accountancy fees as charged by him and disallowed by the learned trial Judge, and such accountancy fee be restored as a debit to partnership; 40
 - (ii) that the Respondent do have costs of

1. The disallowance of accountancy fees charged by the defendant. These are to be restored as a debit against the partnership.
2. The disallowance of costs to the defendant. There will be an order for costs to the defendant in the Supreme Court but reduced by one-quarter.

In the Court
of Appeal

No.35
Judgment
23rd March
1983

(continued)

10 The cross-appeal is dismissed in respect of the remaining ground.

The appeal has failed on all except one minor point and the cross-appeal has succeeded on two of the three grounds raised. The defendant is accordingly entitled to his costs on the appeal and the cross-appeal.

Sd: T.S.Gould
Vice President

20

Sd: G.D.Speight
Judge of Appeal

Sd: J.Quillian
Judge of Appeal

In the Court
of Appeal

No.35
Judgment
23rd March
1983

(continued)

a procurement fee. As there was no question of procurement involved because the defendant simply drew on his own account there could be no proper basis upon which commission could be charged. This ground of cross-appeal must fail.

3. Costs

The outcome of the proceedings in the Supreme Court was that the plaintiff succeeded upon two of his prayers for relief. These were the exclusion from the accounts of the charges made by the defendant for accountancy fees and commission. These two items together totalled \$10,515.46. He failed on all other matters and in particular on his challenge to the validity of the partnership and his claim for the taking of accounts. On the counterclaim the defendant succeeded and obtained judgment for a total of \$257,387.73. It is not easy to understand why in those circumstances there was no order for costs in favour of the defendant.

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The question of costs is one which is in the discretion of the Court, but that is a judicial discretion and is to be exercised in the light of established practice. We consider that costs ought to have followed the event and that the cross-appeal is entitled to succeed in this regard.

The amount of the costs is less easy to determine. It cannot be an order for costs in full because the plaintiff succeeded in part and some regard must be paid to the unsatisfactory nature of the defendant's records which had a direct bearing on the length of the trial. In the circumstances we consider a proper award would have been to allow the defendant his costs but reduced by one-quarter. Regard would, of course, have to be paid to the amended amounts involved as the result of the appeal and cross-appeal.

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SUMMARY

We summarise our findings in this way. The appeal is allowed in respect of the finding as to the date of commencement of the partnership which should be November, 1971, and not the 2nd February, 1971. It is dismissed on all other grounds.

The cross-appeal is allowed in respect of:

1. Accountancy Fees

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(continued)

10 In each year the defendant debited the partnership with accountancy fees. These were disallowed by the learned Judge upon the basis that the defendant had acknowledged that part of his contribution to the partnership was the provision of accounting services, and that there was no evidence of agreement by the plaintiff for a charge to be made for these services. He accordingly concluded that the charges made represented a remuneration to the defendant in his capacity as a partner in contravention of section 25(f) of the Partnership Act. With respect to the learned Judge we feel unable to agree.

20 We think this is a matter which turns upon whether the plaintiff agreed that the charges should be made. If he did, then, notwithstanding that they may have had the character of remuneration, the defendant was entitled to claim them. The learned Judge considered there was no evidence that the plaintiff agreed to them, but we think that there was. We referred in a number of the plaintiff's grounds of appeal to the fact that he saw and understood each year the statements of account and must be taken to have approved them and agreed to their contents. We think the same comment applies in respect of the accountancy charges. These were regularly shown in the accounts, year by year, and were evidently the subject of no protest or objection. We consider this amounts to agreement by him that the charges be made. We accordingly allow the cross-appeal as to accountancy charges which should be restored as a debit against the partnership.

30

2. Commission

40 The defendant also charged against the partnership commission on the sums advanced by him. These were disallowed by the learned Judge and we consider they were correctly disallowed.

It is true that, like the accountancy charges, commission appears in the accounts, although only in three of the years and that the plaintiff at the time accepted them. They differ from accountancy fees, however, in that they lack any proper basis at all.

The charge for commission was referable solely to the sums advanced, and it was acknowledged on behalf of the defendant that it could be no more than

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defendant's records. There seems to have been ample justification for the employment of skilled accountancy assistance in order to analyse and make sense out of those records. We find ourselves, however, confronted by an absence of proof as to what would have been an appropriate sum to award. In his judgment the learned Judge refers to having been informed by Mr. Chernov that the accountants' charges were \$15,000. It is possible this ought to have been a reference to Mr. Koya or Mr. Shankar as it seems unlikely that counsel for the defendant would have been in possession of this information. However, that may be, the real problem arises from the fact that we can find no reference in the evidence to charges which were incurred in this way. What does emerge is that the firm of accountants extended their investigations to cover the plaintiff's other businesses and so the total charge would not all have been attributable to the present proceedings.

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Although we are sympathetic on a matter of principle, we do not feel justified in guessing at what an appropriate award might be and this ground of appeal must accordingly fail for lack of proof of quantum.

14. Costs

The learned Judge declined to make any order as to costs on claim or counterclaim.

30

Each party has appealed against this. For the reasons we will give when we deal with this topic under the cross-appeal the plaintiff's appeal concerning costs must fail.

15. Other matters

Lest it be thought we have overlooked them we should mention that there were a few remaining matters included among the grounds of appeal with which we have not specifically dealt. It is sufficient to say that they are for the most part of a minor procedural nature. We have considered them but can find no merit in any of them and do not propose to refer further to them.

40

CROSS-APPEAL

The defendant has cross-appealed in respect of three matters.

was entitled to debit against the final partnership accounts \$3,600 per annum by way of rent for the use of his garage and workshop, \$2,400 per annum for the use of his car, and \$6,000 per annum by way of remuneration for his services in managing the operations of the business. None of these was allowed by the learned Judge and we agree that they should not have been.

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10 As a partner the plaintiff was entitled
to no remuneration other than his share of
profits (Partnership Act, Cap.248, s.25 (f))
and there was no evidence of any agreement
between the parties for the charging of rent
or car expenses. No doubt if the plaintiff
did in fact incur car expenses on the partner-
ship business and had charged them they may
well have been paid, as was the case with
20 the defendant's interest and travelling
expenses. They appeared in the plaintiff's claim,
however, as an afterthought and were unsupported
by any evidence.

12. Allowance on Spares and Chassis

30 In preparing his re-structured accounts Mr.
Vilash added 10% to spares and 20% to chassis in
respect of stock taken over by Brunswick Motors
when it commenced business. It is not at all clear
what this was intended to represent, and there is
no pleading in the Statement of Claim which seems
to refer to it. The argument advanced by Mr.Shankar
on this ground of appeal was that the plaintiff
was entitled to a reasonable profit for selling
this stock to the partnership. Whether that may
have been so or not, the fact is that there is no
evidence of any agreement by the parties that this
charge should be made. Indeed, the stock was
taken in at valuation. We are satisfied the
learned Judge correctly disallowed it.

13. Accountancy Investigation Charges

40 It was part of the plaintiff's case that he
had been put to considerable expense by having to
engage a firm of accountants for the purpose of
analysing and re-constructing the accounts kept
by the defendant, and he included a prayer for
relief in respect of all costs incurred by him in
that way. This was disallowed by the learned Judge.

We are inclined to the view that this would
have been a proper claim by the plaintiff because
of the confusing and primitive nature of the

(continued)

9. Travelling Expenses Charged by Defendant

The defendant in each year charged travelling expenses against the partnership and objection was taken to the inclusion of these sums. There can be little doubt that any travelling expenses actually incurred on partnership business were properly to be debited against the business. The appeal on this topic was based on the submission that it was necessary for the defendant to show that the expenses had been bona fide incurred. Putting aside the fact that this seems to involve a reversal of the onus of proof, there was ample evidence on which the learned Judge was entitled to hold that the expenses had been incurred.

10

In the first place, they were all recorded in the accounts each year and were not the subject of any protest by the plaintiff. Moreover, they had been checked by Mr. Vilash in the compiling of his re-structured accounts, and the only real variation which seems to have been suggested by him was in the allocation of the expenses to particular years. In the end Mr. Vilash appears to have arrived at a total over the years which exceeds the amount claimed by the defendant. This ground of appeal has not been established.

20

10. Garage and Workshop

The garage and workshop used for the partnership business were situated on land belonging either to the plaintiff or his family. They were shown throughout as assets in the partnership accounts. The plaintiff's case was that this was not correct and they should now be excluded. The learned Judge declined to do so and we can see no basis upon which we should differ from that view.

30

The garage and workshop were taken in to the opening accounts at a value of \$5,575. During the period of the partnership there were additions made to a total value of \$39,888 all of which was paid out of the partnership so that, at the time of dissolution, and allowing for annual depreciation, the value had risen to \$37,582. It is not easy to see upon what basis this item should be excluded, and we note that there was no argument advanced in support of the appeal on this point.

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11. Expenses Claimed by Plaintiff

The Plaintiff sought declarations that he

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to have been shown in the partnership accounts. In the Court
of Appeal

There was at all times a good deal of confusion with regard to the plaintiff's various business interests. This is demonstrated by the fact that in the Distributors Agreement with Seddon Motors Limited the Distributor is described as "Brunswick Motors also trading as K.R.Latchan Bus Service." It was for the plaintiff to prove that in respect of the 38 chassis in question they were intended to be the property of K.R. Latchan Bus Service and not of Brunswick Motors. The learned Judge held that this had not been established and we have no doubt that was a finding he was entitled to make.

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Brunswick Motors was established for the express purpose of importing buses and chassis for distribution and sale. Apart from the first two buses which went directly to K.R. Latchan Bus Service for its own use, all the rest were re-sold. The probability at once arises therefore that this was done in accordance with the original intention. The use of the name K.R.Latchan Bus Service for the purposes of importation has no significance. That name and Brunswick Motors were used interchangeably on many occasions.

In particular, however, in each of the years 1971 to 1974 the importations were clearly reflected in the accounts of the partnership which were seen and accepted by the plaintiff.

7. Damages for Use of Confidential Information

The plaintiff sought an order for damages or compensation

"for the use of confidential information, matters or methods of his business, or for use of Plaintiff's secrets."

40

We need devote little time to this claim which was clearly misconceived. On behalf of the plaintiff it was sought to rely on the case of Seagar v. Copydex Ltd (1967) 2 All E.R.415, but that was a case so far removed from the present one as to require no further mention. There was no suggestion that the defendant used any knowledge he may have gained of the plaintiff's affairs in order to compete with him or in some other way put that knowledge to profit otherwise than within the partnership. There is no merit at all in this ground of appeal.

necessary to pursue this topic further.

5. Interest Charged by Defendant

Throughout the period of this partnership the defendant debited the partnership regularly with interest on the amount from time to time owing to him. This was allowed by the learned Judge, but it is argued that there was no authority for the defendant to have charged interest.

Section 25 of the Partnership Act, Cap.248 provides: 10

"25. The interest of partners in the partnership property and their rights and duties in relation to the partnership shall be determined subject to any agreement, express or implied, between the partners by the following rules -

...

(c) a partner making for the purpose of the partnership any actual payment or advance beyond the amount of capital which he has agreed to subscribe is entitled to interest at the rate of five per cent per annum from the date of the payment or advance." 20

There was no evidence as to the rate of interest charged by the defendant. The onus was, of course, upon the plaintiff to show that the rate was in excess of five per cent if that were thought to be the case. It was open to the defendant to charge interest unless there was an agreement to the contrary. There was no evidence of any such agreement. Indeed, there was evidence indicating that the plaintiff had acknowledged the defendant's right to charge interest. Each of the annual accounts showed the payment of interest and these were seen and understood by the plaintiff. He must be taken to have approved of it. This ground of appeal must fail. 30 40

6. Buses Imported in the name of K.R.Latchan Bus Service

Notwithstanding the formation of Brunswick Motors it was the plaintiff's case that between 1971 and 1974 a total of 38 chassis were imported by his own business known as K.R.Latchan Bus Service and that these ought not

came, by means of journal entry, from that source. The defendant's own contribution is shown as having come from his own account. This was not a reference to his bank account, but to the account between himself and the plaintiff. The effect of these two entries was to reduce what would otherwise have been an indebtedness by the partnership to the defendant of \$52,501.92 to an indebtedness of \$32,501.92. That is the figure shown in the opening accounts. It was not necessary for the defendant to show he had made his contribution in cash so long as it was made for valuable consideration. Clearly it was and there was accordingly a proper basis for the learned Judge's finding.

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4. Whether Money Repaid to Defendant was Recoverable

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Throughout the period of the partnership, and indeed from long before that time, the defendant was advancing money as part of his business. The learned Judge held that he was a moneylender within the meaning of the Moneylenders Act, Cap.234. This finding has not been challenged. It was alleged on behalf of the plaintiff that, as the defendant was never licensed as a moneylender any sums which had been lent by him to the partnership should be held to be irrecoverable. This was upon the basis of section 15 of the Moneylenders Act which provides:

30

"15. No contract for the repayment of money lent after the commencement of this Act by an unlicensed moneylender shall be enforceable."

40

This argument was met by the decision of the High Court of Australia in Kilgariff v. Morris (1955) 91 C.L.R. 524 in which it was held that the corresponding section of the Australian Moneylenders Act did not apply to the case of money contributed by a partner, who was a moneylender, to partnership funds for the purpose of the partnership beyond the amount of capital he had agreed to subscribe. We need not refer in any greater detail to Kilgariff v. Morris because we did not understand Mr. Koya to challenge its authority. He contented himself with submitting that the amount advanced by the defendant would not have been recoverable until after the accounts had been finalised - i.e. after dissolution.

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This would not seem to have any bearing on the present proceedings and we do not find it

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accounts could therefore be expected to include that period. We are not prepared to uphold the procedural objection raised.

The defendant sought either a share of profits made during the additional four years or alternatively interest. In the course of the hearing he elected to pursue only the claim for interest and this was the basis upon which judgment was given. What the learned Judge did was to allow interest at 5% per annum on the value of the defendant's share in the partnership as at the date of dissolution. 10

We are not prepared to say that was an approach which was not open to the learned Judge. The only alternative would have been to try and assess the actual profit which ought to have been made by the proper conduct of the business during that period. The accounts in respect of the actual conduct of the business by the plaintiff are materially affected by the fact that he had sold some of the partnership stock to his own business of K.R.Latchan Brothers at cost. In these circumstances some attempt would need to have been made to reconstruct the accounts upon a proper basis of trading. 20

The learned Judge chose to make an award of interest which he considered to be less to the detriment of the plaintiff than a notional calculation of profit, and we can see no reason for interfering with that. This ground of appeal must fail. 30

3. Defendant's Capital Contribution

The opening accounts of the partnership show each partner to have introduced a capital of \$10,000. It was found as a fact by the learned Judge that the defendant did indeed introduce such a sum and one of the grounds of appeal is that this finding was not supportable on the evidence.

The argument advanced was that at the time the partnership was agreed upon, namely 28th December, 1972, the defendant's account at the bank was in debit to the sum of \$38,894 and so there could have been no question of his having contributed \$10,000. It was, however, never the defendant's case that he had drawn this sum in cash. What he had done was to effect the capital contributions for each of them by journal entry. His evidence was that at that time the plaintiff's mother owed the plaintiff \$13,000, and the plaintiff's capital contribution 40 50

The objection which is now raised is that there was no pleading upon which that prayer could have been based and that it ought not to have been included as an amendment to the Counterclaim.

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This submission is based upon Order 18 r.8(1) of the Rules of the Supreme Court which provides:

(continued)

- 10 "8.(1) A party must in any pleading
 subsequent to a statement of claim
 plead specifically any matter, for
 example, performance, release,
 any relevant statute of limitation,
 fraud or any fact showing
 illegality -
- (a) which he alleges makes any
 claim or defence of the
 opposite party not maintainable;
 or
- 20 (b) which, if not specifically
 pleaded, might take the opposite
 party by surprise; or
- (c) which raises issues of fact not
 arising out of the preceding
 pleading. "

30 It is perhaps unfortunate that there had not
 been any express allegations of fact directed to
 the use by the plaintiff of the partnership assets
 over the period following dissolution. We do
 not think, however, that the pleadings were so
 deficient as to justify us in holding that the
 award of interest which was made upon the basis
 of paragraph 3 in the prayer to the Counterclaim
 should fail upon a matter of procedure.

40 It was implicit in the prayer that there
 was an allegation of wrongful use of assets even
 though that may have appeared in the wrong place.
 It was also implicit in the fact that both
 parties sought the taking of accounts that those
 accounts should embrace the position between them
 for such period after the dissolution as may
 have been necessary to determine the full entitle-
 ment of each of them. What really happened was
 that the plaintiff engaged in an unofficial way
 in a winding-up of the partnership business. He
 carried on the business on a reduced scale,
 gradually sold many of the assets, and eventually
 lodged some of the proceeds in a bank. Any profit
50 derived by him in doing that was something for
 which he was required to account. A taking of

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We are not prepared to hold that the commencement date ought to have been December, 1972, but, for what it may be worth, we think the finding of the learned Judge should be varied to November, 1971, that is, to coincide with the opening of the partnership accounts.

2. Use of Assets after Dissolution

In this Counterclaim the defendant has included a prayer for relief in respect of the alleged wrongful use by the plaintiff of the partnership assets over a period of some four years after dissolution. He claimed to recover his share of the profits made during that period or alternatively interest. The learned Judge found that the plaintiff had used the assets wrongfully and made an award of interest which he quantified at \$42,897.94.

10

There was evidence given at the hearing concerning the use by the plaintiff of the assets after dissolution and it was a matter canvassed in argument. The appeal in respect of this matter is based, however, upon a procedural objection.

20

At the time the hearing commenced the pleadings had reached the point where there was a Counterclaim which contained a single prayer for relief, namely for a declaration that the partnership be dissolved. On the first day of the hearing counsel for the defendant submitted to the Court a document headed Proposed Prayer for Relief. It appears that this was, in effect, an application for amendment of the Counterclaim by the addition of several new grounds. The Proposed Prayer contained 7 paragraphs in which particular relief was sought. The record made by the learned Judge shows that Mr, Koya offered no objection to any of those paragraphs except paragraph 3. In respect of paragraph 3 he seems to have maintained his objection. The learned Judge is recorded as having said that, without reading paragraphs 1 to 26 of the Defence, he could not say whether the proposed paragraph 3 arose on the Counterclaim. He gave leave to amend the Counterclaim by including all 7 prayers for relief.

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Paragraph 3 prayed :

"A Declaration that after the dissolution of the said partnership the Plaintiff wrongfully used the partnership's assets to derive profits therefrom without accounting therefor to the Defendant."

50

In the normal course a partnership will commence on the date of the agreement to form the partnership. The parties may, however, agree that their partnership shall operate retrospectively. (Lindley, p.173). Where there is no written agreement it will no doubt require convincing evidence that the intention was that it should be retrospective.

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10 It seems clear in this case that there was indeed agreement between the parties that there should be retrospective operation, although the precise date of commencement is rather less clear. The business of Brunswick Motors had commenced in about November, 1971. In his evidence the plaintiff in effect acknowledged that the partnership was to operate from some time prior to December 1972, although he resisted the suggestion that it went back as far as 2nd February, 1971. When his solicitors wrote to the defendant on the 20 2nd May, 1978, to ask for access to his records they specified that it was desired to see those records "from commencement of the partnership during November 1971 up to the date of audit." The first set of accounts for Brunswick Motors is for the period from November, 1971, to the 31st December, 1972. These accounts show the defendant as a partner and they were seen by the plaintiff who 30 acknowledged his ability to understand them. There was, therefore, ample evidence upon which to find that the commencement date was to be retrospective.

It is, however, less easy to see that there was a sufficient basis for the finding that the commencement date was the 2nd February, 1971. This finding was really based upon that date having been shown in the document which evidenced the creation of the partnership. Both parties 40 denied having written that date. The learned Judge held that it had been the plaintiff and he did so upon a comparison of the way in which the figures were written. It seems to us that this was a rather slender basis for the finding, but we need not pursue the matter further. It is clear that the business of the partnership did not commence at least until the arrival of an order of six chassis in October, 1971. Prior to that there had been two buses imported but they 50 were for the use of the plaintiff's bus service and formed no part of the business of Brunswick Motors. To adopt a commencement date in November, 1971, rather than in February, 1971, does not, therefore affect the financial relationship between the parties.

was entitled to adopt those values. They were contained in a balance sheet which had been compiled after making due allowance for depreciation (and accordingly may well have represented rather less than the true market value) and after the writing off of stock to the extent of \$12,100. The values of stock were taken from figures supplied by the plaintiff and ought to be accepted by him.

We consider that the course followed by the learned Judge had the effect, as nearly as could be obtained, of equating the result of a sale if one had taken place in late 1978. That was the time when the plaintiff should have been seeking a sale and it was no fault of the defendant that the matter was not resolved then. We accordingly conclude that the learned Judge was entitled to make the order for sale that he did. 10

Ancillary Matters

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Having dealt with the two principal issues involved, which encompass several of the grounds of appeal, we turn now to a number of ancillary matters which formed the subject of argument on appeal. We do not suggest that they are of a minor or trifling nature, but we have found it convenient to isolate first the matters of particular importance. We have not, therefore, dealt with the appeal in the same order as the grounds are set out in the notice of appeal. In any event the grounds as set out in that notice contain many duplications and repetitions and so need not be dealt with seriatim. 30

1. Commencement of Partnership

The first formal appearance of the defendant as a partner is to be found in a form signed by the parties on the 28th December, 1972 for the purposes of the Registration of Business Names Act. This was the record of the defendant's admission to the business of Brunswick Motors as a partner and it purports to show that the partnership commenced on the 17th February, 1971. 40

It was the plaintiff's case that, if there was a partnership at all, it did not commence until the 28th December, 1972, and that accordingly the plaintiff was entitled to any profit derived prior to that date. The learned Judge held that the date of commencement was 2nd February, 1971. 50

learned Judge ought to have followed. Instead, he determined the values of the assets upon the basis of the balance sheet and directed that the plaintiff purchase the defendant's half share.

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10 The course which ought to be followed in such cases is well recognized but is subject to a certain amount of flexibility. The matter is dealt with by Lindley on the Law of Partnership, 14th Ed., in this way:

p.598: "It has been already seen that, in the absence of a special agreement to the contrary, the right of each partner on a dissolution is to have the partnership property converted into money by a sale: even although a sale may not be necessary for the payment of debts."

20 And at " The rule as to selling partnership
p.599: property is merely adopted in order that justice may be done to all parties, when no other course has been or can be agreed upon. It is not an arbitrary rule, inflexibly applied in all cases whether it is necessary or not; and although, if one partner or his representatives insist on a sale, the Court may not be able to refuse to enforce that right, still the
30 Court is always inclined to accede to any other mode of settlement which may be fair and just between the partners."

40 The question, then, was how the learned Judge in this case was to achieve in 1982 a fair distribution between the partners of the assets of a partnership which had been dissolved four years earlier. There is little doubt that if application had been made to the Court at that time an order for sale would have been appropriate and would have been made. But the position had greatly changed. At the time of dissolution the partnership had stocks on hand to a value of over \$282,000. This alone is sufficient to indicate that a sale four years later could not possibly reflect the true position at dissolution, because what that value was would be a matter of speculation and uncertainty.

50 There remained the question of whether the values of assets shown in the balance sheet reflected reasonably the true values at that time. This could not have been the subject of any precise finding, but we have no doubt the learned Judge

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exceptions referred to. Those exceptions were of a legal and not of an accounting nature. It is therefore apparent that any question of reference to a referee would have been superfluous.

There was a matter which remained unresolved by the re-structured accounts. It related to the allegation made by the plaintiff that the defendant had on occasions applied partnership money for his own personal use, and in particular for lending to other persons and upon which he derived interest. Although it was never suggested that there was any element of fraud in this, and indeed it was conceded by Mr. Koya on behalf of the plaintiff that no question of conversion arose; nevertheless it was said that the use of a single bank account and the confusion of money from various sources must have resulted in this kind of misuse of partnership funds. We were at one stage referred to extracts from exhibits which were said to show that, at a time when the partnership was in substantial credit with the defendant, his account was in debit to the bank. It was therefore said that on these occasions at least there must have been improper use of partnership funds. The difficulty was, however, that it had proved impossible for the two accountants to demonstrate that this really was the case. A statement of agreed facts had been submitted to the Supreme Court in an endeavour to show what had occurred in respect of the sales of imported buses. That statement recorded that certain receipts and payments formed part of or had come from a pool of money in the defendant's account but that it was not possible to identify whose money was paid out of that account. It is unnecessary to pursue this topic any further than to say that, because of the inability of the accountants to resolve these matters, there seems to have been no point in the learned Judge ordering reference to a referee. He declined to do so and we are satisfied he was justified in doing so. He accordingly settled the accounts on the basis of the re-structured accounts but allowing for the findings he made upon the matters of difference, and we agree that this was the proper course.

(b) The order for sale 50

The usual course where former partners are in disagreement as to the division of partnership assets is for the Court to order a sale, and this is the course which it is contended the

(a) Settlement of accounts

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It is observed by the author of Lindley on the Law of Partnership, 14th Ed., p.553: "The right of every partner to have an account from his co-partners of their dealings and transactions is too obvious to require comment.

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The only question for decision in this case was how that accounting was to be achieved. It had been contended for the plaintiff that there should be reference to a referee in order to enable any differences to be resolved. In the present case this would have achieved nothing.

20

It must be remembered that, although the defendant had rendered Statements of Account of Brunswick Motors every year, his books and records were primitive in the extreme. He operated for all his personal and business activities only a single bank account. He had not attempted to separate out the numerous dealings through that account affecting a variety of different people. We will deal later with some of the consequences which must follow from this. It is sufficient for the moment to say that the compiling of partnership accounts for Brunswick Motors for the purposes of dissolution was a formidable task.

30

The plaintiff engaged Mr. Vilash, a qualified chartered accountant to undertake this task. Mr. Vilash encountered certain difficulties, but in the end he was able to compile a set of re-structured accounts. For this purpose he made certain assumptions, not all of which turned out to be justified, and eventually conceded that some errors had been made by him. On behalf of the defendant another chartered accountant was engaged and he also examined the books of the plaintiff's businesses as well as the re-structured accounts of Mr. Vilash. He was in general agreement with those accounts, but he noted seven points of difference which he thought required to be made. Each of these was considered by the learned Judge in the course of his judgment and findings upon them were duly made. They form the subject of some of the ancillary matters of appeal to which we will refer later.

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In the result the learned Judge was presented with a set of accounts upon which an experienced accountant from each side were agreed, with the

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that he wished to regain the defendant's interest for himself. This may well be true, but at least it must be borne in mind that the plaintiff was the partner who desired the dissolution.

He set about trying to obtain an accounting from the defendant and he met with resistance. Finally, he gave a notice of dissolution. He was entitled to do so and one might have expected that the normal consequence of dissolution would be put into effect. Those would have involved a taking of accounts, the resolution of differences by a referee, and then the division of proceeds in accordance with the entitlement of each partner. Had the plaintiff acted promptly to achieve that there seems no reason to believe there need have been any greater difficulty involved than the interpretation of the defendant's undoubtedly unusual accounting system. One might have expected, however, that a final winding-up could have been achieved in a fairly brief period. 10 20

That did not happen. Instead, after six or seven years during which the plaintiff accepted the existence of a partnership and the undoubted benefits which he had received from it he suddenly elected to try and repudiate the entire arrangement. In January, 1979, only four months after he had given his notice of dissolution, he issued his Originating Summons seeking a declaration that no valid partnership had ever existed. Not surprisingly this, and the action which followed, met with resolute resistance from the defendant. There followed, inevitably, long delays which were not finally resolved until the judgment of the Supreme Court was delivered in October, 1982. It has been said that some of the delay may have been due to the pressures on the Court itself, and that may be so. That was, however, a known likelihood and the moment the proceedings were issued it must have been obvious that the allegations which were made could not be resolved for a considerable period. It follows that the plaintiff, who initiated the entire matter by dissolving the partnership and then asserting it had never existed, had prevented the normal sequence of events from being pursued. The position which confronted the learned Judge must be considered in the light of that situation. He was required to make an order which was capable, four years after the event, of having some sort of practical application. 30 40 50

10 accept the defendant as a partner he was
at a disadvantage because he received no
independent legal advice. It is the case that
he did not consult a solicitor as to this
proposal, although it is plain he could
well have done so had he wished. He had
solicitors who had acted for him and there is
no suggestion that he was dissuaded from
consulting them. The absence of independent
legal advice is one of the factors which may
lead to the conclusion that there has been
undue influence but it does not rest alone.
This is to be seen from the leading case of
Allcard v Skinner (1887) 36 Ch. D.145. In
the present case the absence of legal advice
was in no sense a determinative factor because
the plaintiff was fully aware of his position
and able to make his own decision. Although
20 we have expressed ourselves a little
differently, we are in full agreement with the
learned Judge that there was no undue influence
exercised by the defendant to procure a partner-
ship and the appeal against the finding as to
this must fail.

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(continued)

We should perhaps add that, even if this
had been a case in which there was a special
relationship, the presumption of undue influence
was, upon the evidence, rebutted for just such
reasons as we have already set out.

30 2. Appointment of Referee and Taking of Accounts

Accepting that there was in existence a valid
partnership which was in due course dissolved
as at the 30th September, 1978, the next main
issue concerns what consequences ought to have
followed. The learned Judge decided to settle
and pass the accounts in the form presented to
him and ordered a sale of the defendant's half
share to the plaintiff. This has been strongly
challenged. It requires consideration under
40 two heads :

- (a) As to the settlement of accounts
- (b) As to the order for sale.

Some general observations of application to
both those matters must first be made.

It was in 1977 that the plaintiff decided
he wanted to get rid of the defendant. It was
the defendant's case that the reason for this
was the plaintiff's growing realization that the
business of Brunswick Motors had flourished and

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(continued)

statements of his account, and there is no suggestion that he was incapable of understanding them. The extent of the plaintiff's intellectual capacity and general acumen is demonstrated by the fact that a few years later, in 1977, he was elected as a Member of Parliament. It is plain, therefore, that the plaintiff was well able to look after himself and was at no stage dealing with the defendant from a position of intellectual or emotional weakness.

10

Before any question of a partnership arose the plaintiff was indebted to the defendant. When the possibility of a new business of importing buses arose it must have been obvious to the defendant that he would be expected to provide the finance. He had provided finance for members of the family over a number of years and had done so without security. Indeed, even at a time when the indebtedness of the partnership to him reached \$100,000 he still held no security. The protection which he sought for himself in respect of the new venture of Brunswick Motors was to say that he thought he should have a partnership. He pursued this request over a period of about two years, and it is apparent that for most of this time the plaintiff was able to resist these requests. The defendant eventually made it clear he was not prepared to continue financing the plaintiff unless he received a partnership. This was not a matter of pressure or unfair bargaining. It was a business negotiation. The plaintiff was at liberty to seek his finance elsewhere and terminate his association with the defendant. He chose not to do so, and the reason is obvious.

20

30

At no stage did the plaintiff attempt to find an alternative source of finance. It must have been plain to him that he could not possibly have obtained such liberal and satisfactory terms as he had received and could expect to receive from the defendant. He was required to find no security and he could expect to draw almost at will upon the defendant's account upon the basis of a daily rate. All receipts went at once to lower the account.

40

He was in truth receiving all the advantages of operating on a current overdraft account but with none of the disadvantages.

50

It has been argued that in agreeing to

then engaged a secretary-companion to whom he proceeded to make a series of gifts totalling over half his estate. In Zamet v. Hyman (1961) 3 All E.R. 933 a 71 year old widow who proposed to marry a 79 year old widower was taken to the latter's solicitor and induced to sign a previously prepared deed relinquishing her rights to claim against his estate.

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10 These cases are sufficient to indicate that the present case cannot be regarded as one of special relationship. The parties were upon reasonably level terms and certainly the plaintiff was not in any specially vulnerable position. We will return to this shortly, but it is necessary first to refer to the general principle which is to be applied in considering the claim of undue influence. The rule is of long standing and provides
20 that where a transaction is shown to have been so opposed to fair dealing that it ought not to be binding the Court will be prepared to interfere (Chesterfield v. Jansen (1751) 2 Ves. Sen. 125 at 155; 28 E.R. 82 at p.100).

30 The plaintiff's case was that the defendant had established himself in a position of authority over the plaintiff in so far as he had full control of all his finances and was his sole business adviser and accountant as well as having been the whole family's guide, philosopher and friend. It is true that the defendant had achieved very much that role. It is necessary, however, to look also at the position of the plaintiff. In December 1972 when the defendant was admitted as a partner the plaintiff was about 31 years of age and already well established in business. He had
40 been in partnership with his mother and brother in a dairy business and, in 1962, had started his own bus service, namely K.R. Latchan Bus Service. It appears both these businesses had operated successfully. He had been sufficiently astute as to see the possibilities of importing buses for distribution, not only throughout Fiji but also in Samoa and Tonga. He required the assistance which the defendant was able to supply in order to conclude that arrangement, but it is clear from the correspondence that he had a full understanding of the business implications.

50 The plaintiff was also, at least in general terms, aware of his own financial position. He had been receiving from the defendant annual

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(continued)

been concealed from him by the defendant, and that if he had realized it was only some \$32,500 he would not have felt under an obligation to admit the defendant to partnership. The learned Judge has, however, made it clear in his findings that the plaintiff was fully aware of his position, in general if not in precise detail, and we can see no basis upon which we ought to say that he could not properly have made that finding.

10

It has not been established that the learned Judge was in error in holding that the partnership did not arise from the breach of a fiduciary relationship or from any false representation.

(b) Undue influence

This allegation was based on the proposition that the defendant had taken an unfair advantage of the plaintiff.

The question of undue influence is one which requires to be considered upon the basis of whether a special relationship existed between the parties. If it did then there arises a presumption of undue influence which it is for a defendant to rebut (18 Halsbury 4th Edition p.148, para.330). What constitutes a special relationship for this purpose was considered in In re Craig (1971) Ch.95. Ungood-Thomas J. reviewed the authorities and summarised the position at p.104 in this way:

20

30

"What has to be proved to raise the presumption of undue influence is first a gift so substantial (or doubtless otherwise of such a nature) that it cannot prima facie be reasonably accounted for on the ground of the ordinary motives on which ordinary men act; and secondly, a relationship between donor and donee in which the donor has such confidence and trust in the donee as to place the donee in a position to exercise undue influence over the donor in making such a gift."

40

The emphasis is accordingly upon inequality of position and bargaining power. This emerges clearly from the cases in which a special relationship has been held to exist. In In re Craig it was the case of a man whose wife had died leaving him her estate and who

representations to the plaintiff to the effect that the plaintiff's late father had asked the defendant to guide and assist the plaintiff in his business affairs after the death of the plaintiff's father.

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(b) That the defendant when making the representations aforesaid also made false representations to the plaintiff to the effect that the plaintiff was heavily indebted to the defendant."

(continued)

Paragraph (a) would not appear to involve any representation at all, but the matter was clarified by Mr. Shankar on behalf of the plaintiff when he made it clear that he was relying upon the allegation that the defendant had falsely represented the plaintiff was heavily indebted to him. This in turn was further refined because it was common ground that the extent of the plaintiff's indebtedness at that time was \$32,501.92. The question therefore was whether, when that indebtedness was described by the defendant as heavy, that was a false statement. Mr. Shankar's argument was that the plaintiff had at that time assets valued at \$107,000 and also an interest in 200 acres of freehold land, and as well had shown a profit for 1972 of \$39,386.10. It was accordingly argued that in the light of such a financial position it could not be properly said that by owing some \$32,500 the plaintiff was heavily indebted.

It should be observed that the value of the net assets was taken from the evidence of Mr. Vilash, the accountant called on the plaintiff's account. In that passage in his evidence Mr. Vilash was referring to the accounts of K.R.Latchan Brothers. The plaintiff was in partnership with his brother in a dairy business and it appears the accounts related to that partnership rather than to the plaintiff personally. Whether that is so or not, however, the learned Judge considered that owing a sum of \$32,500 constituted heavy indebtedness and we cannot for a moment say he was not entitled to make that finding. The sum is a large one and the plaintiff's business at that time was a modest one.

It was further argued by Mr. Shankar that the extent of the plaintiff's indebtedness had

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(continued)

and unlawfully procured by the defendant and so was never to be regarded as a valid partnership. This allegation was made upon two grounds :

- (a) That the defendant acted as the plaintiff's sole business adviser, accountant and financier and was accordingly in a confidential and fiduciary relationship to the plaintiff so as to have been able to acquire a knowledge of the plaintiff's business secrets and methods. In this way, and by reason also of a false representation made by the defendant, he had induced the plaintiff to accept him as an equal partner. 10
- (b) That by the exercise of undue influence over the plaintiff the defendant had obtained for himself a half share in the partnership business. 20

The learned Judge rejected both these allegations.

(a) Fiduciary relationship and false representation

There is no doubt that the defendant was fully aware of the plaintiff's affairs. He had advised the members of the family for years and helped the plaintiff with advice and finance. He knew of the plaintiff's desire to make an arrangement for the importing of buses and took part in the negotiations to achieve that. It is no doubt true to say that he was in a fiduciary relationship to the plaintiff in the sense that he was receiving the plaintiff's money into his personal bank account and so was under a duty to account to the plaintiff for that money. There is, however, no suggestion that the defendant failed to account for any of that money and there seems to be no connection between the fiduciary relationship and the creation of the partnership. 30 40

The allegation that there was a false representation which induced the plaintiff to agree to the partnership is contained in paragraph 11 of the Statement of Claim.

- "(a) That the defendant in the month of December, 1972, at Suva made

rid of the defendant he does not appear to have done anything about it until May 1978 when he consulted his solicitors. On 2nd May 1978 the solicitors wrote to the defendant saying that an audited statement of the plaintiff's interest in Brunswick Motors was needed to enable him to satisfy his bank in respect of an application for credit. The defendant was asked to make his records available for inspection. Concern was expressed that there had been no separate bank account kept for the partnership. This letter was followed by a visit to defendant's office by the plaintiff and Mr. Mills, an accountant, but the defendant became upset and refused to let them see his accounts. Notwithstanding the deterioration in their relationship it was not until the 2nd October, 1978, that the plaintiff wrote to the defendant with notice of dissolution of the partnership as at the 30th September, 1978, and a request that accounts be prepared to that date. On the 16th January, 1979, the plaintiff issued his Originating Summons and since then the parties have been involved in the present proceedings.

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(continued)

A substantial number of matters are in issue between the parties, but inevitably some are of more significance than others. There are two main matters:

1. Whether there was a valid partnership created between the parties.
2. If there was, whether the learned Judge was in error in declining to appoint a referee and order the taking of accounts and in ordering a sale by one party to the other.

We deal with these in turn and will then consider the ancillary matters.

1. Partnership

It was common ground that the parties went through the process of establishing themselves as partners in the business known as Brunswick Motors. A relatively minor matter arose as to the date of commencement of that partnership, and we will deal with this among the ancillary matters. The real issue concerned the plaintiff's allegation that there should be an order setting aside the partnership on the ground that it was wrongfully

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(continued)

purchase price which, together with interest,
he fixed at \$257,387.73.

The plaintiff appealed against the disallowance of all those items of relief upon which he had failed and also against the declarations and orders made against him in the counterclaim. The defendant in turn cross-appealed against the exclusion from the partnership accounts of the two items of accountancy fees and commission, and against the disallowance of costs. 10

Before considering any of the particular grounds of appeal it is necessary to say something in a general way about the course which events took between the parties.

The arrangement whereby the plaintiff (and, before him, his mother and father) had paid money to the defendant who had simply deposited it to his personal account was, to say the least, an unusual one. There can be little doubt that many of the difficulties which arose in the course of the proceedings must be attributed to this practice and in particular to the fact that the defendant made no attempt to maintain any separate set of accounts for the partnership as distinct from the numerous other people with whom he was dealing. We will refer later to some of the repercussions of this. 20

Nevertheless a close business relationship became established between the plaintiff and the defendant and there seems little reason to doubt that for a period of about six years that was both a profitable and an amicable relationship. There came a time, however, when this changed. Some time in 1977 the plaintiff decided to get rid of the defendant whom he regarded as a nuisance. In about October, 1977, the partnership was in credit with the defendant to the extent of over \$121,000. The plaintiff stopped making payments into the defendant's account and indeed drew on the account by the end of January 1978 to a total of about \$187,000, so that the partnership's account was then in debit by about \$75,000. When the defendant realized that payments to his account had stopped he refused to provide any further finance for the partnership. 30 40

Although the plaintiff had decided to get 50

detail. The relief sought is in substance the same as that set out in the Originating Summons although there are additional prayers for relief as well. There was a Counterclaim by the defendant in which he in his turn sought relief. That relief may be summarised as follows :

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- 10 1. A declaration that a partnership (continued)
had existed from 17th February,
1971 until 30th September, 1978,
and had been dissolved on the latter
date.
2. A declaration that after dissolution
the plaintiff wrongfully used the
partnership assets to derive profits
for himself.
- 20 3. Orders for the taking of accounts
and for the final settling of accounts
by the Court at the hearing of the
action.
4. An order for payment by the plaintiff
to the defendant of the latter's share.
5. An order for payment by the plaintiff
of the defendant's share of any profit
made after dissolution, or alternatively
for payment of interest.

30 It is unnecessary to give any greater detail
of the pleadings at this stage, although reference
will have to be made later to certain particular
aspects.

40 After a lengthy hearing the learned Judge
delivered a reserved judgment. The effect of that
judgment was to disallow the whole of the relief
claimed by the plaintiff with two relatively
minor exceptions. Those were in respect of
accountancy fees and commission charged by the
defendant to the partnership each of which was
ordered to be deleted as not being properly
chargeable in the partnership accounts. On the
counterclaim the learned Judge made the declara-
tions sought as to the existence and dissolution
of the partnership and as to the wrongful use by
the plaintiff of the partnership assets after the
dissolution. He then decided that he should settle
and pass the accounts and did so, and he made
an order for the sale by the defendant to the
plaintiff of a one-half share in the partnership,
and for the payment by the plaintiff of the

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(continued)

deteriorated and on the 2nd October, 1978, the plaintiff wrote to the defendant giving notice of dissolution of the partnership as from the 30th September, 1978, and inviting the defendant to draw up the partnership accounts as at that date.

In January, 1979, the plaintiff issued an Originating Summons seeking a number of declaratory orders, and then followed it in July 1980 by a Statement of Claim. It will be necessary for us to refer to the facts in more detail in respect of particular aspects of the appeal as we deal with each of them. We now summarise the nature and scope of the proceedings. 10

The Originating Summons sought declarations:

1. That the plaintiff formed the firm of Brunswick Motors and was at all times the sole proprietor of it. 20
2. That by reason of a confidential relationship existing between the plaintiff and the defendant and of a false representation made by the defendant the plaintiff was induced to accept the defendant as a partner.
3. That the defendant exercised undue influence over the plaintiff in order to obtain a one-half interest in the firm. 30
4. That the partnership was dissolved on 30th September, 1978, and that accounts should be settled.
5. That in the settlement of accounts certain items should be debited against the defendant.
6. That the defendant had used for his own purposes money deposited with him by the plaintiff on behalf of the firm. 40

The plaintiff accordingly sought orders that the partnership be set aside and that the defendant account to the plaintiff, and also that the defendant pay damages or compensation for his use of the firm's money. The Statement of Claim in its finally amended form sets out the allegations in considerable

Seddon Motors Limited an arrangement was made for the supplying of the two buses and also for the sole agency. The arrangement could not at once be put into effect because the plaintiff had to find a source of finance. The outcome of this was that the defendant agreed to finance him and must have been regarded by Seddon Motors Limited as the plaintiff's backer. An agreement known as a Distributors Agreement, was entered into between an agent for Seddon Motors Limited and Brunswick Motors (described in the agreement as also trading as K.R.Latchan Bus Service). This agreement is dated the 1st November, 1972. The importing of buses started earlier than that. The first order of two buses was placed in February, 1971. These were for use by the K.R.Latchan Bus Service itself. They were financed by the defendant. Six more arrived in October, 1971 and that marked the start of the business of Brunswick Motors. What was imported was the chassis and the bodies were built on them by the plaintiff. Both the cost of the chassis and the body-building was financed by the defendant. Upon the sale of completed buses they were either sold for cash or the defendant would finance the purchasers on the security of bills of sale. Over the years the defendant advanced substantial sums to Brunswick Motors. The account fluctuated from time to time as receipts from the business were paid in.

10

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The business of importing chassis and selling buses flourished and between 1st January 1973 and 31st December, 1974 bus chassis were imported.

On 17th December 1971, the plaintiff applied for registration of the business name Brunswick Motors and gave the date of commencement of that business as the 2nd February, 1971. On the 28th December, 1972 the plaintiff and the defendant joined in an application under the Registration of Business Names Act recording a change of particulars. This was for the purpose of recording a partnership between them. That partnership was shown as having commenced on the 17th February, 1971. The learned Judge found as a fact that it commenced on the 2nd February, 1971, which was the date shown as that on which the business of Brunswick Motors commenced.

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The relationship between the parties

In the Court
of Appeal

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Judgment
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1983

(continued)

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of Appeal

No.35
Judgment
23rd March
1983

Dates of Hearing: 7, 8 & 9 March, 1983

Delivery of Judgment: 23rd March, 1983

JUDGMENT OF THE COURT

Quilliam J.A.

(continued)

This is an appeal and cross-appeal from the decision of the Supreme Court in proceedings arising out of the business relationships of the parties.

The facts are set out in detail in the judgment appealed from, but it is necessary for present purposes to give a summary of them and of the background to the proceedings. To avoid confusion it is convenient to refer to the parties as the plaintiff and the defendant. 10

The defendant is a retired accountant although never licensed as such. He was formerly employed by the firm of Pearce & Company which firm he later acquired. Over a long period from 1946 there developed a business relationship between, on the one hand, the defendant and on the other hand the plaintiff's father and mother and eventually the plaintiff himself. The plaintiff's father had been a farmer. His mother started a transport business. In about 1962 for the purposes of that business the practice developed of all income being paid to the defendant who would bank it in his personal account and pay all outgoings from the same account. 20 30

The plaintiff managed his mother's transport business and also operated businesses of his own. The practice continued in respect of all his business dealings of the defendant acting as his banker. The defendant rendered annual accounts to the plaintiff in respect of the money received and expended by him.

In 1970 the plaintiff decided to import buses from the English firm of Seddon Motors Limited for his firm which was registered under the name of K.R. Latchan Bus Service. He required two buses for his own business and he decided also to seek the sole selling agency for the English firm in Fiji, Samoa and Tonga. Following correspondence between the plaintiff (supported by the defendant) and 40

- (b) Appointed a Receiver with powers to take possession and control of all assets and the affairs of the said partnership and wind up its affairs under supervision of the Supreme Court;
- (c) After receiving a Report from the Referee in respect of accounts, settle the accounts in accordance with the principles applicable to the winding up of the affairs of a partnership after dissolution and to give effect to the provisions of Section 45 in the Partnership Act Cap.248.

In the Court
of Appeal

No.34
Notice of
Motion for
leave to
supplement
trial Record
and for
leave to add
and argue
Grounds of
Appeal
28th February
1983

10

This Application is made pursuant to Rules 5 and 20 of the Court of Appeal Rules.

(continued)

DATED this 28th day of February, 1983.

KOYA & CO.

20

Per: Sd: S.M.Koya
Solicitors for the Appellant

TO: The Chief Registrar
Fiji Court of Appeal
SUVA

Messrs. Mitchell Keil & Associates
Solicitors, Dominion House, Suva

No. 35

JUDGMENT

No.35
Judgment
23rd March
1983

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IN THE FIJI COURT OF APPEAL
Civil Jurisdiction
Civil Appeal No.56 of 1982

BETWEEN: RAM LATCHAN also known
as K.R. LATCHAN Appellant
- and -
LESLIE REDVERS MARTIN Respondent

S.M.Koya and G.P.Shankar for the Appellant.
E.D.Lloyd Q.C. and T.J.Ginnane for the Respondent.

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of Appeal

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Notice of
Motion for
leave to
supplement
trial Record
and for
leave to add
and argue
Grounds of
Appeal
28th February
1983

(continued)

control after the dissolution of the
alleged partnership;

- (d) in arriving at the conclusion that the Appellant wrongfully used the partnership assets to derive profits therefrom without accounting therefore to the Respondent;
- (e) in not taking into account that the affairs of the partnership even after his judgment were not wound up.

14. That the Appellant was deprived of a fair trial on the grounds :- 10

(a) that the Learned Trial Judge allowed the Respondent to introduce new prayers of relief (page 139 of the Record);

(b) that the Learned Trial Judge having ordered on the 17th May 1982 that the Appellant do supply further and better particulars by "tomorrow" and to deliver accounts up to the year 1981 during the trial, erred in not on the 17th May 1982 ordering production of the Respondent's books of accounts and other documents (pages 136 - 140 of the Record); 20

(c) that the Learned Trial Judge wrongly refused the Appellant's Counsel to cross examine the Respondent on matters relating to his money-lending transactions.

15. That the Learned Trial Judge was wrong in rejecting the Appellant's evidence and that of his Accountant (Mr. Ram Vilash) without fully and properly evaluating those evidence against all other evidence and the documentary evidence before the Court. 30

16. That having regard to the pleadings, the evidence adduced at the Trial and all other relevant circumstances of the case including the fact that the Learned Trial Judge had made a declaration that the partnership had been dissolved with effect from 30th September, 1978 the Learned Trial Judge ought to have :- 40

- (a) Ordered the taking of accounts concerning the partnership business and affairs and referred the matters in issue as to the accounts to a Referee;

Judge erred in relying on the Respondent's personal Books of Accounts and failed to take into consideration the matters alleged in paragraph (8) of the Statement of Claim and in paragraph 9(b) of the Statement of Defence.

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of Appeal

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As to the question whether an Order for account should have been made

10 12. That the Learned Trial Judge erred in law in fact in relying on the Respondent's personal Books of Accounts in arriving at a decision that no Order as to accounts relating to the partnership firm of "Brunswick Motors" should be made and treating the Respondent's personal Books of Accounts as evidence against the Appellant.

(continued)

20 On the question relating to the Learned Trial Judge's refusal to make an Order for accounts, appointment of Referee and sale of the partnership assets and relating to the making of an Order compelling the Appellant purchase the Respondent's share in the partnership

30 13. That the Learned Trial Judge in refusing to make an Order for Accounts and refer the issues to a Referee and in not ordering the sale of partnership assets as a condition precedent to settling finally the accounts of the partnership and in ordering the Appellant to purchase the share or the Respondent's interest in the assets of the partnership, erred in law and in fact on the following matters :-

- 40 (a) in not taking into account the Respondent's conduct in refusing to produce the books of accounts pertaining of the affairs of the partnership to the Appellant and his Accountant Mr. Martin Mills as was established at the trial;
- (b) and not taking into account that there was no evidence that the Appellant refused to furnish accounts of the assets which were in his hand as in respect of the period after dissolution;
- (c) in not taking into account that from the inception of the alleged partnership the tangible assets of the alleged partnership had been in possession or custody of the Appellant with the full knowledge and concurrence of the Respondent and that such assets continued to be in his possession or

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NOTICE OF MOTION FOR LEAVE
TO SUPPLEMENT TRIAL COURT
RECORD AND FOR LEAVE TO
ADD AND ARGUE GROUNDS OF
APPEAL

IN THE FIJI COURT OF APPEAL
CIVIL JURISDICTION

CIVIL APPEAL NO. 56 OF 1982
CIVIL ACTION NO.12 OF 1979

10

BETWEEN: RAM LATCHAN also known
as K.R. LATCHAN Appellant
(Original Plaintiff)

A N D: LESLIE REDVERS MARTIN Respondent
(Original Defendant)

NOTICE OF MOTION FOR LEAVE TO
SUPPLEMENT TRIAL RECORD AND FOR
LEAVE TO ADD AND ARGUE ADDITIONAL
GROUNDS OF APPEAL

TAKE NOTICE that at the hearing of this appeal the Appellant intends to apply to this Honourable Court for LEAVE to supplement the Trial Record by Affidavit to establish the circumstances preceding the Learned Trial Judge's action in refusing the Appellant's Counsel to make his address and open the Appellant's case at the Trial upon the ground that the Trial Record is deficient in this regard and that such leave is necessary to enable the Appellant to argue effectively ground (1) of grounds of Appeal. 20 30

AND TAKE FURTHER NOTICE that the Appellant also intends to apply to this Honourable Court for LEAVE to add, argue and rely to the following additional grounds of appeal.

As to the question whether there was a partnership and that the Respondent contributed \$10,000.00

11. That the Learned Trial Judge erred in law in fact in not holding that the Respondent failed to establish and prove satisfactorily the Respondent's alleged capital contribution of \$10,000.00. In so doing the Learned Trial 40

(b) made no order as to costs on the claim or the counterclaim and ordered that each party bear his own costs -

In the Court
of Appeal

No.33
Notice and
Grounds of
Appeal
(original
Defendant)
19th November
1982

(continued)

10 BE SET ASIDE and lieu therefor it be ordered that the Respondent/Plaintiff's claim be dismissed and that judgment be entered for the Appellant/Defendant on his counterclaim against the Respondent/Plaintiff for the sum of \$257,387.73 together with the accountancy fees and commission referred to in the said judgment with the Appellant/Defendant's costs of and incidental to the claim and counterclaim with interest as set out in the said judgment AND FOR AN ORDER that the Respondent/Plaintiff do pay to the Appellant/Defendant the costs of this appeal.

20 AND FURTHER TAKE NOTICE that the grounds upon which the Appellant/Defendant intends to rely in support of this appeal are as follows:-

1. THAT the Learned Trial Judge erred in law in disallowing the accountancy fees and commission charged by the Appellant/Defendant;
2. THAT the Learned Trial Judge should have found that the accountancy fees and commissions were properly charged by the Appellant/Defendant;
- 30 3. THAT the Learned Trial Judge erred in law in making no order as to costs on the claim and the counterclaim and in making an order that each party bear his own costs;
4. THAT the Learned Trial Judge should have ordered that the Respondent/Plaintiff pay all of the Appellant/Defendant's costs of the trial of the claim and counterclaim.

40 AND TAKE FURTHER NOTICE that upon the receipt of the trial record, additional grounds of appeal (if necessary) will be filed and served with the leave of this Honourable Court.

D A T E D the 19th day of November, 1982

Sgd: Illegible
MITCHELL, KEIL & ASSOCIATES
Solicitors for the Appellant

TO: Chief Registrar
Fiji Court of Appeal Suva;
Messrs. Koya & Co., Solicitors Suva

In the Court
of Appeal

DATED this 18th day of October, 1982.

No.32
Notice and
Grounds of
Appeal
(original
Plaintiff)
18th October
1982

(continued)

KOYA & CO.

Per: Sd: S.M.Koya
Solicitors for the Appellant

TO: The Chief Registrar, Fiji Court of Appeal,
Suva;
Messrs. Mitchell Keil & Associates,
Solicitors, Suva.

No.33
Notice and
Grounds of
Appeal
(original
Defendant)
19th November
1982

No.33

NOTICE AND GROUNDS OF
APPEAL (original Defendant)

10

IN THE FIJI COURT OF APPEAL
CIVIL JURISDICTION

Civil Appeal No.56 of 1982
Civil Action No.12 of 1979

BETWEEN: LESLIE REDVERS MARTIN Appellant
(Original
Defendant)

A N D: RAM LATCHAN (also
known as K.R.
LATCHAN Respondent
(Original
Plaintiff)

20

NOTICE OF APPEAL

TAKE NOTICE that the Fiji Court of Appeal will
be moved at the expiration of fourteen (14)
days from the service upon you of this notice,
or so soon thereafter as Counsel can be heard
for the abovenamed Appellant/Defendant
FOR AN ORDER that so much of the judgment
entered by His Lordship Mr. Justice Kermode
at Suva on the 13th day of October 1982
whereby His Lordship -

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- (a) disallowed the accountancy fees and
commission charged by the Appellant/Defendant;
and

8. THAT the Learned Trial Judge having made the Declaration in favour of the Respondent that the Plaintiff had wrongfully used the partnership assets to draw the profits therefrom without accounting therefor to the Respondent as aforesaid, erred in law and contradicting himself in treating the Appellant for the purpose of the judgment as a Purchaser of the remaining assets of the said firm.

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9. THAT the Learned Trial Judge erred in law in not making the following Declarations claimed by the Respondent in his Counter-Claim as follows :-

(continued)

(a) that the Declaration No.(4) as set forth in the Respondent's Counter-Claim, that is to say :-

"An order that all accounts and enquiries between the Plaintiff and the Defendant concerning the said partnership be taken and made.";

(b) that the Declaration No.(5) as set forth in the Respondent's Counter-Claim that is to say :-

"That the said accounts be finally settled and passed by the Court at the hearing of this action."

10. THAT the Learned Trial Judge erred in relying on the oral submission by Counsel for the Respondent that the dispute or the issues between the Appellant and the Respondent concerning the said firm be settled once and for all. In so doing he departed from the well established rules to act to the pleadings rather than oral request or a litigant or his Counsel in a civil trial. The resultant effect was that the Appellant was deprived of the opportunity of meeting the Respondent's new case. Having regard to this and other errors made at the trial, substantial miscarriage of justice has occurred. In effect there was an unfair trial.

TAKE FURTHER NOTICE that upon the receipt of the trial record, Additional Grounds of Appeal (if necessary) will be filed and served with the leave of this Honourable Court.

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established rules that after the dissolution of a partnership and before its final winding up, it was imperative for the Court to order a sale of the assets of the partnership; converted the same into moneys and direct that the partners were obliged in law to act in accordance with the rules of equity and give effect to Sections 39, 40 and 45 of the Partnership Act Cap.248.

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(continued)

7. THAT the Learned Trial Judge erred in making the following Declarations :-

(a) Declaration No.(1) as set forth in the Respondent's Counter-Claim, that is to say :-

"Declaration that the partnership between the Plaintiff and the Defendant known as Brunswick Motors existed from 17th February 1971 or alternatively from 1st November 1971 to 30th September, 1978;"

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(b) Declaration No.(2) as set forth in the Respondent's Counter-Claim, that is to say :-

"A declaration that the said partnership was dissolved on 30th September, 1978";

(c) Declaration No. (3) as set forth in the Respondent's Counter-Claim, that is to say :-

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"A Declaration that after the dissolution of the said partnership the Plaintiff wrongfully used the partnership's assets to derive profits therefrom without accounting therefore to the Defendant";

In this regard, the Learned Trial Judge erred in not taking into account that the Respondent did not make any allegations in his Defence or Counter-Claim and there was no proof to support this claim and the Learned Trial Judge failed to direct his mind to Section 39 of the Partnership Act, Cap.248.

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- (b) in not taking cognizance of the fact that the "Preliminary and Draft Account" was filed during the trial of the action (Exhibit 30) in compliance with the Order of the Court.
- (c) in not taking cognizance of the fact that the accounts kept by the Respondent concerning the said firm formed part of his personal accounts; they were recorded in his personal Ledger and other books of record; that he acted as a Banker in collecting and receiving moneys from the said firm and making payment of same into his own account with the Bank of New Zealand, Suva with other moneys collected from several other persons and in paying them out to other persons without adequately identifying the moneys received or collected from or paid to the said firm or its creditors or agents or servants;
- (d) in not taking into account that neither the Appellant nor the Respondent conducted the case on the basis that the remaining assets (out of the assets which were in the hands of the Appellant as at 30th September, 1978) should be sold to the Appellant and that the Respondent should be paid for the value of his shares in such assets. No such claim formed part of the Respondent's pleadings at the trial;
- (e) in treating the Respondent as a Vendor and the Appellant as the Purchaser and ordering or compelling the Respondent to sell and the Appellant to purchase the Respondent's share in the remainder of the assets of the said firm and in placing an arbitrary value or his own value thereon;
- (f) in taking into account irrelevant matters to arrive at his decision;
- (g) in not taking into account relevant matters for the purposes of arriving at a just decision;
- (h) in not taking cognizance of the well

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(continued)

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(continued)

incurred by the Appellant in examining, analysing Respondent's Books of Account, Records and papers relating to the Accounts of the said firm: "K.R.LATCHAN BUS SERVICES"; "K.R.LATCHAN BUSES LIMITED" and in re-constructing the said accounts be paid by the Respondent as prayed in his prayer (1) of his Statement of Claim.

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3. THAT the Learned Trial Judge erred in law and misdirected himself in not ordering that all accounts and enquiries between the Appellant and the Respondent concerning the Partnership business of the said firm be taken and made. He erred in not taking cognizance of the fact that taking of such accounts was an essential part of the Appellant's case and secondly that the Respondent himself specifically in his prayer number (4) of his Counter-Claim applied for such relief, and thirdly the taking of such accounts and settling the same was imperative for the purposes of Winding-up of the affairs of the said firm and to give effect to Sections 39, 40 and 45 of the Partnership Act, Cap.248. The refusal for the Order for taking of such accounts has caused a substantial miscarriage of justice.
4. THAT the Learned Trial Judge erred in law in not awarding the costs in favour of the Appellant.
5. THAT the Learned Trial Judge erred in law in not ordering the sale of the Partnership properties or assets and in not making appropriate orders for the purpose of winding up of the affairs of the said firm and making all consequential orders as required by rules of equity or Sections 39, 40 and 45 of the Partnership Act, Cap. 248.
6. THAT the Learned Trial Judge erred in law:-
 - (a) in assuming that accounts filed by the Respondent in Court were correct and accurate and were settled accounts between the parties and in assuming that such accounts were binding on the Appellant despite his objections;

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depositing moneys with the Respondent and that the Respondent had at all material times banked the said moneys in his own Bank Account with the Bank of New Zealand, Suva and that in his Ledger Account the Respondent had at all material times showed the moneys lying to the credit or debit of the said firm that the Respondent had used the said moneys for his personal use at a time when the Respondent's own account with his bank was over-drawn as prayed in his prayer (h) of his Statement of Claim. In this regard the Learned Trial Judge further erred in not taking into account the relevant facts which were agreed between the parties in a written Statement of Facts filed in Court on the 21st day of May, 1982;

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(continued)

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- (f) in not making an Order that the Respondent do pay to the Appellant such damages or compensation as may be just and equitable for the use of the moneys so received for and on behalf of the Appellant and the said firm as prayed in his prayer (i) of his Statement of Claim;
- 20
- (g) in not making an Order that the Respondent do pay to the Appellant such damages or compensation as may be just and equitable for the use of confidential information, matters or methods of his business, or for use of Appellant's secrets as prayed in his prayer (j) of his Statement of Claim;
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- (h) in not making a Declaration that all monies lent to the said firm and/or to the Appellant by the Respondent together with any interest charged by him since the inception of the said firm irrecoverable in law as prayed in his prayer (k) of his Statement of Claim. In this regard the Learned Trial Judge erred in law in holding that notwithstanding the fact that the Respondent was not a Licensed Moneylender, his advances to the said firm were not loans so as to be caught by the provisions of Money Lenders Act Cap.234;
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- 50
- (i) in not making an Order that all costs

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(continued)

AND TAKE FURTHER NOTICE that the grounds of
this Application are :-

1. THAT the Learned Trial Judge erred in law and acted unfairly in refusing the Appellant's Counsel to make his address and open the Appellant's case at the trial. Consequently there has been a substantial miscarriage of justice.
2. THAT the Learned Trial Judge erred in law:-
 - (a) in dismissing the Appellant's claim for relief as set forth in his prayer (a) to (d) of his Statement of Claim; 10
 - (b) in dismissing the Appellant's claim for an Order that the Respondent do account to the Appellant money received by him for and on behalf of the firm known as "BRUNSWICK MOTORS" from the 22nd day of February, 1971 to the 30th day of September, 1978 as prayed in his prayer (e) of his Statement of Claim; 20
 - (c) in dismissing the Appellant's claim for a Declaration (in the alternative) that the said firm was dissolved on the 30th day of September, 1978 and that therefore accounts between the Appellant and the Respondent as partners be settled in accordance with the requirements of Section 45 of the Partnership Act, Cap.248 as prayed in prayer (f) of his Statement of Claim. In this regard the Learned Trial Judge ought to have taken cognizance of the fact that the taking of account between the parties in respect of the Partnership business was imperative to settle such accounts and to give effect and/or to comply with provisions of Sections 39, 40 and 45 of the Partnership Act, Cap.248; 30
 - (d) in not granting the Declarations set forth in his prayer (g) (ii) to (iv) and (g) (vi) to (xiv) of his Statement of Claim; 40
 - (e) in not granting a Declaration that from 9th December, 1971 until 30th September, 1978 the Appellant for and on behalf of the said firm had been

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IN THE FIJI COURT OF APPEAL

CIVIL JURISDICTION

Civil Appeal No.56 of 1982

Civil Action No.12 of 1979

10 BETWEEN: RAM LATCHAN also known
as K.R. LATCHAN Appellant
(Original Plaintiff)

A N D: LESLIE REDVERS MARTIN Respondent
(Original Defendant)

NOTICE OF APPEAL

20 TAKE NOTICE that the Fiji Court of Appeal will be
moved at the expiration of fourteen (14) days from
the service upon you of this notice, or so soon
thereafter as Counsel can be heard by Counsel for the
abovenamed Appellant/Plaintiff FOR AN ORDER that the
verdict given and the judgment directed on the trial
of the abovementioned action before His Lordship Mr.
Justice Kermode at Suva on the 13th day of October,
1982 be set aside whereby he dismissed the Appellant/
Plaintiff's claim (except that he ordered the
exclusion of the Accountancy fees and commission
charged by the Respondent/Defendant in the Partnership
Accounts) and whereby he ordered that judgment be
entered for the Respondent/Defendant on his Counter-
Claim against the Appellant/Plaintiff for the sum of
30 \$257,387.73 together with an interest rate of 5% per
annum \$214,489.79 from the 1st day of August, 1982
to the delivery of the said judgment and whereby he
refused to make any order for costs on the claim or
the Counter-Claim AND FOR AN ORDER that in lieu thereof,
Judgment be entered herein for the Appellant/Plaintiff
in terms of his prayers set forth in his Statement of
Claim or alternatively FOR AN ORDER that a new trial
be had between the parties and the costs of the former
trial be paid by the Respondent/Defendant to the
40 Appellant/Plaintiff or alternatively the costs abide
the result of the new trial AND FOR AN ORDER that the
Respondent/Defendant do pay to the Appellant/Plaintiff
costs of or occasioned by this Application.

In the
Supreme
Court

No. 31

ORDER

No.31
Order
13th October
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IN THE SUPREME COURT OF FIJI

CIVIL ACTION NO. 12 OF 1979

BETWEEN: RAM LATCHAN also known
as K.R.LATCHAN Plaintiff

A N D: LESLIE REDVERS MARTIN Defendant

JUDGMENT AFTER TRIAL OF ACTION AND
COUNTER-CLAIM BEFORE HIS LORDSHIP
MR. JUSTICE KERMODE ON WEDNESDAY THE
13TH DAY OF OCTOBER, 1982

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THIS ACTION AND COUNTER-CLAIM coming on for
trial on the 17th, 18th, 19th, 20th, 21st and
25th days of May, 1982 and this day before this
Court in the presence of Counsel for the
Plaintiff and for the Defendant AND UPON READING
the pleadings AND UPON HEARING the evidence and
what was alleged by Counsel for the Plaintiff
and for the Defendant THIS COURT DOTH ORDER that
the Plaintiff's claim be dismissed except that
the Accountancy fees and Commission charged by
the Defendant in the Partnership accounts be
disallowed as prayed by the Plaintiff and that
Judgment be and is hereby entered for the
Defendant on his Counter-claim against the
Plaintiff for the sum of \$257,387.73 together
with interest at the rate of 5% per annum
on the sum of \$214,489.79 from the 1st day of
October, 1982 to date of delivery of this
judgment and that there be no Order as to costs
on the Claim or the Counter-Claim and that
each party do bear his own costs.

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BY THE COURT

Sd: Illegible

for DEPUTY REGISTRAR

SIGNED and SEALED this 18th day of October, 1982

question of costs. The plaintiff has succeeded only on two items in his alternative claim regarding the accounts. He has throughout maintained his stand that the defendant was not a partner or entitled to anything at all. His conduct during the hearing which disclosed on several occasions that he is a person who is not prepared to be bound by his oath disentitles him in my view to an order for costs albeit he has been partially successful.

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(continued)

The defendant on the other hand has succeeded on the major part of his counterclaim. While I have no doubt that the plaintiff would in any event have sought to evade his liability to account for the defendant's share of the partnership assets there was no justification for the defendant arbitrarily charging accountancy fees and commission. He could, once the action had commenced, have conceded that he was not legally entitled to make such charges and offer to credit the partnership with the amounts involved. Had he done so he would have been entitled to costs.

There will be no order as to costs on the claim or the counterclaim. Each party is to bear his own costs.

R.G. KERMODE
JUDGE

S U V A,

OCTOBER, 1982

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(continued)

parties after making an adjustment for refund of accountancy fees and commission. The outcome is that the parties share the sum as follows :

Defendant

Capital as per balance sheet \$155,327.62
Adjustment for fees and commission 10,515.46 \$144,812.16

Plaintiff

Capital as per balance sheet \$154,896.03 10
Add adjustment for fees and commission 10,515.46 165,411.49
\$310,223.65

The total amount the plaintiff has to account for to the defendant is the sum of \$214,489.79.

There remains the question of interest which the defendant has opted to take in lieu of his share in the profits made by the plaintiff. Pursuant to section 43 of the Partnership Act he is entitled to interest at the rate of five per centum per annum on the amount of his share of the partnership assets. 20

Interest was payable on the money owing to him by the firm but I have no evidence as to the rate payable. Five per centum per annum is the rate provided in the Partnership Act. I have for the purposes of calculating interest capitalised the defendant's debt and calculated simple interest on the sum of \$214,489.79 at 5% per annum for four years to 30th September 1982. I make the sum \$42,897.94 which added to the sum of \$214,489.79 makes the sum of \$257,387.73 which is the sum the plaintiff has to pay to the defendant. 30

I accordingly give judgment for the defendant on his counterclaim against the plaintiff for the sum of \$257,387.73 together with interest at the rate of 5% per annum on the sum of \$214,489.79 from the 1st day of October 1982 to date of delivery of this judgment. 40

I have given considerable thought to the

Brought Forward	\$51,858.83
Deduct excess value on plant	<u>40.10</u>
	<u>\$51,818.73</u>

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(continued)

10 The balance sheet as at 31st December 1981 in the draft accounts show assets of a gross value of \$343,328.00. As a rough check, and ignoring depreciation on the workshop, on adding back the value of the workshop the assets are increased to \$380,910.00. This sum approximates the 1978 book value of the firm's gross assets.

I consider the 30th September 1978 gross value of the assets shown in the accounts is the fair realisable market value of those assets. Had the business been sold in 1978 it might also have attracted payment for goodwill. The defendant however seeks no payment in respect of goodwill.

20 The fact that the plaintiff continued the business and treated the assets as his own must be taken as acknowledgment that the assets were worth at least the book values to him.

30 I have also considered whether the defendant will be receiving by way of interest on his capital a sum in excess of his share of the income which the plaintiff has disclosed. Adding back deductions for administration charges, accounting and rent which the plaintiff should not have deducted, and ignoring one year when the plaintiff made an alleged loss the plaintiff from the 1st October 1978 to the 31st December 1981 made a profit of \$64,633.00. The defendant's share of this would be \$32,316.50 a sum considerably in excess of what he will be getting by way of interest on his capital for the same period, ignoring interest on his advances.

40 To arrive at a division of the partnership assets in view of the circumstances I treat the plaintiff as a purchaser of the business at the gross asset value of \$379,901.28.

There are no losses of capital to consider and the only creditor of the firm is the defendant to the extent of \$69,677.63. The defendant is entitled to payment of this sum in priority to return of capital to the partners. This leaves the sum of \$310,223.65 to be divided between the

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the fair market value of the assets and have come to the conclusion that they should be so treated.

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By referring to Mr. Vilash's accounts for the same period and his preliminary draft accounts showing the alleged position as at 31st December 1981 I am able to confirm the values which the parties themselves in 1978 accepted were the values of the assets.

(continued)

Before referring to those accounts I would mention that due allowance was made each year for depreciation of assets in the accounts. The value of those assets in the accounts is the depreciated value based on the cost of such assets. 10

As regard stock, despite protests by the defendant that the amount of stock the plaintiff proposed to write off in 1978 was excessive, stock to the value of \$12,100.47 was written off in the 1978 final account. Since the plaintiff furnished the defendant with stock figures the value he placed on stock can be accepted. 20

No allowance has been made for bad debts either in the defendant's accounts or those prepared by Mr. Vilash. Mr. Vilash excludes the sum of \$12,651.83 shown in the defendant's accounts as the value of work done but otherwise accepts the figures for "sundry debtors". I must therefore assume that the parties did not consider there were any bad debts and the full amount of the debtors accounts is recoverable. 30

Everything appears to have been done to present a balance sheet for period ending 30th September 1978 showing realistic values of the partnership assets.

Mr. Vilash in his balance sheet for period ending 30th September 1978 shows gross value of assets as \$328,082.55 a drop of \$51,818.73 from the figures shown in the defendant's account. This difference is arrived at as follows : 40

Workshop omitted	\$37,582.00
Additional depreciation on tip truck	1,625.00
Work done omitted	<u>12,651.83</u>
Carried Forward	51,858.83

triable issues nor did he apply for a referee to be appointed. Instead Mr. Vilash was engaged to check the accounts and prepare a report. He was also instructed to reconstruct the accounts. The plaintiff's case was based on that report and restructured accounts.

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(continued)

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There is no need to refer the accounts to a referee as they have been checked and double checked by two firms of accountants. Mr. Vilash on behalf of the plaintiff inspected and reported on the accounts and prepared reconstructed accounts.

Mr. Chau, whose evidence I accept, testified that he and his staff had checked all accounts and he could vouch for the accuracy of the accounts kept by the defendant.

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Mr. Chau also considered the accounts prepared by Mr. Vilash and made a summary of seven points of difference between those accounts and the accounts prepared by the defendant (Ex.46). All those differences have been considered by me and do not require to be referred to a referee.

I accept and pass the accounts prepared by the defendant subject to an adjustment which I will refer to later.

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The balance sheet of the firm as at the 30th September 1978 discloses that the firm had assets of a total book value of \$379,901.28 as at that date.

The market value of the assets of a partnership on the dissolution of the partnership would in most cases be established by the sale of those assets.

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This is not practicable in the instant case for several reasons. The plaintiff claimed and still claims to be entitled to all the assets. Instead of winding up the business as he should have done he continued operating the business using the assets of the partnership. Four years have now elapsed since the dissolution and the nature and possibly quality of the assets has changed. There is also no certainty that the assets disclosed in the account for year ending 31st December 1981 now exist or even that the proper values have been disclosed.

I have given considerable thought to the question whether book values should be treated as

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Mr. Vilash admitted he had had another look at the books and had found the item in the ledger. Another such item was item 10 which states :

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"10. A test addition of Ram Kuar's ledger account showed a suppression of \$5,760.38 credit balance. This amount was further charged with interest for all the years thereafter."

(continued)

Mr. Vilash had to admit that as regards item 10 he had received further information and was satisfied that the sum had not been suppressed. 10

In item 11 Mr. Vilash had expressed the view that there seemed to be a short accounting of cash as actually received and credited to the ledger accounts. He stated that this could only be verified by a detailed checking.

It is a great pity indeed that Mr. Vilash should have been so hasty in raising matters in his report which could only have conveyed to the plaintiff and his counsel that the defendant had been dishonest. In the space of a few hours Mr. Chau was able to satisfy him about the cash situation covering a period of some years. Mr. Vilash had to admit that he was given an opportunity to check and he said he was satisfied subject to minor differences that moneys had been accounted for. Had he checked before making statements which could be interpreted as indicating that the defendant had been dishonest, the defendant may not have been faced with accusation of fraud conversion and dishonesty. I am satisfied he was not dishonest in his accounting for the moneys he received and there was no fraud by him or conversion of moneys. 20 30

There was no justification for Mr. Shankar's allegations. It must have been perfectly obvious to Mr. Shankar that the Court was making every effort to narrow the issues as regards the accuracy of the accounts, issues that should have been agreed and filed as ordered by Tuivaga J. as he then was, as early as 15th October 1979 when Mr. Koya, in seeking an adjournment of the hearing on that date, indicated that he wanted issues to be settled. Mr. Koya on that occasion mentioned that it might be necessary pursuant to Order 43 rule 3 for a referee to be appointed to report on the accounts. 40

Mr. Koya did not file any list of agreed

investigations of the firm's books of account which Mr, Koya had him explain in some detail. Mr. Vilash had also prepared the reconstructed accounts which Mr, Koya had Mr. Vilash describe in some detail. This gave rise to frequent objections by Mr. Chernov about the relevance of the questions which were overruled.

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On more than one occasion however Mr.Koya was asked by the Court about the relevance of the reconstructed accounts which had been filed in Court. His attention was drawn to the fact that had issues been settled and decided the reconstructed accounts would have been of assistance to the Court. He was told on more than one occasion that it was not necessary to have the witness explain the accounts in great detail by pointing out and marking entries in the books of account and that Mr. Koya could in his address direct the Court's attention to entries in the books on which he relied or challenged.

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Mr. Koya was at one stage also told that it was not the function of the Court in this action to check and rule on every entry in the books of account. To this Mr. Koya said that it might be necessary to refer the accounts to a referee. He was informed that it might be necessary.

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On the second day of the hearing, at the Court's suggestion, the hearing was adjourned to the following day to enable Mr. Vilash and Mr. Chau to confer and consider the accounts.

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This resulted in two sets of agreed facts being filed by Mr. Koya. Further evidence given by Mr. Vilash also disclosed that certain serious allegations he had made in his report, which could be interpreted as impugning the defendant's honesty, had no foundation. Admittedly the report was made after an apparent cursory examination of the books but Mr. Vilash had the opportunity to check the books over a period of almost nine months and his errors should have been corrected by him long before the hearing.

One such error was item 8 in Exhibit 1 which states :

"8. One such Bill of Sale in the amount of \$15,832.- made in Oct/Nov. 1975 was not credited to Brunswick Motors account at all."

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not raised by Mr. Shankar in his lengthy final written submissions but which he raised towards the end of his further oral submissions.

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Mr. Shankar made a statement in the nature of a complaint that because of a ruling of the Court the plaintiff was stopped from going into the accounts in detail. The plaintiff had therefore conducted his case on the basis that the accuracy of the accounts was not in issue and they would be referred to a referee.

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(continued)

Mr. Shankar was asked where the plaintiff had asked for the matter to be referred to a referee. He indicated page 12 which was reference to one paragraph in an amended Statement of Claim which refers to declarations or orders sought regarding accounts. There is no reference anywhere in the pleadings seeking any order that a referee be appointed to report on the accounts.

When Mr. Shankar was asked what the Court was to do about the reconstructed accounts on which some \$15,000 in fees were said to have been incurred, Mr. Shankar replied that the accounts were only put in for a limited purpose, which he did not specify, and he repeated his statement that the plaintiff's case had been conducted on the basis that the matter (i.e. the accounts) would be referred to a referee.

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I must first of all state that at no time during the hearing did the plaintiff's counsel Mr. Koya indicate that he was conducting the plaintiff's case on the basis that the accounts would be referred to a referee or seek clarification if in doubt. Nor did Mr. Koya's conduct of the case give any indication that that was his understanding. Since the ruling Mr. Shankar referred to, is one of very many made by me during the hearing which is not recorded in my notes it is necessary to state the events leading up to the ruling and the nature of the ruling.

30

On Monday the 17th May 1982 the first day of the hearing after most of the morning had been utilised in dealing with Mr. Chernov's application for particulars which set the stage for the unfortunate animosity displayed by senior counsel towards each other and which was to last throughout the hearing, the first witness Mr. Ram Vilash was called at 12.30 p.m. This witness concluded his evidence on Thursday morning the 20th May 1982. He had been called by the plaintiff to present a report on his

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instead of making the usual order for sale of the partnership assets and consequential orders. I have come to the conclusion that it is the only course that can be followed.

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(continued)

10 It is apparent that from the time the plaintiff decided to dissolve the partnership, which was some time prior to the 31st December 1977, when he ceased paying moneys into the defendant's bank account the firm started losing money.

There was a significant drop in profits in 1977 from \$92,533.16 in 1976 to \$50,609.50. For the first nine months in 1978 up to the date of dissolution the firm suffered its only loss, and a substantial one at that, amounting to \$21,514.11.

20 It must also have been early in 1978 that the defendant complained about excessive write off of stocks. The final accounts show that stock to the value of \$12,100.47 was written off.

The plaintiff admitted he was well aware that the writing off of stock would reduce the profits of the partnership.

30 The defendant in 1978 when no moneys were being paid to his account had to rely on the plaintiff for the information required to prepare the accounts. The plaintiff was sole operational manager of the firm at all times and he was in possession of the partnership assets. The opportunities to suppress or reduce figures is a possibility that cannot be overlooked given the plaintiff's patent dishonesty disclosed in this Court. It would also be a very difficult task for any person to now determine what profits the plaintiff actually made since he dissolved the partnership. He has refused to produce his books of account and I do not consider he could be relied on to make full or honest disclosures if I were to order that accounts be taken since the dissolution of the partnership.

40 The defendant's decision to claim interest on his capital instead of profits simplifies the task of the Court and accordingly I propose to settle and pass the accounts and order that the plaintiff pay the defendant his share of the capital with interest after due allowances for all debts and after payment of moneys owing to him for advances.

Before doing so I have to consider a matter

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dissolution. This was not done with the leave or approval of the defendant nor has the plaintiff accounted to the defendant for his use of the partnership assets.

I grant the relief claimed and declare that after the dissolution of the partnership the plaintiff wrongfully used the partnership assets to derive profit therefrom without accounting therefor to the defendant.

There are four more items of relief claimed by the defendant which can be considered together. They are :

- "4. An order that all accounts and enquiries between the plaintiff and the defendant concerning the said partnership be taken and made."
5. That the said accounts be finally settled and passed by the Court at the hearing of this action.
6. That the plaintiff pay to the defendant an amount equal to the amount found to be the defendant's share of the partnership's assets.
7. That the plaintiff pay to the defendant such share of the profits made by the plaintiff as the Court may find attributable to the use by the plaintiff of the defendant's share of the partnership capital or assets after the date of dissolution thereof or alternatively to interest pursuant to the Partnership Act Cap.217. "

Mr. Chernov in his final address asked the Court to determine the issues between the parties once and for all. He contended the Court could pass the defendant's accounts and could then order that the plaintiff repay the defendant's capital with interest from the date of dissolution.

Mr. Chernov said the alternatives were horrifying to contemplate. He drew attention to the defendant's age - over 80 and the fact that the plaintiff had not produced the books of accounts for Brunswick Motors. He stated the defendant would accept the book values of the assets.

I have fully considered whether it would be equitable to accede to Mr. Chernov's request

No fixed term had been agreed upon for the duration of the partnership and either party could dissolve the partnership at any time on giving notice of his intention to the other party.

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10 Although the plaintiff's letter to the defendant is dated 2nd October 1978 it is confirmation of verbal notice that the plaintiff intended to dissolve the partnership with effect from the 30th September 1978.

(continued)

I grant the relief claimed and declare that the said partnership was dissolved on the 30th September 1978.

"3. A declaration that after the dissolution of the said partnership the Plaintiff wrongfully used the partnership's assets to derive profits therefrom without accounting therefor to the Defendant."

20 I believe the plaintiff when he wrote to the defendant on the 2nd October 1978 intended that the partnership assets "be properly distributed as mutually determined by (the parties) or as determined by a Court of Law."

30 If that letter is taken as evidence of his intention, he at that time acknowledged the existence of the partnership and was prepared to agree to distribution of the assets or have the Court decide the issue.

40 Somewhere along the line his apparent honest intentions were discarded. I do not know the reasons for his change of heart but it cannot have escaped his notice, when he received the final partnership accounts, that he might have to find a sum of \$225,005.25 to buy out the defendant and repay what the firm owed him if he intended to carry on the business himself without selling any of its assets. This would leave the firm with assets of \$379,901.28 but with no working capital.

Under section 39 of the Partnership Act the plaintiff had authority after the dissolution to continue the business as far as was necessary for the purpose of winding up the business but not otherwise.

It is clear from the "Preliminary Draft" accounts prepared by Messrs. Peat Marwick & Mitchell that the plaintiff continued the business after

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(continued)

The plaintiff is not entitled to the order he seeks.

This concludes consideration of the plaintiff's numerous claims for relief. He has been successful on only two claims on his alternative claims for relief regarding the defendant's charges for accountancy and commission which I have disallowed.

I turn now to the defendant's counterclaim. I will deal with the defendant's claims to relief in the order set out in the counterclaim. 10

"1. Declaration that the partnership between the plaintiff and the defendant known as Brunswick Motors existed from 17th February 1971, or alternatively from 1st November 1971, to 30th September 1978."

There is nothing in law to prevent two parties, as between themselves, agreeing that a partnership between them shall be deemed to have commenced at some time before its actual commencement. 20

It appears to me on the facts before me that the parties had carried on the business together long before the defendant was recorded as a partner. In support of this view is the plaintiff's admission of a number of discussions with the defendant in 1971 and 1972 about the name of the firm which were held on the basis that the parties would work together. It is immaterial whether I am wrong in my views as the Registration of Business Names Act section 7 makes it mandatory to record a change in the particulars registered in respect of any firm. In particular the nature and date of the change must be specified. The plaintiff signed and filed a statement recording that the defendant was an "Incoming Partner" and the date of change was shown as "17.2.71". Whether this change records an agreement for retrospective admission of the defendant or belated recognition of the factual situation is of no moment. I find as a fact that the defendant was a partner in the firm with effect from the 17th February 1971. 30 40

I grant the relief claimed and declare that the partnership between the plaintiff and the defendant known as Brunswick Motors existed from 17th February 1971 to 30th September 1978.

"2. A declaration that the said partnership was dissolved on 30th September 1978."

analysing the Defendant's books of account, records and papers relating to the accounts of "BRUNSWICK MOTORS" K.R.LATCHAN BUS SERVICE, K.R.LATCHAN BUSES LIMITED and in re-constructing the said accounts be passed by the Defendant."

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This is the last specific item of relief claimed by the plaintiff.

(continued)

10 Mr. Chernov mentioned in his address that Messrs. Peat Marwick and Mitchell's charges for examining the books was the sum of \$15,000.

That firm had done work for the plaintiff prior to being instructed to audit the books. They were instructed to reconstruct accounts not only for Brunswick Motors but for two other businesses in which the plaintiff had an interest. Accounts for those firms are not challenged in this action.

20 It was the plaintiff or his legal advisers who instructed the plaintiff's accountants to make certain assumptions and include items omitted in the defendant's accounts and exclude items which were included in the accounts.

30 The reconstructed accounts for 9 months ending 30th September 1978 together with the accumulated assumptions in the plaintiff's favour resulted in a much more favourable account for the plaintiff in the event of his having to account to the defendant for his share of the partnership assets. Comparing those accounts with those prepared by the defendant for the same period shows the following advantages that would accrue to the plaintiff if the reconstructed accounts are adopted.

	Reduction of Assets	\$51,818.73
	Defendant's capital reduced	20,479.72
	Defendant's advances reduced	19,988.99
40	K.R.Latchan Bus Service shown as creditor	9,000.00

I will be considering accounts in some detail later. It is only necessary at this stage to say that Messrs. Peat Marwick and Mitchell were not accountants employed by the partners. They were engaged by the plaintiff and given instructions to restructure accounts clearly designed to limit the plaintiff's liability to account to the defendant.

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a very wide sense what is done may be considered an advance. But the word 'advance' when used in the definition of 'loan' occurs in a context which clearly shows that it is an advance made by one person to another and not an advance by way of a contribution to the funds of a partnership of which he is a member or, indeed, to himself and others in any circumstances. The law of partnership is well known and advances or contributions made to the funds of a partnership in excess of the required capital by any member of the partnership stand upon a footing which is well understood. The result of such contributions is to create the rights and duties which are specified in ss.34 and 57 of the Partnership Act and such transactions do not result in the kind of debt which is brought under the category of loan or lending by the provisions of the Money Lenders Act. It would, of course, be clear under s.9, had it been otherwise, that the sums would not have been enforceable or recoverable. But the very words 'no contract shall be enforceable' suggest the correctness of the view which we have adopted, viz., that the provision is dealing with debts incurred by one person or persons to another person or persons as a result of a contract of loan or something which is analogous to it. "

The advances made by the defendant to the firm over and above the \$10,000 capital he contributed were not moneylending transactions within the meaning of the term "moneylending" in the Act.

The evidence is clear that advances were repaid by the firm not at any fixed or agreed time but automatically as and when partnership moneys were paid into the defendant's account.

Under section 45(b) of the Partnership Act the defendant is entitled after payment of all other debts and liabilities to be paid rateably what is due to him from the firm for advances made by him in priority to any other payment.

The plaintiff is not entitled to the declaration he seeks.

"(1) For an Order that all costs incurred by the Plaintiff in examining,

1972 when the Fiji Institute of Accountants Act came into force he has not practised as a licensed Accountant. He admits he has not been acting as an auditor.

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10 On the evidence before me the defendant since at least 1972 has been engaged in no special business. His interest in the partnership and looking after his investments and his interest in public matters appear to have taken up his time.

Mr. Chernov recognised the difficulty of rebutting the presumption. Not only was his client difficult to examine because of his age but no effort was made in any event to establish that interest charged by the defendant did not exceed ten per centum per annum.

20 The advances made by the defendant for the purpose of the partnership of which the defendant was a partner were not loans to the plaintiff or the two partners.

In Kilgariff v. Morris & Another [1955] 91 C.L.R. 524 the High Court of Australia held that section 9 of the Moneylenders Act, which is similar to section 16 of the Fiji Act, did not apply to the case of money contributed by a partner, who was a moneylender, to partnership funds for the purpose of the partnership beyond the amount of capital he had agreed to subscribe.

30 The High Court considered section 34 of the Partnership Act 1895 which is similar to section 25 of the Fiji Partnership Act. "Loan" was defined under the Australian Act in very wide terms to include advance, discount, money paid for and on account or behalf or at the request of any person and to include every contract which is in substance or effect a loan of money.

The Court said at p. 528:

40 "In our opinion it is not possible to bring the transactions we have described within the meaning of s.9, helped though it is by the definition of 'loan'. The reason is that a contribution by a partner to the funds of the partnership is not a loan to any or all of the partners. It creates no debt payable by the partners to the person standing in the situation otherwise occupied by a lender. The partners are not in a proper sense borrowers who immediately incur a debt which is repayable by them to a creditor. In

(continued)

"moneylender" includes every person whose business is that of moneylending or who carries on or advertises or announces himself or holds himself out in any way as carrying on that business whether or not that person also possesses or earns property or money derived from sources other than the lending of money and whether or not that person carries on the business as a principal or as an agent but does not include -

10

(a).....

(b) any person bona fide carrying on the business of banking or insurance or bona fide carrying on any business not having for its primary object the lending of money in the course of which and for the purpose whereof he lends money at a rate of interest not exceeding ten per cent per annum; or

(c)

20

(d)

Under section 3 of the Act the defendant must be presumed to be a "moneylender" unless he rebuts that presumption or establishes that what the plaintiff alleges are loans are not "money-lending" transactions.

An attempt was made by the defendant to rebut the presumption but he was not successful.

There were several defences open to the defendant. Some of the loans which were secured by mortgage may have been outside the Act because of section 29 of the Act. Mr. Chernov did not seek to adduce any evidence as to the nature of those loans recognising that what were relevant were the transactions between the parties.

30

Mr. Chernov did touch upon the definition of moneylending but the defendant was not able to appreciate the nature of Mr. Chernov's questions.

I am not sure what bona fide business the defendant has been carrying on since 1971. He described himself as a retired Accountant. He claims he has never been licensed as an Accountant.

40

That admission means that since 11th February

There is no merit in this claim for relief and I decline to make the order sought.

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"(k) For a Declaration that all monies lent to "BRUNSWICK MOTORS" and/or the Plaintiff by the Defendant together with any charged by him since the inception of "BRUNSWICK MOTORS" irrevocible (sic) at law"

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10 This is a major issue. It is apparent from the declaration sought and the further particulars furnished that the plaintiff has a misconception of the law regarding moneylending where an unlicensed moneylender lends money.

Section 15 of the Moneylenders Act provides as follows :

"15. No contract for the repayment of money lent after the commencement of this Act by an unlicensed moneylender shall be enforceable."

20 There is nothing in the Act which would enable a borrower to recover payment of principal sums repaid to the lender in respect of an unenforceable contract. In respect of such moneys the contract has been fully performed.

30 The defendant admits he is not registered as a Moneylender. Assuming for the moment that advances made to the firm of which he was a partner were moneylending transactions and assuming that the defendant's accounts correctly record the dealings between the parties what sum should the defendant be seeking to recover? The amount shown in the accounts as owing to the defendant as at the 30th September 1978 was \$69,677.63. It would be this sum and only this sum that might be irrecoverable. A declaration limited to this sum on the assumptions I have adopted might be in order but the declaration the plaintiff seeks is far more reaching. The plaintiff is seeking a declaration that "all moneys lent" be declared
40 irrecoverable whether the bulk of the moneys have already been repaid to or recouped by the defendant or not.

I do not think there can be any doubt that the defendant was at all material times a moneylender within the meaning of that term in the Moneylenders Act.

The relevant portion of the definition of Moneylender in section 2 of the Act is as follows:

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evidence before me that there was any breach of confidence or misuse of information. The defendant acquired his information from his dealings with the plaintiff and it was with the plaintiff and only the plaintiff that he discussed partnership. I am satisfied the defendant wanted to join in the venture with the plaintiff as early as January 1971 when the plaintiff had not started his business which was then in the planning stages.

10

Mr. Shankar relies on a number of cases in support of his allegations. The first case he mentions and on which he relies heavily is Seager v. Copydex Ltd. 1967 2 All E.R.415. The facts in that case bear no resemblance to the facts in the instant case. Seager's case was one where the defendant used information gained from the plaintiff confidentially. They made use of information about an unpatented device which they patented themselves.

20

Lord Denning in Seager's case at p.417 in an extract also quoted by Mr. Shankar said:

"The law on this subject does not depend on any implied contract. It depends on the broad principle of equity that he who has received information in confidence shall not take unjust advantage of it."

Mr. Shankar obviously takes as a starting point the date the parties agreed on the terms of the partnership namely 28 December, 1972.

30

What use did the defendant make of his information about the business? He, as the plaintiff alleges, indicated that he was not prepared to continue financing the plaintiff unless he was taken in as a partner. He knew the business was making money.

There is not in my view anything unfair in that attitude. It involves no breach of confidential information at all.

I have no quarrel with Mr. Shankar on the law he has quoted but the cases he quotes do not fit the facts in this case.

40

The defendant has not set up in opposition to the plaintiff or disclosed to others any confidential information he received from the plaintiff.

paying out money. Had there been evidence of any conversion by the defendant the accountants would no doubt have commented on it.

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Connected with (h) is relief claimed in (i) which is as follows :

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10

"(i) For an Order that the Defendant do pay to the Plaintiff such damages or compensation as may be just and equitable for the use of the monies so received for and on behalf of the Plaintiff and the said firm."

20

I do not consider the plaintiff is entitled to the declaration as framed or any modification thereof or to the order. The defendant committed himself to meeting all requests for funds when the firm's account was in credit. There is no evidence that he refused to provide funds as and when required. It was a service which the books show was fully utilised by the firm under the management of the plaintiff.

30

I do not in all the circumstances consider it just or equitable that the defendant be asked to pay interest to the firm of which he was a partner when the firm was in credit. There is no basis for any claim to damages or compensation. The defendant was the firm's banker in effect and there was no agreement that the account be treated as an interest bearing account.

40

I decline to make the declaration or the order sought.

"(j) For an Order that the Defendant do pay to the plaintiff such damages or compensation as may be just and equitable for the use of confidential information, matters or methods of his business, or for use of Plaintiff's secrets."

I have had to have recourse to Mr. Shanker's written submissions to understand just what the plaintiff is complaining about in this claim for relief.

The plaintiff certainly consulted the defendant and discussed the proposed extension of his business. As I understand Mr. Shankar's argument he says the defendant abused his position as an advisor and repository of confidential information and was seeking to make a profit for himself. There is no

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the said monies for his personal use at a time when the Defendant's own account with his bank was overdrawn."

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In paragraphs 4 and 19 of the Statement of Claim the plaintiff pleaded that he ceased to deposit any moneys with the defendant after the 31st December 1977. Part of his claim now alleges he deposited moneys until 30th September, 1978.

10

In paragraph 28 of the Statement of Claim the plaintiff alleged that the defendant wrongfully converted to his own use moneys belonging to Brunswick Motors.

The only part of (h) which could form the basis of a declaration is a declaration that he used moneys belonging to the firm for his own personal use when his own account with the bank was overdrawn.

During the hearing the parties' respective accountants, Mr. Vilash for the plaintiff and Mr. Chau of the firm of Gammon & Chau for the defendant, examined the defendant's books of account. They agreed that a list of twelve receipts or payments recorded in the defendant's books of account formed part of or came from a pool of moneys being an account with the Bank of New Zealand Suva standing in the name of the defendant but it was not possible to identify whose money was paid out of that account. The agreed facts were signed by counsel and filed. The firm's money was "on call" and it is evident that the plaintiff from the end of October 1977 having decided he would dissolve the partnership, reduced the firm's October credit from \$121,097.64 to a debit of \$75,830.40 by the end of January 1978 - drawing on the defendant to the extent of \$196,928.04 before the defendant probably appreciated that no further moneys were being paid to his account.

20

30

40

This emphasises the nature of the account. The plaintiff pleaded that the defendant acted like a banker. There is no doubt he did so. Money was "on call" and when the firm was in credit no interest was allowed but interest was charged by the defendant when the firm was overdrawn.

The accountants were quite unable to identify whose money the defendant used when

partner other than what can be assumed from the accounts which records that the parties own them equally.

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The claim is not clear. I assume it relates to Mr. Vilash's inclusion C4 in Exhibit 14 where he added 10% to spares and 20% to chassis thus increasing the value of the assets taken over by the partnership.

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10

I do not understand what the plaintiff is claiming. If he is claiming to have these debits on his taking over the assets on dissolution this would result in unjust enrichment of the plaintiff.

20

There is no justification for such a claim. The agreement between the parties was that the defendant be admitted as a partner with effect from 17/2/71 at which time, on the evidence before me, the business had been operational for only 15 days. Also the plaintiff has taken over the assets and dealt with them after dissolution without any agreement with the defendant.

The claim is not allowed.

Before dealing with the issue whether the defendant was a moneylender within the meaning of that term in the Moneylenders Act I will total the items which I have held the defendant was not entitled to. Only two items are involved.

30

Commission	\$17,227.14
Accountancy Fees	<u>3,803.78</u>
	\$21,030.92

I will deal with these items when I come to settle the accounts.

40

"(h) For a Declaration that from 9th December, 1971 until 30th September, 1978 the Plaintiff or and on behalf of the said firm, has been depositing moneys with the Defendant and that the defendant had at all material times banked the said moneys in his own Bank Account with the Bank of New Zealand, Suva, and that in his Ledger account the Defendant had at all material times showed the monies lying to the credit or debit of the said Firm that the Defendant had used

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"(xiii) A Declaration that a sum of \$6000.00 per annum either as remuneration or allowance be allowed in favour of the Plaintiff in respect of services rendered by him to "BRUNSWICK MOTORS" in managing the day to day affairs of "BRUNSWICK MOTORS", supervising Bus building arranging sales of Buses and spare parts and general welfare and interest of the Partnership at the material times." 10

These three items can be considered together. Item (xiii) cannot be allowed for the same reason I have not allowed the defendant his accountancy fees. Not only was there no agreement between the parties regarding remuneration but under the Partnership Act the plaintiff is not entitled to any salary.

As far as the claim to rent and payment for use of his car for promoting the business is concerned the short answer to these claims is that it was never agreed that the partnership would meet these expenses. The so called 'rent' for use of the garage and workshop is a claim by the plaintiff to charge rent for premises owned by him and the defendant in equal shares. It was part of the agreement that the plaintiff would manage the business and construct the bodies. He could have hired premises but elected to use his own and improve them thereby saving expense. There is no evidence in any event to indicate that the premises were exclusively used for the firm's business. 20 30

Had the plaintiff put in an account for expenses in respect of his car the defendant may have paid them. He did not do so.

It must also be remembered that the plaintiff had two other businesses of his own which must have taken up a great deal of his time and incurred a lot of travel. 40

I disallow the three claims.

"(xiv) A Declaration that a debit of 10% on all spare parts and a debit of 20% on all chassis taken over by or sold to "BRUNSWICK MOTORS" in favour of the Plaintiff be allowed."

There is no evidence of any agreement between the parties as regards the assets of the partnership when the defendant was taken in as a

'garage and workshop' as being part of the assets of "BRUNSWICK MOTORS" in its Balance Sheet or Trading Account by the Defendant be excluded."

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10 To comply with the terms of the dealer's franchise the plaintiff had to urgently and substantially extend the firm's business premises to house buses and stocks of spare parts. He lost no time obtaining more money from the defendant for this purpose.

20 The garage and workshop were always treated in the partnership accounts as an asset of the partnership. In 1973 the plaintiff with partnership funds made additions to the buildings to the extent of \$23,562.81. The buildings were on his land or the family's land. I am not sure which. In 1974 there were further additions to the value of \$13,969.65. There were additions of a minor nature in subsequent years.

The effect of excluding these assets would be to unjustly enrich the plaintiff by half of the sum of \$34,582 spent by the firm on improvements. He does not seek to have the electrical installations excluded thus conceding the partnership owns the installations in the buildings but not the buildings.

30 If these assets are to be excluded then the costs borne by the partnership on that asset will have to be treated (together with interest) as advances by the defendant to the firm. This could prove more costly to the plaintiff than accounting for half the value.

I hold that the item should not be excluded.

40 "(xi) A Declaration that a debit be allowed to be made against "BRUNSWICK MOTORS" in its account in the sum of \$3600.00 per annum as rent owing to "K.R.LATCHAN BUS SERVICE" or to the Defendant personally for the use of the garage and Workshop situated at Wainibokasi, Nausori.

(xii) A Declaration that a sum of \$2400.00 per annum be allowed as a credit in favour of the Plaintiff for the use of his car for promoting the business of "BRUNSWICK MOTORS" during the relevant years.

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expenses paid by the firm.

Mr. Vilash did not query them in his reconstructed accounts. His figure for 1973 is the same as in the defendant's account.

In 1974 the defendant's account shows \$2,106.30 including \$1,857.66 for 1972.

Mr. Vilash's figure is \$459.15. He has omitted the \$1,857.66 for 1972 since he was erroneously of the view that 1972 was before the partnership commenced. He has accepted the defendant's figure of \$259.30 for 1974 expenses but increased it to \$459.15 because, as his notes in Exhibit 2 for 1974 shows, the sum of \$199.85 for travel was in error not charged to the Brunswick Motors but to someone else.

10

In 1975 expenses for travel in the defendant's account was \$1,902.01. Mr. Vilash's accounts have the figure \$189.03. His notes do not explain the difference. The difference is not a debit however which he rejected as his cash account reconciliation shows.

20

In 1976 the travel expenses were \$1,909.00 but Mr. Vilash's figures are \$1,993.1.

The defendant's figure for 1977 shows travel expenses were \$337 but Mr. Vilash's figure is (\$1,227.00) within brackets. It would appear the travel account was in credit to this extent.

In 1978 the defendant's accounts show the figure of \$2,537. Without any comment Mr. Vilash increases this figure to \$4,105.

30

I have spent some time on this issue of travel expenses to indicate that it was not one which Mr. Vilash overlooked. I reject the plaintiff's claim on this issue.

"(ix) A Declaration that all moneys lent by the Defendant to "BRUNSWICK MOTORS" and debited by him with interest in the said Firm's account be disallowed."

I have already dealt with the issue of interest. On the issue of the moneys alleged to have been lent, this will be dealt with when I consider the claim to a declaration in (k).

40

"(x) A Declaration that the times shown as

if it was not in fact specifically agreed, it was clearly understood by the parties that all monies advanced by the defendant would be interest bearing.

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10

I do not know the rate of interest the defendant charged but had it been excessive or above \$10 percent per annum the plaintiff would not have omitted to add further allegations and seek further relief. While the plaintiff did say he did not agree to pay commission or accountancy fees he did not make payment of interest an issue. He acknowledged that the defendant charged interest.

(continued)

Section 25(c) of the Partnership Act in any event provides that where a partner makes any payment or advance for the purpose of the partnership beyond his agreed capital contribution he is entitled to interest at the rate of five per centum per annum.

20

There is no merit in this claim by the plaintiff.

"(vii) A Declaration that accounting fees charged by the Defendant for preparing the accounts of "BRUNSWICK MOTORS", be disallowed."

I have dealt with this when considering in (i) above.

30

"(viii) A Declaration that all travelling expenses charged against or collected from "BRUNSWICK MOTORS" by the Defendant during the years be disallowed."

Travelling expenses were not an issue when the plaintiff first initiated this action. He challenged only debits for accountancy fees and commissions which I have held were properly challenged.

This claim was framed after the books of account had been checked by accountants employed by him for that purpose.

40

There was evidence he was in England early in the partnership at a time when the defendant was there and also that he went to Tonga. There is no evidence however that any of the sums debited to travel appearing in the accounts were sums that were credited to the defendant or to cover the defendant's travelling expenses. They appear as

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on the sale of buses to various
purchasers between November, 1971
to 30th September, 1978 be disallowed."

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1982

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Charging commission falls into the same category as charging accountancy fees. The defendant frankly admitted the plaintiff never agreed to it but he considered he was entitled to it. He did not appear to remember what the charge was for. There was mentioned that it was a finder's fee for finding the finance and also that it was commission for selling buses.

10

No commission was charged by the defendant until the 1975 trading year when the sum of \$5,310.86 was paid by the firm. In 1976 the charge was \$9,208.33 and in 1977 it was \$2,707.95. There was no charge in 1978. In all, the defendant arbitrarily debited the firm with a total of \$17,227.14. He was not entitled to receive commission in the absence of any agreement with the plaintiff. It was in breach of the rule in partnership law which I mentioned when considering the accountancy fees.

20

The sum of \$17,227.14 is disallowed and will be taken into account later.

"(vi) A Declaration that interest charged by the Defendant against "BRUNSWICK MOTORS" be disallowed."

In the further particulars furnished by the plaintiff relating to paragraph 6 of the statement of claim it was admitted that it was understood between the parties that the defendant would charge interest for moneys lent to purchase more than 2 bus chassis prior to 9 December 1971.

30

Interest had been charged by the defendant for many years prior to 1971 to the plaintiff's mother and the family businesses in which the plaintiff had an interest. There has been no claim by them in this action as regard the interest paid by them from about 1962 onwards.

40

It is significant also that when he first initiated this action the plaintiff did not seek any relief as regards the interest charged by the defendant on moneys made available to the firm.

I am satisfied that from the time of the initial advance by the defendant to the plaintiff,

the amount secured under the bill of sale. This resulted in the sale of such buses being treated as cash sales releasing funds which would have enabled the firm to purchase more buses. The financing of the purchases was not done with partnership funds and was no concern of the firm.

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10 Despite a thorough check of the accounts by Mr. Vilash, an accountant and a local partner in the international firm of Peat Marwick & Mitchell, no evidence was forthcoming of any alleged "secret and other profits" other than interest received under the bills of sale and items specified in the statement of claim.

(continued)

I decline to declare that this income be taken into account.

20 "(iv) A Declaration that profit or earning out of the sale of Buses which were, imported by "K.R.LATCHAN BUS SERVICE" from Seddon Motors Limited between 1971 and 1974 be excluded from the accounts of "BRUNSWICK MOTORS". "

The plaintiff has not adduced any evidence to indicate what profit included in the accounts was made by K.R. Latchan Bus Service on buses alleged to have been imported and sold between 1971 and 1974.

30 Before 17th February 1971 when defendant was admitted into partnership no buses appear to have been imported and sold. The defendant financed the importation of all buses. There was some mention that a bus was sold to K.R.Latchan Bus Service at cost which is not consistent with this claim.

40 It was the plaintiff himself who set up the separate business of Brunswick Motors and who used that firm to import Seddon buses. He did not disclose to Seddon Motors that he was not sole proprietor of the firm of K.R.Latchan Buses Service in which his mother and brother were apparently partners. He led them to believe he was sole proprietor. They are not parties to this action.

In my view there is no merit in this claim.

"(v) A Declaration that all monies charged by the Defendant as commission against "BRUNSWICK MOTORS" for any purpose or

In the	1974	...	\$1,000
Supreme	1975	...	500
<u>Court</u>	1976	...	500
	1977	...	500
No.30	1978	...	375
Judgment			<hr/>
13th October			\$2,875
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(continued)

The 1977 accounts show accountancy and audit fees of \$1,428.78. An examination of the ledger sheets for Brunswick Motors indicates that this sum is made up of \$500 accountancy fees and \$928.48 audit 10
 advice "PM and M" paid on 28th October 1977. On the evidence before me this appears to have been advice that the plaintiff sought from Messrs. Peat Marwick & Mitchell that Mr. Vilash mentioned in evidence. Accordingly I have excluded this sum. The sum of \$2,875 is to be refunded to the firm.

"(ii) A Declaration that all income and other transactions on sale and purchase of bus chassis and spare parts prior to 20
 the 31st December 1972 be excluded and be regarded as part of the Plaintiff's own income for all purposes."

The agreement between the parties was that the partnership be deemed to have commenced on the 17th February 1971. It was the defendant's money which was used to procure the buses and spare parts and the plaintiff's management which resulted in a profit. The defendant acted only 30
 in an advisory capacity and as financier and accountant. The profit was a team effort.

I decline to declare that the items in (ii) be excluded.

"(iii) A Declaration that all secret and other profits made by him in the sale of vehicles sold by the said firm between the 9th day of December, 1971 and the 30th day of September, 1978 be debited against the Defendant."

If by "secret and other profits" the plaintiff 40
 means the interest he earned on moneys he advanced to purchasers of buses then those profits should not be excluded.

It is an agreed fact that where the defendant financed a purchaser of a bus and took bill of sale from him he credited the partnership firm with

be either included in or excluded from the accounts. For convenience of reference I will set out these items and number them as they appear in the statement of claim although I appreciate this will unduly lengthen what is already a very lengthy judgment.

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10 "(i) A Declaration that all monies charged by the Defendant against the said Firm as Accountancy fees be excluded." (continued)

This item is duplicated in item (vii). My remarks herein will apply equally to item (v) - the commission charged by the defendant.

In his defence the defendant sets out what he alleges were some of the agreed terms of the partnership. He alleges :

20 "The defendant would have the responsibility for looking after the accounts of the business and financial aspects and providing finance to the business and credit facilities as required from time to time."

I treat these allegations as admissions by the defendant. The defendant also alleges in his defence that the plaintiff agreed to payment by the firm of accountancy fees comprising the cost of staff. He did not establish that in evidence nor did he establish that the fees represented the cost to him of the staff employed by him.

30 Since the defendant is an accountant, albeit now retired, and he stated he did most of the book work himself his charges for accountancy were in the nature of salary for work he admits he agreed to do. He has not established that the plaintiff agreed to the charge and under section 25(f) of the Partnership Act he is not entitled to remuneration for such services. The section provides :

40 "No partner shall be entitled to remuneration for acting in the partnership business."

The fact that the plaintiff did not complain until he instituted this action is of no moment. The charge by the defendant was in breach of a statutory rule under the Partnership Act.

The amounts involved are as follows :

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By no stretch of the imagination can it be said the plaintiff was in extreme need and forced into an improvident bargain. As a result of the partnership Ram Kuar and her sons including the plaintiff and his businesses at the peak of the defendant's financial assistance about January 1976 had obtained over \$310,000 from the defendant apparently without any security.

(continued)

This assistance flowed mainly from the agreement which the plaintiff now says he was forced into by threats, duress and fraud or induced to enter into by undue influence exercised by the defendant.

10

The plaintiff is not entitled to any of the three declarations he seeks which I decline to make. It follows he is not entitled to the order seeking to set aside the partnership or for an order that the defendant account for all moneys received and expended by him for and on behalf of the firm from 2nd February 1971 to 30th September 1978. Full accounts were furnished by the defendant to the plaintiff.

20

I believe this order (item e) was sought if it was held that the plaintiff is entitled to rescind the agreement. Since I do not consider he is entitled to rescission I do not consider it necessary to consider whether rescission in any event was possible.

There is an alternative claim (item f) to a declaration that the firm was dissolved on the 30th September 1978. This is also claimed by the defendant in his counterclaim.

30

Although the plaintiff has framed this alternative claim to relief he has not at any time been prepared to concede that the partnership existed or was legal. His main defence to the counterclaim is that the defendant was never a partner.

I decline to make the declaration which I propose to grant to the defendant on his counterclaim.

40

I do however agree that accounts will have to be settled in accordance with the requirements of section 45 of the Partnership Act and before settling such accounts it is necessary to consider the plaintiff's claim (item g) relating to such accounts.

The plaintiff seeks a declaration that 14 items

10 infirmity, coupled with undue influences
or pressures brought to bear on him by
or for the benefit of the other. When I
use the word 'undue' I do not mean to
suggest that the principle depends on
proof of any wrongdoing. The one who
stipulates for an unfair advantage may be
moved solely by his own self-interest,
unconscious of the distress he is bringing
to the other. I have also avoided any
reference to the will of the one being
'dominated' or 'overcome' by the other.
One who is in extreme need may knowingly
consent to a most improvident bargain,
solely to relieve the straits in which he
finds himself. Again, I do not mean to
suggest that every transaction is saved
by independent advice. But the absence
20 of it may be fatal. With these explana-
tions, I hope this principle will be
found to reconcile the cases. "

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The defendant was unable to establish that
the plaintiff received any independent advice.
However, the Privy Council in Inche Noriah v.
Shaik Allie Bin Omar [1929] A.C. 127 emphasised
that if evidence is given of circumstances to
show that the contract was the act of a full
and independent mind the transaction will be
valid even though no external advice was given.

30 The difficulty faced by Mr.Chernov was that
the defendant's memory was clearly faulty and
Mr. Koya had no difficulty in establishing that
on two occasions statements made by the defendant
were not true. When shown documents the
defendant readily admitted he was wrong. I am
satisfied however that he is an honest man but
because of his unreliable memory I have based
my findings mainly on the evidence given by the
plaintiff and documentary evidence.

40 Admissions made by the plaintiff as a result
of the skillful cross-examination by Mr.Chernov
support the defendant's case on this issue.
Whichever way I view the evidence and wherever the
onus lies the evidence does not disclose that
any undue influence was used by the defendant.

The defendant stated in December 1972 his
opinion which on the facts before me I cannot fault.

50 Ram Kuar and her sons' fortunes were very
much intermingled. Financial failure by the
plaintiff could have effected all of them.

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admission which in my view considerably weakened his case and also highlighted the fact that was evident on several occasions that he is a person deserving of little credence. He said :

"I agree in 1971 and 1972 defendant and I discussed how best to organise Brunswick Motors. He did suggest firm should have a distinctive name. This was discussed on a number of occasions. I agree this was done on basis that we would work together. He suggested the name Brunswick. "

10

The evidence satisfies me and I hold as a fact that the question of partnership had been raised by the defendant on a number of occasions and discussed by the parties well before the 28th December 1972. It was the plaintiff who repeatedly put off making a decision about a partnership without committing himself either way. On the 28th day of December 1972 believing the defendant would not assist him further he finally agreed to take in the defendant as a partner on terms which I find were very fair and if anything more favourable to the plaintiff than the defendant. It was after or at the time this agreement was reached that the plaintiff signed the Distributors Agreement.

20

If I am not correct in my view that there was no special relationship between the parties then the burden of rebutting the presumption that undue influence was used by the defendant in obtaining a half share in the business falls on the defendant. He has to establish that he has not abused his position and that the plaintiff acted voluntarily, in the sense that he was free to make an independent and informed estimate of the expediency of the contract.

Lord Denning M.R. in Lloyd Bank Ltd. v. Bundy [1957] Q.B. 326 reviewed the existing law and said at p.339 :

"Gathering all together, I would suggest that through all these instances there runs a single thread. They rest on inequality of bargaining power. By virtue of it, the English law gives relief to one who, without independent advice, enters into a contract on terms which are very unfair or transfers property for a consideration which is grossly inadequate, when his bargaining power is grievously impaired by reason of his own needs or desires, or by his own ignorance or

40

50

he continued with the additional business (Brunswick Motors) without sufficient capital resources or establish the business on a proper financial basis he and the family businesses (in which the plaintiff also had an interest) could get into serious financial difficulties.

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He had four options at the time:

(continued)

10

1. He could have ceased operating the business and in particular given up any thought of obtaining the dealers sole distributing rights which would involve him in heavy capital expenditure.
2. He could have sold the business.
3. He could have refinanced.
4. He could accede to the defendant's request to take him in as a partner.

20

Having so many options there is no merit in the plaintiff's allegation that he was compelled or induced to take in the defendant as a partner. He has not satisfied me that the defendant procured an agreement by "undue influence" which the plaintiff would not otherwise have made. At the end of 1977 starting with no capital in 1971 his capital in the firm was \$165,782.69 - an excellent return for 6 years business.

30

The plaintiff had been enjoying and reaping the benefits of the defendant's participation in the business from its virtual inception. He was a benefactor who had provided all the funds the plaintiff required at a cheap or reasonable rate without security.

40

I see nothing wrong in the defendant saying in effect, if he did so, "I am not prepared to provide any more finance unless I am made a partner". There is no evidence that the defendant dictated the terms of the partnership. There is however evidence that contribution of capital was discussed and it was mutually agreed that each contribute \$10,000. It is evident that it was also agreed that the defendant be treated as a partner with effect from 17 February 1971.

The plaintiff professes not to know how this date came to be inserted in the document he signed.

In cross-examination he made a significant

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which he would not otherwise have made. Cheshire
and Fifoot 9th Edition p.290 in discussing this
topic states :

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"The Courts have never attempted to define
undue influence with precision, but it has
been described as 'some unfair and improper
conduct, some coercion from outside, some
overreacting, some forms of cheating and
generally, though not always, some personal
advantage obtained by 'the guilty party'."

10

The quotation within this quotation are
the words of Lindley L.J. in Allcard v. Skinner
[1887] 36 Ch.D. 145 at p.181.

The defendant's alleged conduct does not
come within the above description of undue
influence. As it turned out the business
flourished but it could have foundered and it
would have been the defendant who could have ended
up being the bigger loser. I have already held
that there was no misrepresentation and in any
event the alleged representations were not false
representations. The plaintiff however as well
as claiming fraudulent misrepresentation also
alleged he was induced to act and accept the
defendant as an equal partner.

20

The defendant denied that he had stated he
would not assist the plaintiff financially any
longer unless he was made a partner.

The plaintiff, however, cannot be blamed
if he read the defendant's complaints as
indicating that his source of finance might dry
up unless he acceded to the request by the
defendant to be made a partner.

30

Accepting what the plaintiff alleges as
being the truth the plaintiff was not put into
a position where he was compelled to take in the
defendant as a partner.

There is no evidence that the defendant
threatened to demand the money owing to him or
to sue for the money. The defendant on the other
hand mentioned without challenge that he is
"long winded" in his approach to debtors and had
never issued a writ to enforce payment of a debt.

40

Nothing in the plaintiff's evidence
establishes that the defendant was in a position
to ruin the plaintiff financially or that he
threatened to do so. He was given what can only
be considered as sound financial advice that if

Far from the defendant inducing the plaintiff to give him a share in the business at an unfair price, it was the plaintiff who prevailed on the defendant to finance him and it was only when the plaintiff realised that if he wanted further finance to continue the business and obtain the sole agencies for a popular chassis the price he had to pay was the admission of the defendant as a partner that he finally agreed.

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The plaintiff was no callous youth in 1972 - he was 31. For some years he had been managing the family businesses also financed by the defendant and had proved to be a successful manager. Quite independently of the defendant and without his prior advice he decided to import buses and build bodies and was about to commit himself to further very heavy capital expenditure.

He acknowledges he had no experience as an importer and it is clear he had insufficient finance to embark on the new venture. That is why he consulted the defendant. During the time he operated Brunswick Motors on his own there is no evidence that the defendant interfered or imposed his will on the plaintiff in any way. At all times even after the formation of the partnership the plaintiff managed the business. The defendant appears to have done little more than receive and pay out moneys, keep accounts, prepare tax returns and when asked give advice and make funds available.

The plaintiff admitted that he had been consulting a number of solicitors for some years. There is no evidence however that he obtained any independent advice about admitting the defendant as a partner.

The burden of establishing undue influence falls on the plaintiff if there is no special relationship between the parties. If there is a special relationship where a confidential relationship exists between the parties, undue influence is presumed to exist and the onus is on the defendant to establish that undue influence was not exercised to procure a share in the business. As I stated earlier I do not consider there was any special relationship.

Since I consider there was no special relationship at the time the plaintiff agreed to take the defendant in as partner the onus is on the plaintiff to establish that the defendant in fact exerted undue influence on him to procure a partnership

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The plaintiff alleges that the defendant at all material times acted in a fiduciary capacity. I do not consider the evidence supports that allegation. His handling of the funds paid to him constituted him a debtor to the plaintiff and his family and not a trustee. The funds were not treated as trust funds a fact known to the plaintiff and his family and accepted by them at least from 1962 to the end of 1977.

The defendant certainly acquired a knowledge of the plaintiff's business and the state of his finances. Since he was the defendant's accountant there is nothing unusual in that state of affairs. 10

The defendant certainly gave advice to the plaintiff when the plaintiff sought his advice and he did make finance available but that does not in my view create a fiduciary relationship or any special relationship.

My assessment of the situation on the evidence before me is that the plaintiff an ambitious man fully realised the defendant was a fairly wealthy man - an elderly gentleman who was "a soft touch". It was no feeling of filial piety or any quasi-parental domination which induced him to call the defendant "father" and to show him respect. Such treatment is consistent with either genuine respect or recognition that it would pay to show respect to the man who was to furnish finance. I find it strange that the defendant an accountant should have advanced such large sums to the plaintiff, an inexperienced business man and his family without any security other than the dubious security of having all moneys paid to his account. 20 30

As far as I am aware from the evidence, moneys were advanced at a rate of interest which the plaintiff has not mentioned presumably because it was low or reasonable. Advances to the firm, the plaintiff and Ram Kuar and Sons at one time exceeded the staggering sum of \$310,000. This state of affairs I consider indicates the persuasive ability the plaintiff possessed. 40

I believe the defendant was concerned on more than one occasion about the large amount of money the plaintiff and his family owed him and for quite a period of time the plaintiff resisted any suggestions by the defendant to take him in as a partner in the Brunswick Motors firm meanwhile persuading the defendant to advance even larger sums to him. 50

The evidence is clear that from the inception of the business the defendant had contributed his services and time to the firm and the absence of any premium or back dating of admission as a partner is on the balance of probabilities also recognition of those services.

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10 Mr. Shankar made significant statements in his final address in the nature of admissions which indicates to what extent the plaintiff's will or mind was influenced or overborne by the close relationship between the parties or the alleged misrepresentations. Mr. Shankar said as I recorded him:

(continued)

20 "Defendant had intention to become partner from beginning but was not successful until December 1972. Only thing that was wrong was the misrepresentation made in December 1972; this caused plaintiff to distrust defendant."

30 This shows the plaintiff's independence and strength of will to resist the defendant's requests for a partnership. Plaintiff in his evidence, mentioned that the defendant had mentioned the matter before but he thought the defendant was joking. The defendant had in fact mentioned that on many occasions and as early as December 1970 or January 1971. I believe the defendant when he says he had been raising the matter over a period of two years.

In cross-examination the plaintiff was reluctantly forced to admit that the defendant had on other occasions raised the question of partnership. At this stage of his cross-examination he presented a sorry figure. He was quite obviously not telling the truth. He said as I recorded him :

40 "I am not sure that defendant on other occasions raised questions of partnership. Defendant did not say he would assist me if he had a say in the business before December 1972. I think there were 2 or 3 times he mentioned - could have been 3 or 4 times. It could be he mentioned it several times I have forgotten."

He went on to say :

50 "I agree he did say on a number of occasions 'what are you going to do'. In December he did say 'God knows you owe me a lot of money now. What are you going to do? You could be in a lot of trouble'. "

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unless he could have refinanced.

On the evidence before me I am in no doubt and find as a fact that the plaintiff was heavily indebted to the defendant on the 28th December 1972 and the statement alleged to have been made by the defendant was factual. The other statements the plaintiff now complains about are expressions of the defendant's opinion or intentions at the time and cannot be considered as representations.

The next issue to decide is whether the defendant used undue influence to compel the plaintiff to take him in as a partner. Before dealing with this issue I will consider the allegations that the defendant paid "no premium" for his share or contributed any money to the firm. 10

The firm's first balance sheet indicates that trading started some time in November 1971 although the business actually started in February 1971. There were no accounts for period February 1971 to November 1971 produced. The balance sheet as at 31st December 1972, 3 days after the defendant was taken in as partner indicates that the firm was heavily in debt. The firm as at 28th December 1972 had in my view no goodwill value notwithstanding it had made a trading profit of \$18,799.29. The accounts show that the defendant assumed liability for half the firm's debts. No allowance was made by the plaintiff for this factor. Those debts totalled \$50,707.80 (vide balance sheet as at 31/12/72). The company had no cash in hand or in bank and could not have continued trading unless it could obtain capital. In effect the defendant paid half of the \$50,707.80 and could have made himself liable to pay the whole sum if the plaintiff was unable to meet his share of the debts. The profit made would not have repaid the defendant's debt. It would barely have covered sundry creditors and depositors. The biggest depositor to the extent of \$13,000 was the plaintiff's own firm K.R. Latchan Bus Service. How this debt was incurred was not explained. Taking in the defendant as a partner, ensured that the plaintiff got that money back. The balance sheet as at 31st December 1973 indicates that the whole of the \$13,000 had been repaid to K.R. Latchan Bus Services. The failure to pay a premium for a share in such a firm cannot in my view be construed as evidence of an unconscionable bargain or of undue influence. There was also the capital the plaintiff needed to operate the business and to comply with the terms of the Distributors Agreement which the defendant agreed to furnish. 20 30 40 50

probable and he presented all accounts to the defendant for payment. He ordered the chassis, built bodies on them and sold the completed buses. He never asked to see the books of account, which is confirmation of a sort that he knew the position. In 1977 although he had never seen the books of account he knew the firm was making a lot of money.

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10 The balance sheet for the firm as at 31.12.72 discloses that the firm was indebted to the defendant in the sum of \$32,501.92.

Those accounts were prepared after it was agreed on 28th December 1972 that the defendant be admitted as a partner. One matter also agreed at that time was that each partner contribute \$10,000 capital. Defendant's counsel argued that the \$20,000 should be deducted from the \$32,501.92. It should not.

20 Before the 1972 accounts were prepared and before the defendant was admitted as a partner the position was that the plaintiff, as sole proprietor owed the defendant a sum in excess of \$32,501.92. The introduction of \$20,000 capital, \$10,000 of which was provided by the defendant and the rest from the defendant's funds held for Ram Kuar & Sons, reduced the firm's debts by \$20,000. The sum of \$52,501.92 could have been owing to the defendant unless some of the capital introduced was utilised to pay other

30 creditors.

Exhibit 44 discloses the indebtedness of the firm to the defendant at the end of November 1972, which was the position that would probably have been known to the defendant on the 28th December 1972 when he made the alleged representation. The firm was "in the red" to the defendant to the tune of \$47,765.49. These figures indicate that the \$20,000 capital was probably used to

40 reduce the plaintiff's debt to the defendant.

To describe this situation as "being heavily indebted" to the defendant is in my view a factual statement and not a misrepresentation or false representation.

With total assets of \$89,507.09 as at 31.12.72, the figures I have just quoted do indicate the plaintiff was heavily indebted to the defendant at the time he is alleged to have made the false representation. Had the defendant asked for repayment of the money owed to him the plaintiff could have been in serious financial trouble

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"In December 1972 the defendant called me. I was in his office to bank money. He said I owed him a lot of money. He said I cannot finance you any more. He said the only way we can go ahead was if I gave him a half share in Brunswick Motors. I did not say anything for a little while and he said 'look I cannot finance you any more'. He said I was spending money like water and that if I was not careful I could go to jail because I owed a lot of money. He had mentioned this matter before the 28th December but I thought he was joking. On the morning of the 28th December I said I would get the form from the Registrar-General's office. I believed at the time that I did owe him a lot of money. I always believed him. He did not show me any account at the time. I think it was the same when he first mentioned the matter in his office. He said it was very hard for me to carry on the business because I needed a lot of finance."

What he did not disclose in evidence was that at the time he had with him the Distributors Agreement which when executed by him made him the sole selling agent for Seddon Motors Ltd. in Fiji, Samoa and Tonga. Nor did he disclose to the Court the fact that he would need a lot of capital to comply with the terms of the agreement. The probability is that the agreement was shown to the defendant at the time. The signing before Miss Cleary (and stamping on 28th December 1972) to which I have earlier referred would indicate that that might be so.

The defendant's version of what happened on that occasion differs from that related by the plaintiff but his memory was not good and little reliance can be placed on his recollection of events unless there is other evidence to substantiate his story. Accepting for the moment that the plaintiff's story is a true account, his real and only complaint is that the statement that he was heavily indebted to the defendant was false and that statements that he and his family businesses would get into serious financial difficulties were also false. Were those statements false?

I am in no doubt at all that the plaintiff at all times, despite his denials, had an idea of the state of his firm's finances and also the finances of his other businesses. He collected all income and recorded takings in an exercise book according to the defendant which seems

(b) that the Defendant when making the representations aforesaid also made false representations to the Plaintiff to the effect that the Plaintiff was heavily indebted to the Defendant.

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10 Paragraphs 11 (c), (d) and (e) allege that the representations in paragraph 11(b) were false to the knowledge of the defendant and made with the knowledge they were false. Representation (a) is not alleged to be false. Paragraph 13 however does not limit false representations to representation (b) in paragraph 11. Representation (a) must therefor also be considered. (continued)

20 I am unable to understand how representation (a), if false, could possibly have acted on the plaintiff's mind as a threat or duress likely to cause financial or economic loss. Indeed I would go further and say the same about the alleged bare representation (b).

30 The Plaintiff alleges that the defendant was not prepared to carry on financing the plaintiff unless he was admitted into partnership. There was no obligation on the defendant to continue financing the plaintiff and there is not in my view anything improper in the defendant saying he would not continue financing the plaintiff unless he was made a partner.

30 The plaintiff alleges that the representations were false.

A representation whether innocent or fraudulent must be a statement of fact and not a statement of intention or of law. The burden of establishing the representations were false lies on the plaintiff.

40 As to representation (a) the plaintiff said in evidence that the defendant had told him in 1962 that his father had asked the defendant to look after the plaintiff. This was years before the plaintiff started his new business. The plaintiff said he believed him then. Nine years later a similar statement said to have been made by the defendant is alleged to have operated on his mind as a threat or duress. When he came to relate the discussion he had with the defendant in December 1972, the plaintiff made no mention of representation (a). What he did say and which is relevant to representation (b) is as follows :-

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plaintiff formed the business on the 9th December 1971.

It is not disputed that the plaintiff formed or established the firm but there is an abundance of evidence to establish that it was not formed on the 9th December, 1971. The application which the plaintiff himself signed discloses that the date of the commencement of the business was the 2nd day of February 1971.

While this application shows that the plaintiff was sole proprietor of the business there is also an overwhelming amount of evidence to show that he was not "the sole proprietor" of the said firm "at all material times" and entitled "to all the income and profits of the said firm".

10

The plaintiff signed a statement recording a change in the particulars relating to the firm registered by him on the 7th December 1971. That statement discloses that the defendant was a partner who was taken into partnership on "17/2/71".

20

There are also the annual partnership accounts from November 1971 to 30 September 1978 prepared by the defendant, copies of which were furnished to the plaintiff annually and which the plaintiff admits he received and understood.

The plaintiff is not entitled to the first declaration he seeks which I decline to make.

The second and third declarations he seeks can conveniently be considered together.

30

Declaration (b) refers to "the false representation aforesaid" in the singular but paragraph 11 of the Statement of Claim refers to more than one false representation. There is also in paragraph 13 an allegation that "such false representations operated upon the plaintiff's mind as or (sic) threat or duress likely to cause financial or economic loss".

Paragraph 11 alleges the following two representations :

40

- (a) that the Defendant in the month of December 1972 at Suva made representations to the Plaintiff to the effect that the Plaintiff's late father had asked the Defendant to guide and assist the Plaintiff in his business affairs after the death of the Plaintiff's father;

the same under the registration of Business Name Act Cap.218 under Certificate of Registration No.9197 at the office of the Administrator General, that at all material times he was the sole proprietor of the said firm that he is entitled to all the income and profits of the said firm from its inception to the date hereof.

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(b) A Declaration that all material time there existed a confidential and fiduciary relationship between the Plaintiff and the Defendant, that the Defendant became the Plaintiff's Trustees in all matters concerning the Plaintiff's Business, that the Defendant acted as the Plaintiff's sole Business Advisor, his Accountant and his Financier and because of such confidential and fiduciary relationship, the defendant had access to and acquired the Plaintiff's business secrets and methods employed by him in relation to his business and therefore was in a position of influence over the Plaintiff. Furthermore, by reason of such confidential and fiduciary relationship and by reason of the false representation aforesaid, the Defendant influenced the Plaintiff and induced him to accept the Defendant as Partner of the said firm, enter a change of particulars as to the composition and caused the same to be registered at the office of the Administrator General under Registration No.9979 whereby the Defendant was shown as a Partner in the said firm;

(c) A Declaration that the Defendant exercised undue influence over the Plaintiff to bring about a change in the composition of the said firm and the Defendant obtained for himself on half share in the firm without contributing any monies to the firm or without paying any premium to the plaintiff to become a partner therein.

Declaration (a) as framed contains a number of allegations of fact which are not in dispute. Some of them have been pleaded.

There is however one important statement which is not correct and that is the allegation that the

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"In 1977 when I entered Parliament and got some courage I broke up partnership. I had learned and had trusted the defendant. I had no bank account. I did know Brunswick Motors was making a lot of money towards the end of 1977. I did not bother about what money firm had at the time. I did want to do business the way I wanted to. It was difficult with defendant an old man as a partner. He was a nuisance and I had to get rid of him. It did take me 10 months to write letter dissolving partnership. I did send in Peat Marwick & Mitchell to check books. I thought defendant would cheat me. I did not know what was going on. I did send in auditors before giving notice. "

There were apparently discussions between the parties just prior to the 2nd October 1978 when the plaintiff wrote to the defendant on that date (Ex.36) confirming his prior verbal intimation that he wanted to dissolve the partnership with effect from 30th September 1978.

Before considering the plaintiff's claims to relief I would point out that there has been a typographical omission in the amended defence filed on the 26th May 1982 in paragraph 9C.

The final copy pleadings which was prepared by Mr. Koya and presented in his usual clear and attractive form also faithfully records the omission.

The Defence in the prior copy of pleadings filed the 10th August 1981 in clause 9C thereof denies allegations in paragraphs 8, 9, 10, 11, 12, 13, 14 and 15 of the Statement of Claim.

The amended Defence, however, which I am aware was prepared in a hurry, and filed on the penultimate day of the hearing, omits any reference to paragraphs 10 to 15 both numbers inclusive. This is clearly an unintentional omission.

I turn now to consider the plaintiff's claims to relief which I shall consider seriatim. The first three items all relate to the Brunswick Motors business and can conveniently be considered together. The plaintiff seeks three declarations as under :

- "(a) A Declaration that the Plaintiff formed a Firm known as "BRUNSWICK MOTORS" on the 9th December, 1971 and registered

The plaintiff said that he thought the printing on page 2 of the form was the defendant's, which the defendant denies, and he thought that the defendant had inserted the date 17/2/71 showing that the defendant had been introduced as a partner in the firm on that date.

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10 Comparison of Exhibits 14 and 15 indicates the person who wrote the figures 1, 2 and 7 which appear in both forms was probably one and the same person.

(continued)

On the balance of probabilities I find that it was the plaintiff and not the defendant who filled in the forms but it is immaterial who did so. The plaintiff is an educated literate man who speaks good English. He signed and lodged the form.

20 It was not explained why the date 17.2.71 should have been chosen as the date the partnership commenced but the evidence indicates that the defendant was very much involved in the business from the time the plaintiff was first seeking advice and financial assistance to finance the purchase of the initial two chassis.

30 When the defendant prepared the first annual accounts for the partnership they were for the period November 1971 to December 1972. It was not explained why the accounts did not start from 17 February 1971. A possible explanation is that the business did not commence with sales of buses to the public until after the second order of 6 buses arrived at the end of October 1971. In any event it was a variation which was probably more beneficial to the plaintiff than the defendant as the plaintiff kept all profits made to that date (if any).

40 After the defendant was acknowledged as a partner, with the plaintiff's industry and the defendant's advice and financial assistance Brunswick Motors became a flourishing business.

Some 74 bus chassis were imported by the firm between 1st January 1973 and 31st December 1977, all financed by the defendant. Until 31st December 1977 all moneys were paid to the defendant and banked in his name.

The beginning of 1978 saw the beginning of the break up of the partnership. The reasons the plaintiff gave in cross-examination for his desire to break up the partnership were stated by him in these words :

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him. He was committed to purchasing 30 vehicles a year and to hold a stock of spare parts at all times.

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Clause 14 of the agreement provided that payment for vehicle chassis and spare parts was to be in cash in London or by confirmed Bankers credit payable in London or other terms agreed by the parties. The plaintiff said the defendant advised against seeking terms.

(continued)

It is not in dispute that at all relevant times it was the defendant who arranged for letters of credit and provided the finance necessary to purchase the chassis and spare parts. He also provided all operational costs as and when required if the firm's account was not in credit with him which was usually the case. 10

The first order was for 2 chassis about February 1971. These were apparently ordered for the plaintiff's firm K.R.Latchan Bus Service. The next importation was for 6 chassis which arrived on 26th October 1971. 20

The defendant financed the construction of bodies that were built by the plaintiff on the chassis. After the bodies were constructed the buses were then sold for cash or the defendant would finance the purchasers. He would take security over the bus by having the purchaser execute a Bill of Sale in his favour.

It is a fact agreed by the parties during the hearing that when the defendant financed a purchase of a bus "by way of Bill of Sale" he credited Brunswick Motors with the Bill of Sale amount and debited the purchaser's account in his private ledger. The effect of this was that, so far as Brunswick Motors was concerned, the sales of such buses financed by the defendant were cash sales. 30

The plaintiff on the 7th December 1971 signed an application for Registration of the Business name Brunswick Motors (Exhibit 14). The application discloses that the business commenced on 2nd February 1971, about the time the plaintiff ordered the first two Seddon bus chassis. On 28th December 1972 the parties signed a form required under the Registration of Business Names Act (Exhibit 15) to record a change of registered particulars of Brunswick Motors. From evidence given by the plaintiff it was he who on the morning of 28th December 1972 said he would obtain this form from the Registrar-General's office. 40 50

We are anxiously awaiting the arrival of our two buses for there is a great deal of interest already aroused.

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Court

Our best regards to you,

Yours truly,
(Sgd:) L.R.Martin

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P.S. We are seeking a name for our company. Have you a suggestion which could incorporate your good name please? "

(continued)

10

The letter of commendation bore fruit. A Distributors Agreement bearing date the 1st November 1972 was entered into between B. Ashworth & Co. (Overseas) Ltd. acting as sole Export Commissioners for Seddon Motors Ltd. and Brunswick Motors also trading as K.R.Latchan Bus Service.

20

The plaintiff signed the agreement for Brunswick Motors in the presence of Miss Cleary. The document was probably signed by him after it had been signed by the other party in London on the 1st November 1972 as the copy agreement has an impressed stamp thereon which bears the date 28.12.72 a significant date which will be referred to later.

30

As regards this agreement, the document was the culmination of lengthy negotiations initiated by the plaintiff before he first consulted the defendant and in which the defendant appears to have played his part. The plaintiff also wanted and was granted sole distributors rights for Fiji, Samoa and Tonga.

40

On page 3 of a letter addressed to him personally by Seddon Motors Ltd., dated 12th October 1970 (Exhibit 26) the company set out its "very simple" requirements. The stated requirements have been underlined in ink and the probability is that it was the plaintiff who did this to emphasise the requirements he had to meet.

Paragraphs 12 and 13 of the agreement seek to give effect to the company's requirements.

On signing that agreement it is apparent that the plaintiff committed himself to finding a lot of capital, which he did not then have and had little prospects of finding, unless the defendant or someone else was prepared to assist

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(continued)

I do not believe him. The letter is a photocopy of a signed copy of the original letter and is typed on the defendant's firm letterhead. This indicates the probability that the defendant furnished the plaintiff with a copy of his letter. It is not usual to use a letterhead for a file copy of a letter and to sign it. The plaintiff's attention was also drawn to a letter from "Mr. L.R.Martin of Pearce and Martin Limited" in Seddon's Motors Limited's letter of 16th June, 1971 (Exhibit 28) to him enclosing a copy of the company's reply to that letter which was not produced by the plaintiff. As the letter is important, I set out the terms thereof :

10

"25th January 1971

Messrs. Seddon Motors Ltd.,
P.O.Box 223, Standard House,
Finsbury Square, London, E.C.2.

Dear Sirs,

20

You have not known that the young man who has written all previous correspondence, K.R.Latchan, by name, is a very capable bus operator. He has nine buses on his scheduled route, and is anxious to enlarge his business. The writer, hitherto unknown to you, had met his father in business some 25 years ago, and when he died I found that I had 'inherited' his family. From a small beginning with one bus I have built his knowledge of business, and expanded his experience, so that he now has - at 30 - a very fine business. I am prepared to join with him in this venture as it is to be expected that bigger business will make demands on his small capital. I submit the names of the Manager and Deputy Manager, Mr. Barlow and Mr. Blanchard respectively, of the Bank of New Zealand, Queen Victoria Street, London; or Mr. K.Sare, the Manager of the Bank of New Zealand, Suva, Fiji, all of whom know me personally and will be happy to inform you of my standing in the Bank.

30

40

It is my intention sometime later in the year to visit you on my way to the National Olympic Committee Meeting in Munich - I think September - but if it is necessary to come sooner I would be pleased if you would tell me, for I am anxious to meet you and let you see with whom you are dealing.

50

enable him to keep a record and prepare accounts.

In the
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Court

I pass now from the history of the early association of the defendant with the plaintiff's family, which the plaintiff, in a letter he wrote on 25th January 1971 (Ex.35) to Seddon Motors Ltd., a company which features in this case, stated he had 'inherited' on the death of the plaintiff's father to his more personal association with the plaintiff.

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(continued)

10

In 1970 the plaintiff decided to import buses from Seddon Motors Ltd., for the firm K.R.Latchan Bus Service. On 14th September 1970 he wrote to that company in England making enquiries about the bus chassis that company manufactured. He was also interested in becoming sole selling agent for the company in Fiji, Samoa and Tonga.

20

After an exchange of correspondence with the Company the plaintiff decided to import two Seddon bus chassis and the question must have arisen as to how he was to finance the purchase.

(sic)
The defendant/said in cross-examination that he could in 1970 have borrowed money from the National Bank of Fiji and given the family's 200 acre freehold land as security. He said also that he had letters indicating that Seddon Motors would have given him credit terms.

30

The letters from that firm which he produced do not support his allegation that Seddon Motors would allow him terms. Exhibit 27 written by that Company on 4th November 1970, after the plaintiff placed his initial order for two bus chassis, informed him that a letter of credit had to be established before shipment.

About December 1970 he decided to consult the defendant who had befriended his father and who after the death of his father had continued to assist and advise his mother.

40

There was produced by consent, while the plaintiff was giving his evidence in chief, a copy of a letter written by the defendant to Seddon Motors Ltd., dated 25th January, 1971 (Ex.35).

The plaintiff said under cross-examination that he did not know at the time that the defendant had written Ex.35 and he had not seen it until he saw it in a file in 1977.

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see the defendant from whom she obtained financial assistance to enable her to purchase a bus and establish and operate a bus service.

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(continued)

At some stage of the defendant's association with Ram Kuar, whether it was before or about the year 1962 is not known, he suggested to her that the income from her transport business be paid to him. He would account to her and pay all outgoings. She agreed to his suggestion. One reason for the arrangement was that Ram Kuar's transport headquarters was at Wainibokasi near Nausori. There was not at the time any trading bank or agency operating in Nausori.

10

Pursuant to the arrangement the plaintiff would take the previous days takings to the defendant's office in Suva and hand the money personally to the defendant or if he was absent to his assistant a Miss Cleary. The defendant would then bank the moneys in his current account in the Bank of New Zealand.

20

According to the plaintiff, from 1962 onwards he managed the family transport business. In 1974 he also started his own business styled Baulevu Bus Service and in June 1965 he registered the name of another business K.R. Latchan Bus Service. All income from these businesses was also paid to the defendant.

The arrangements made with the defendant operated in a manner which indicates the trust Ram Kuar and her family had in the defendant.

30

No receipts were ever given by the defendant to the plaintiff for the moneys paid by him to the defendant. The plaintiff in evidence said he did not ask for receipts because it was not necessary.

The plaintiff paid accounts monthly and he would apply to the defendant for cheques to pay them which the plaintiff drew on his current account. The defendant kept books of accounts at his office and rendered annual accounts to the plaintiff and his family. He also prepared their income tax returns which the plaintiff would sign.

40

Some 4 or 5 years after the arrangements were first entered into, the plaintiff was able to pay moneys directly into the defendant's current account with the Bank of New Zealand banking agency in Nausori. He would then furnish particulars of the deposits to the defendant to

of the partnership Act Cap.248 and the Plaintiff do have the costs of this action.

In the
Supreme
Court

DATED this 27th day of May, 1982.

No.29
Reply to
Defence
and Defence
to Counter-
claim
27th May
1982

KOYA & CO.

Per: Sd: S.M.Koya
SOLICITORS FOR THE
PLAINTIFF

TO: The Defendant and/or his Solicitors
Messrs. Mitchell Keil and Associates

(continued)

10

No.30

JUDGMENT

No.30
Judgment
13th October
1982

IN THE SUPREME COURT OF FIJI
Civil Jurisdiction
ACTION NO.12 OF 1979

BETWEEN: RAM LATCHAN also known
as K.R.LATCHAN Plaintiff

- and -

LESLIE REDVERS MARTIN Defendant

20

Messrs. S.M.Koya with G.R. Shankar
for the plaintiff.
Messrs. A.Chernov Q.C. with J.H.Karkar
for the defendant.

J U D G M E N T

30

The defendant, a retired accountant, now 80 years of age, was in 1946 working for the firm of Pearce & Co. who acted for the Rewa Dairy Co.Ltd. Khurbur a dairy farmer and father of the plaintiff met the defendant when he called on the firm to collect his milk cheques. From time to time he sought advice and assistance from the defendant. When Khurbur died in 1949 his widow, Ram Kuar continued his business. She also came to the defendant for advice and help when required. The plaintiff who is now 41, first met the defendant about 1950 when his mother took him with her to

In the
Supreme
Court

Deta Nominees case 1979 Victorian
Reprints 190 - 194 - plaintiff not dealt with
this.

No.28
Proceedings
27th May
1982

Court:

Judgment on notice.

R.G. Kermode
JUDGE

(continued)

No.29
Reply to
Defence
and Defence
to Counter-
claim
27th May
1982

No. 29

REPLY TO DEFENCE AND
DEFENCE TO COUNTERCLAIM

10

IN THE SUPREME COURT OF FIJI NO:12 OF 1979

BETWEEN: RAM LATCHAN also known
as K.R.LATCHAN Plaintiff
A N D : LESLIE REDVERS MARTIN Defendant

REPLY TO DEFENCE

- (1) The Plaintiff joins issue with the Defendants on all such matters which have been disputed by the Defendant in his Defence.

DEFENCE TO COUNTERCLAIM

20

- (1) The Plaintiff repeats the allegations mentioned in paragraph (1) to (30) of the Amended Statement of Claim and says that he ought to be declared as the sole proprietor and the owner of the firm known as "BRUNSWICK MOTORS".
- (2) The Plaintiff denies that the Defendant was at any time a partner in the said firm.
- (3) That if this Honourable Court holds that the Defendant was a partner in the said firm, then and in such case the Plaintiff says that an Order for dissolution be made with effect from such date as this Honourable Court thinks fit under the provisions

30

beginning but was not successful until December 1972. Only thing that was wrong was the misrepresentation made in December 1972 - this caused plaintiff to distrust defendant.

In the
Supreme
Court

Amended pleadings now drops admission made in original defence that plaintiff would be in serious financial difficulties.

No.28
Proceedings
27th May
1982

10 Only have plaintiffs. Exhibit 35 indicates that defendant wanted a partnership "by hook or by crook".

(continued)

2.15 p.m.

Books not available on the one occasion that he required them produced. Contrary to provisions of Partnership Act. Doctrine of laches and delay cannot apply because book still not available.

20 (With Mr. Chernov's concurrence Mr. Shankar puts in his written submissions without speaking to it on understanding, court would read and consider it).

Plaintiff not enabled to establish fully that defendant a moneylender by court's ruling. Should not confine period to 1978. Garage was on Crown Land.

Conducted case on basis that the accounts accuracies were not in issue and these would be referred to a referee.

(Court: Where have you asked for matters to be referred to referee).

30 Mr. Shankar:

Page 12. We were stopped from going into accounts in detail.

Court:

What do I do about restructured accounts on which some \$15,000 in fees has been spent. Mr. Shankar only put in for a limited purpose. We conducted case on bases that matter would be referred to a referee p.576 Lindley - this was basis on which we conducted our case.

40 Mr. Chernov:

On basis on which plaintiff conducted, we made it clear that we would be asking this Court to conclude.

In the
Supreme
Court

figures.

Mr. Chernov Q.C. address -

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Proceedings
27th May
1982

Issues in 4 parts. Have not had time to type notes but propose to put in photocopy since case has finished earlier than expected.

Court:

(continued)

No objection provided Counsel covers notes in his address.

As regards witnesses - Mr. Vilash and plaintiff - Vilash and participant witness. Reconstructed accounts in accordance with his instructions. Plaintiff where conflict between his and defendant should prefer the defendant, defendant a candid witness. Plaintiff lack of candour where answer would damage his case e.g. when asked about Solicitors acting said, it was 1974 but eventuated back to late 60's. Tailored his answers.

10

Defendant's big lie that he did not make loan to plaintiff's father. No relevant inconsistencies. Discussion of partnership on more than one occasion critical to case when discussions took place.

20

(Mr. Chernov speaks to notes handed in)

If agree with argument court has alternative - should determine issues between parties once and for all. Court can pass Martin's accounts. Could order that plaintiff repay defendant's capital with interest from date of dissolution. Alternatives horrifying to contemplate defendant over 80. Plaintiff has not brought books of account of Brunswick Motors. Add 5% interest.

30

(Mr. Chernov referred to para. 9(b) of Defence)

Mr. Chernov:

I agree court should work on book assets of values.

~~Accounts have really not been challenged.~~

Mr. Shankar In Reply -

Plaintiff and witnesses credible. Martin did not explain crucial date events of 28.12.72. Plaintiff speaking English not his mother tongue. Defendant had intention to become partner from

40

to fact that Exhibits 7, 8 & 9 are ledger sheets taken from Mr. Martin's private ledger and asks that this be noted.

In the
Supreme
Court

Mr. Koya:

No objection.

Defendant's
Evidence
No.27
John Hon
Lum Chau
Cross-
Examination
27th May
1982

Cross-Examination continues:

10

I did yesterday refer to Brunswick Motors ledger. I cannot remember seeing a cash book. Ledger did show personal accounts of the partners. (Exhibit 7) accounts were verified by my staff. I can vouch for accuracy of the accounts. Accounts was balanced end of October 1972 not in November but balanced end of December.

(continued)

(Mr. Chernov produced journal for Brunswick Motors) Between November, 71 and December 72 monthly balances were made 7 times - there were other balances in between the months. I ascertained monthly balances.

20

Exchange entries or reverse entries I mentioned appear in Exhibits 7 & 8. According to the books transfers were done on 2.11.71. The books indicate that. I did look at Ram Kuar and Baulevu books in same way to produce figures in Court.

(Mr. Koya - hands back journal to Mr.Chernov).

No re-examination.

(Mr. Chernov draws attention to Cap.270 Schedule Dairy land.)

30

Case for Defendant.

No. 28

PROCEEDINGS

No.28
Proceedings
27th May
1982

Mr.Koya:

Mentions that schedule of buses is annexed to plaintiff's affidavit.

Mr. Chernov:

Admit only that where they are shown as being sold on terms that was the case but do not admit

In the
Supreme
Court

Defendant's
Evidence
No.27
John Hon
Lum Chau
Cross-
Examination
26th May
1982

(continued)

Cross-Examination:

(Exhibit 44) - Cash requirements is the overdraft position. Brunswick Motors as at end of December 1972. All of 44 come from the ledgers. If capital put in at the beginning it would show at the beginning of the account. Capital accounts would be opened.

Balance is equivalent to overdraft. It is unusual to have everything in one account. I did see Brunswick Motors account - Sheet is a ledger sheet for Martin's account but is a cash book for Brunswick Motors. I saw journal and ledger of that firm after Peat Marwick and Mitchell finished with them in 1980.

10

Adjourned to 9 a.m. in Court No.2.

R.G.Kermode
JUDGE

27th May
1982

Thursday the 27th day of May, 1982 at 9.00 a.m.

Appearances as before.

D.W.2 - MR. CHAU re-sworn

Cross-Examination continues -

20

(Mr. Koya amended defence requires amendment to counterclaim, seek leave to amend defence to counterclaim.

Mr. Chernov Q.C.

No objection.

Court:

Leave granted. Counsel to inform Mr.Chernov today of nature of amendment before filing Amended Defence).

Cross-Examination continues:

30

Mr. Koya:

Calls for Brunswick Motors ledger and journal.

Mr. Chernov:

We do not have ledger. We may have the journal and will send for it if required. Refers

being engaged in this case I never did any work for the defendant and have not undertaken any other work for him.

In the
Supreme
Court

10 I have examined books of accounts of Latchan Bus Service, Brunswick Motors and Baulevu Bus. I examined some and some was done under my supervision. I also did examination of restructured accounts prepared by Peat Marwick & Mitchell to determine differences and reasons therefore.

Defendant's
Evidence
No.27
John Hon
Lum Chau
Examination
26th May
1982

As regards Martin's account I recorded monthly credit and debits balances. List shown me was prepared by me. Tendered Exhibit 44.

(continued)

It reflects credits and debits in Latchan Motors account.

20 Did the same exercise for Latchan Bus Service and Baulevu Bus service. I plotted balances on graphs, 4 graphs covering from 1964 to September 1978. Tendered Exhibit 45 a,b,c & d in order of dates. I prepared graphs 2 days ago. I added for Brunswick Motors back to November 1971. In 45 (d) includes Baulevu Service Books indicate that from November 1971 there was a partnership existing between plaintiff and defendant.

I did summarise differences between Martin's and reconstructed accounts and made notes at the time of the difference.

30 (Leave given to refer to notes)

There were 7 points of difference which I have summarised.

By consent summary tendered Exhibit 46. Interest was charged t- Brunswick Motors on monthly balances. Expenses all come out of defendant's account.

40 Importation of chassis before November 1971 as recorded in Ram Kuar's account. They were replaced out of Ram Kuar's account and transferred to Brunswick Motors. A similar procedure was followed in 1974 when Baulevu Bus Company commenced business, Fiji Institute of Accountants Control Accountants. I am a member. Act passed above 1970 and 1971.

(Exhibit 17) P & L Account 31.12.72 there was a charge for cost of travel to the U.K.

In the
Supreme
Court

Mr. Koya:

Wishes a ruling.

Defendant's
Evidence

Court:

No.26
Leslie
Redvers
Martin
Cross-
Examination
26th May
1982

I agree with Mr. Chernov that Mr. Koya's line of questioning is irrelevant and particularly as to whether persons to whom he had lent money had assets or not or whether he wrote off any loans. I do not have to investigate and rule on such loans. It has been established that Mr. Martin advanced moneys to a number of people over a period of up to 15 years and charged interest. The issue before me is whether finance made available to Brunswick Motors were "moneylending transactions". If the court has to investigate collateral matters such as details of all the other loan transactions we will be here a very long time. I rule the line of questioning out of order as not being relevant.)

10

(continued)

It is true I have never registered as a moneylender under the Moneylenders Act. I did not lend money to defendant's father ever. (Exhibit 37). I do not remember making the loan. Having seen Exhibit 37 I agree I made him a loan. I cannot remember what was said by me or Mr. Latchan on 28.12.72.

20

Re-
Examination

Re-Examination:

I do not understand question about commission. I can't remember what the commission was for. Plaintiff would be present when purchasers wanted to purchase a bus. I said I would advance money on giving Bill of Sale. I would draw a cheque and give it to purchaser who would hand it to the plaintiff.

30

Accordingly fees were charged every year for work done for Brunswick Motors.

Defendant's
Evidence
No.27
John Hon
Lum Chau
Examination
26th May
1982

No. 27

JOHN HON LUM CHAU

D.W.2 - JOHN HON LUM CHAU
of Suva, Chartered Accountant
duly sworn:

40

Passed B. Comm. at University of Centerbury. I am a partner in Gammon Chau & Company, Suva 1.7.72. I joined firm in January 1971. Before

did agree in December 1972 to take me in as a partner.

In the
Supreme
Court

Adjourned to 2.15 p.m.

Ameded Defence filed.

Defendant's
Evidence

No.26

Defendant Cross-examination continues:

Leslie
Redvers
Martin
Cross-
Examination
26th May
1982

Amount owing by plaintiff and family and Brunswick Motors \$20,311.59. (Witness confirmed this figure is interest). Balance sheet for Ram Kuar & Sons \$2,687.91 as at 31.12.72.

10 Brunswick Motors as at 31.12.72 \$32,501.93. That was the amount owing to me before I formed the firm.

(continued)

(Mr. Chernov so far as schedule of buses were concerned we agree where sold on terms were sold under Bill of Sale but not balances owing under the Bill of Sale) I had an account with Bank of New Zealand. I see Bank Statement for 28.12.72 showing amount in account. Assets in K.R.Latchan Bus Service were shown at historic values.

20

Brunswick Motors assets as at 31.12.72 were shown at cost.

There were others who brought moneys to me for banking from time to time. Since September, 1978 I have not handled any Brunswick Motors business.

30

Commission shown in the accounts was payable to me. I considered I was entitled to it. I also considered I was entitled to accountancy fees. I did not charge K.R.Latchan Bus Services for accountancy. Plaintiff did some work and I did a lot more. Plaintiff did not bring in all the customers. I brought in some.

40

I admit there was no agreement in writing about commission - he knew about it. Books did not have to be re-written to reflect my becoming a partner in December, 1972. I deny that the plaintiff did not agree to pay interest. I did not always know that people I lent money could pay. Some had no assets but had jobs. Niranjana was one when he first came to me for a loan.

(Mr. Chernov strongly objects to irrelevant line of cross-examination - not relevant.

In the
Supreme
Court

\$170.20 left out of list, page 75 for year 1971.

Defendant's
Evidence
No.26

(Mr. Koya told books of account are in evidence and he can refer to lists in his final address). I did not take security from people whom I knew well and wanted to help.

Leslie
Redvers
Martin
Cross-
Examination
26th May
1982

(Mr. Chernov objects that line of questions a waste of time. It is not cross-examination.)

Court:

Mr. Koya, it is not necessary to investigate each account and I have so indicated but since matter is relevant, I will permit you to continue. I do not know when Apted (Mr. Chernov again objects strongly). Not cross-examination matters in books of account and will take some hours to take this witness through the books.

10

(continued)

Mr. Koya questions such as when lent money was lent to Apted goes to issue of moneylending.

Court:

Rule that question not relevant when loan was made to Apted since loans appears in books and the amount is shown.

20

Sometimes I have lent large sums of money. In 1971 there was a loan of \$62,000. Book shows amounts lent. A few of the men are businessmen. Apted was a businessman. (Witness taken through list - most of them are businessmen - some of them are not). I lent Om Chand money to buy a home. I cannot say how many times I asked Plaintiff to make me a partner - something had to be done, depended on money I had to provide. I offered to form him as a partner over a period of 18 months. I wanted to know what he meant to do. I think I told him many times that he would be in difficulties if he carried on the way he was with no capital - he and his family could end in bankruptcy. I did not say they would end in gaol. Plaintiff did not commit himself in any way.

30

I think plaintiff understood the position. It was not threat by me it was advice to him. I think it was December 1972 it was agreed I would be a partner. I never threatened to not to lend any more money. I did say we could not carry on that way. I did not have Ram Kuar & Sons assets valued, why should I? I do not know how many buses they had in 1971. I did know by end of 1972 that importing buses was a good business. Plaintiff

40

When referring to indebtedness in 1971 I was referring to Ram Kuar & Sons and K.R.Latchan & Sons. Before 28.12.72 plaintiff did import chassis and I financed him.

In the
Supreme
Court

(Exhibit 15) - There was a ledger account for Brunswick Motors before 28.12.72)Exhibit 7). I did not debit Latchan's account for importing chassis. It was not correct that sales of buses were to be cash sales. It became my responsibility to finance purchases.

Defendant's
Evidence
No.26
Leslie
Redvers
Martin
Cross-
Examination
26th May
1982

Before 28.12.72 I did finance the purchase of completed buses. Appropriate entries were made in Brunswick Motors. Not necessarily entered in the Brunswick Motors account until moneys paid. (Mr. Chernov refers agreed facts 21.5.82 para.6). Mr. Koya asks that his question be recorded "when bus was sold to prospective purchasers by Brunswick Motors and when Mr. Martin purchased such purchase did he then credit the whole of the sum secured by the Bill of Sale to Brunswick Motors account".

(continued)

Court:

No.6 of agreed facts signed by counsel dated 21.5.82 states that Bill of Sale amount was credited to Brunswick Motors account. Counsel cannot be permitted to ask questions which seeks to establish that was not a fact. (Objection upheld).

Each time I financed a purchaser I charged interest. I cannot produce Bill of Sale today. Yes, I have for many years been lending money to different purchasers. Have been for the past 12 to 15 years. I am not sure I lent money in 1954. Mr. Pearce was not a partner in 1970. I became owner of business in 1963 and continued name of Pearce and Martin. On occasions I have been commission agent and insurance agent. I have on occasions charged commission for helping people to purchase things. Since 1963 I have acted as insurance agent and acted as manufacturer's representative and as accountant but not very much. Since 1963 I have not practised as an auditor that I can remember. I sometimes operated as financier but not as a valuer. I did valuations a long time ago.

(Witness shown notice to admit facts on file showing list of persons in second page Schedule A and referred to journal for 1970 p.278). Shows interest figures shown are correct \$18,365.98. List of persons are correct. Another figure is

In the
Supreme
Court

Defendant's
Evidence
No.26

Leslie

Redvers
Martin

Examination
(continued)
26th May
1982

Cross-
Examination

business had to go on, it needed money. I am long winded in my approach to that who did not pay. I have never issued any writs or demanded money but sometimes would speak quietly to some of them. I let many of them off. Some were on their "beams end" and no chance of collecting. There are loans I have never collected.

Cross-Examined Mr. Koya:

After proceedings started I did hand over books to Peat Marwick & Mitchell. I look all the sheets of my private ledger before I handed over the book. (Exhibits 7, 8, 9) came from a book. (Exhibit 42) came from the same book. Exhibit 42 was left in the book. I do not know why it was left. I do not remember reading plaintiffs affidavit. I do not remember replying by affidavit. I don't know, I don't remember seeing plaintiff's affidavit before I swore my own. I can see my signature on my affidavit and know I signed it. I see my affidavit. I cannot remember seeing Mr. Knight. I have to accept I saw him. I did read it and understood what I said in it was true. Para. 6 is true.

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(Mr. Koya reads para. 7 - Tenders Defendant's affidavit from file Exhibit 43).

(Witness asked to read plaintiff's original affidavit sworn 19.3.79)

Yes, I did read plaintiff's affidavit before swearing my affidavit.

Exhibit 42 does deal with my various ventures. I show \$10,000 capital and profit from Brunswick Motors. \$10,000 appears in journal 56, 31.12.72. In Brunswick Motors account there are entries regarding capital J. 56 covers both entries. I did debit Ram Kuar & Sons account my \$10,000 came out of my account. I reconciled accounts at the end of year. I am sure I did not receive subpoena to bring books. There are reconciliations at end of each month in the cash book such as P.82 of cash book in court. Up to time plaintiff imported final chassis, I was automatically assisting plaintiff. I did assist him I would help him. Second time I also helped. By the end of 1972 I knew he was making a success of the business. I knew he could sell buses at competitive prices. Beyond advising accountancy and making funds available I did what was required of me to assist. I did know price plaintiff paid for buses. I paid for them. I was advising him and was keeping matters confidential.

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6) That the Plaintiff pay to the Defendant an amount equal to the amount found to be the Defendant's share of the partnership's assets.

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7) That the Plaintiff pay to the Defendant such share of the profits made by the Plaintiff as the Court may find attributable to the use by the Plaintiff of the Defendant's share of the partnership capital or assets after the date of dissolution thereof or alternatively to interest pursuant to the Partnership Act Cap.217.

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(continued)

8) Costs

9) Any further or other orders or relief as the Court may seem fit.

D A T E D the 26th day of May 1982

Sd: Illegible

MITCHELL KEIL & ASSOCIATES
Solicitors for the Defendant

No. 26

LESLIE REDVERS MARTIN
(continued)

Defendant's
Evidence
No.26
Leslie
Redvers
Martin
Examination
(continued)
26th May
1982

Wednesday the 26th day of May, 1982 at 9.30 a.m.

Appearances as before

Defendant re-sworn -

Cross-Examination continues:

(Exhibit 9) - I have had chance to look at books, ledger sheets - reflect accurate picture of transactions - up to time books were taken away from my office.

I have lent large sums of money over the last 15 years at interest. I did not advertise fact. I was lending money. I lent to people I knew and those whose position had deteriorated and who wanted homes and help loans for firm were because

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26. Of the matters complained of by the Plaintiff in the Statement of Claim which are denied by the Defendant, the Defendant repeats paragraphs 1 to 23 hereof and says by the Plaintiff at all material times accepting the Defendant as an equal partner in the partnership of Brunswick Motors and the transactions carried out by the Defendant in relation to the partnership the Plaintiff has acquiesced in the matters complained of.

(continued) 27. The Defendant repeats paragraphs 1 to 23 hereof and says the Defendant will plead laches on behalf of the Plaintiff. 10

28. Furthermore certain matters referred to in the Statement of Claim arose more than 6 years before the commencement of this action and are barred by virtue of the Limitation Act 1971.

29. By reason of the matters aforesaid the Plaintiff is not entitled to any of the reliefs sought and the Defendant asks that the Plaintiff's claims be dismissed with costs. 20

COUNTER-CLAIM

30. The Defendant repeats paragraphs 1 to 29 hereof and Counter-Claims for the following declarations and relief:

- 1) Declaration that the partnership between the Plaintiff and the Defendant known as Brunswick Motors existed from 17th February 1971, or alternatively from 1st November 1971, to 30th September 1978. 30
- 2) A declaration that the said partnership was dissolved on 30th September 1978.
- 3) A declaration that after the dissolution of the said partnership the Plaintiff wrongfully used the partnership's assets to derive profits therefrom without accounting therefor to the Defendant.
- 4) An order that all accounts and enquiries between the Plaintiff and the Defendant concerning the said partnership be taken and made. 40
- 5) That the said accounts be finally settled and passed by the Court at the hearing of this action.

sale of buses by Brunswick Motors and generally carrying out his agreed responsibilities that the partnership was so successful. Save as aforesaid the Defendant denies the allegations in paragraph 22 of the Statement of Claim.

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19. The Defendant says that the Plaintiff had at all times agreed to the inclusion in the accounts of the partnership of accountancy fees, comprising the cost of staff, and interest on funds advanced to the partnership and commission to Defendant for providing finance to enable sales on terms by the partnership. Save as aforesaid the Defendant denies the allegations in paragraphs 23 and 24 of the Statement of Claim.

(continued)

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20. The Defendant repeats paragraph 13 hereof. Save as aforesaid the Defendant denies the allegations in paragraph 25 of the Statement of Claim.

21. The Defendant denies each and every allegation in paragraphs 26 and 27 of the Statement of Claim.

22. The Defendant says that on occasions when his account with the partnership was in debt he paid interest on outstanding amounts. Save as aforesaid the Defendant denies the allegations in paragraph 28 of the Statement of Claim.

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23. The Defendant has no knowledge of the matters set out in paragraph 29 of the Statement of Claim.

24. The Defendant repeats paragraph 1 to 23 hereof and says that the Plaintiff at all material times holding himself out agreeing to, accepting and conducting himself as an equal partner with the Defendant in the partnership of Brunswick Motors the Plaintiff is now estopped from claiming that the partnership did not exist on the terms hereinbefore set out.

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25. Of the matters complained of by the Plaintiff in the Statement of Claim which are denied by the Defendant ~~the Defendant repeats paragraphs 1 to 23~~ hereof and says that the Plaintiff at all material times freely agreed to and continued to accept and acknowledge the Defendant as his equal partner in the partnership of Brunswick Motors and accepted and acknowledged the Defendant's transactions and responsibilities carried out in relation thereto the Defendant has thereby waived any of the matters complained of.

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(continued)

a Bill of Sale over the purchased vehicles to the Defendant and upon its proper execution stamping and registration the Defendant would from his own funds credit the partnership at that time with that amount so that the full purchase price of the bus so sold was in fact received by the partnership business as if a cash sale had taken place. In these terms transactions the Defendant denies that he at any time acted as Trustee for the Plaintiff and/or K.R.Latchan Bus Service.

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Save as aforesaid the allegations in paragraphs 16 and 17 of the Statement of Claim are denied.

14. Other than that a company called K.R.Latchan Buses Limited was incorporated at the Companies Office, the Defendant denies each and every allegation in paragraph 18 of the Statement of Claim.

15. The Defendant denies each and every allegation in paragraph 19 of the Statement of Claim.

16. The Plaintiff has at all material time accepted and acted in accordance with being with the Defendant an equal partner in the partnership of Brunswick Motors. That it was the Plaintiff's failure in 1978 to supply information of the business under his control to the Defendant to enable the proper accounts of the business to be prepared. The Plaintiff gave notice to determine the partnership with effect from the 30th September 1978.

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Save as aforesaid the Defendant denies the allegations in paragraph 20 of the Statement of Claim.

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17. The Defendant repeats paragraph 9(b) hereof and says that the Plaintiff had at all material times accepted as his responsibility as an equal partner with the Defendant in the Brunswick Motors partnership the functions set out in paragraph 21(a) to (g) and had at no time during that period queried or questioned that his responsibilities should be otherwise or that payment should be made to him as claimed in the reliefs sought for carrying out his responsibilities. Save as aforesaid the Defendant denies the allegations in paragraph 21 of the Statement of Claim.

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18. The Defendant repeats paragraph 9(b) hereof and says that at all material times it was the ability through his own resources to finance the partnership and being able to finance on terms the

11. He denies each and every allegation contained in paragraph 10B thereof.

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12. As to paragraph 11 thereof:

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a) Save that he admits that the Plaintiff's father had, before his death, indicated his desire that after his death the Defendant look after the financial well-being of his family, he denies each and every allegation contained in sub-paragraph (a) thereof.

(continued)

b) He denies each and every allegation contained in sub-paragraph (b) thereof.

c) He admits that in or about 1972 the Defendant informed the Plaintiff that -

(i) the Plaintiff owed the Defendant a significant amount of money;

(ii) the Plaintiff did not appreciate fully his financial position;

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(iii) if the Plaintiff continued to expend moneys in respect of Brunswick Motors at the rate theretofore obtaining without a proper financial basis he could get in financial difficulties.

Save as aforesaid, he denies each and every allegation contained in sub-paragraph (c) thereof.

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d) Save that he admits that in or about December 1972 he repeated to the Plaintiff the statement that he had been making to the Plaintiff from time to time during the immediately preceding period of two years, namely, that he would not finance the importation of further chassis unless the Plaintiff and the Defendant became equal partners in Brunswick Motors, he denies each and every allegation in sub-paragraph (d) thereof.

e) He denies each and every allegation contained in sub-paragraph (e) thereof.

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f) He denies each and every allegation contained in sub-paragraph (f) thereof.

13. The Defendant says that a substantial number of bus chassis were imported for and on behalf of and by the partnership on which bus bodies were built and complete buses sold on cash or terms basis. In each case where buses were sold on terms, which sales were arranged by the Plaintiff, the purchasers would give

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(continued)

the Chassis. It became clear to the Defendant from his knowledge of the business affairs of the Plaintiff's family that although the dairy and bus service businesses produced a certain income the businesses were not in a financially strong position so as to support the Plaintiff's separate establishment and continuation of the bus importing business. It appeared to the Defendant that the Plaintiff did not appreciate that position. That if the Plaintiff would continue with the said additional business without sufficient capital resources or having the business established on a proper financial basis then he and the family businesses would get into serious financial difficulties. 10

(b) This was explained to the Plaintiff sometime in 1972 and he then appeared to fully understand and appreciate the position. The Defendant suggested to the Plaintiff who accepted, that the business of Brunswick Motors should be operated between them on an equal partnership basis, with each partner having designated responsibilities. The Plaintiff would be in charge of the day to day operations of the business of ordering, importing bus chassis building bus bodies and selling the completed buses including maintaining sufficient stocks of spare parts and generally looking after the business. The Defendant would have the responsibility for looking after the accounts of the business and financial aspects and providing finance to the business and credit facilities as required from time to time. Each partner would contribute, and did contribute the sum of \$10,000 as capital in the venture. This capital is the sum of \$20,000 referred to in paragraph 8 of the Statement of Claim. 20 30

(c) After agreeing and to give effect to this the Plaintiff and the Defendant filed change of particulars of the partnership of Brunswick Motors which was registered at the office of the Administrator General on the 29th December 1972 to be effective from the 17th February 1971. The business of the partnership of Brunswick Motors has since been carried on that basis. Save as aforesaid the Defendant denies each and every allegation in paragraphs 8, 9 and 10 of the Statement of Claim in particular that his dealing with the Plaintiff and his family established a trustee of fiduciary relationship between them. 40

10. He denies each and every allegation contained in paragraph 10A thereof. 50

the Plaintiff and his brother and with their full agreement, the takings of the bus service business were collected by the Plaintiff's family and brought to the Defendant's office for checking and confirmation with the records prepared and supplied by the Plaintiff's family. After this the Plaintiff or someone on the family's behalf would deposit those takings with the Defendant's bank on behalf of the Plaintiff's family. Full particulars of the amounts of each banking were at all times known to the Plaintiff's family and were entered in records kept by the Defendant to the credit of the Plaintiff's family.

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(continued)

(c) All accounts for the dairy and bus businesses income and outgoings were supplied to the Defendant by the Plaintiff's family and after checking the details were received or paid by the Defendant from the funds held with respect to the Plaintiff's family's businesses.

(d) This arrangement was at all times freely accepted by the Plaintiff's mother and later the Plaintiff and his brother. At no time did any of them intimate that they were not satisfied with the arrangement or not knowing their financial position having all records themselves or available of income and outgoings in addition to the annual accounts. Save as aforesaid the Defendant denies each and every allegation in paragraph 4 of the Statement of Claim.

6. The Defendant became aware that the Plaintiff intended to commence a separate additional business of importing bus chassis for construction of bus bodies and sale of complete buses and had contacted Seddon Motors Limited of England to this effect. Save as aforesaid the Defendant denies the allegations in paragraph 5 of the Statement of Claim.

7. Subsequently the Plaintiff without any finance or arrangement for finance purchased 2 Seddon Chassis which the Defendant at the request of the Plaintiff paid for from the Defendant's funds. Save as aforesaid the Defendant denies the allegations in paragraph 6 of the Statement of Claim.

8. The Defendant admits paragraph 7 of the Statement of Claim.

9. (a) The Plaintiff in 1971 and 1972 continued to import Seddon bus Chassis again without finance or making arrangements for finance for the payment of

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before his death in 1949 during which time the Defendant had helped the Plaintiff's father to obtain prompt and speedy payment for his dairy cream supply from the Rewa Dairy through its agent Pearce & Company and also assisted him in purchasing needed farm supplies from that Company. At no time did the Defendant carry out accountancy work or lend monies to the Plaintiff's father.

(continued)

(b) After the Plaintiff's father's death in August 1949 his widow Ram Kuar having been advised to do so by her late husband came to see the Defendant and requested his assistance in her business affairs which at that time consisted solely in the operation of the family dairy farm. This assistance was freely given by the Defendant.

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(c) Sometime later the Plaintiff's mother requested and sought the Defendant's assistance, in particular his financial assistance, the family business having insufficient financial resources, to purchase a bus and establish and operate a bus service. This assistance was given. This business subsequently grew and required the purchase and financing of a number of other buses. This assistance requested and agreed to and accepted at first by the Plaintiff's mother and later by the Plaintiff on becoming a partner in the business and also by his brother continued until sometime in December 1977. Save as aforesaid the Defendant denies the allegations in paragraph 3(a) of the Statement of Claim.

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4. The Defendant says that at all material times commencing from 17th February 1971 he was a full equal partner with the Plaintiff in the partnership of "Brunswick Motors" each partner having agreed duties and functions with respect to the partnership. Save as aforesaid the Defendant denies the allegations in paragraph 3(b) of the Statement of Claim.

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5. (a) The Plaintiff's mother gave the Defendant a Mortgage No.81973 over her one-third interest in the property in Certificate of Title 3580. The Defendant says that this is a matter between the Defendant and the Plaintiff's mother and not with the Plaintiff.

(b) To assist the Plaintiff's family and to ensure that proper financial control was kept for the bus service operations having fully explained the matter to the Plaintiff's mother and later

DATED this 25th day of May, 1982

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Court

KOYA & CO.

Per: Sd: S.M.Koya
Solicitors for the Plaintiff

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(continued)

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AMENDED DEFENCE

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IN THE SUPREME COURT OF FIJI

No.12 of 1979

BETWEEN: RAM LATCHAN also known
as L.K.R. LATCHAN Plaintiff

A N D: LESLIE REDVERS MARTIN Defendant

AMENDED DEFENCE

1. The Plaintiff's mother Ram Kuar in her own right since 1949 has been carrying on business as a dairy farmer on the family property "Waidalaci" at Tailevu and later as bus operator and since sometime in or about 1962 in partnership with her sons the Plaintiff and Ram Lagan. (The Plaintiff's mother, the Plaintiff and his brother Ram Lagan referred to as "the Plaintiff's family"). The Plaintiff in his own name registered the business name "K.R.LATCHAN BUS SERVICE" registration No.5928 on the 1st June 1965. Save as aforesaid the Defendant denies the allegations in paragraph 1 of the Statement of Claim.

2. As to paragraph 2 of the Statement of Claim the Defendant at all material times has been engaged in various businesses including as accountant. It is denied that the Defendant has at any time carried on the business of Moneylender.

3. (a) The Defendant knew the Plaintiff's father as a Tailevu dairy farmer for a number of years

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(continued)

- (xiv) that a debit of 10% on all spare parts and a debit of 20% on all Chassis taken over by or sold to "BRUNSWICK MOTORS" in favour of the Plaintiff be allowed.
- (h) For a Declaration that from 9th December, 1971 until 30th September, 1978 the Plaintiff or and on behalf of the said firm has been depositing moneys with the Defendant and that the Defendant had at all material times banked the said moneys in his own Bank Account with the bank of New Zealand, Suva, and that in his Ledger account the Defendant had at all material times showed the monies lying to the credit or debit of the said Firm that the Defendant had used the said monies for his personal use at a time when the Defendant's own account with his bank was overdrawn. 10
- (i) For an Order that the Defendant do pay to the Plaintiff such damages or compensation as may be just and equitable for the use of the monies so received for and on behalf of the Plaintiff and the said firm. 20
- (j) For an Order that the Defendant do pay to the Plaintiff such damages or compensation as may be just and equitable for the use of confidential information, matters or methods of his business, or for use of Plaintiff's secrets. 30
- (k) For a Declaration that all monies lent to "BRUNSWICK MOTORS" and/or the Plaintiff by the Defendant together with any charged by him since the inception of "BRUNSWICK MOTORS" irrevocable (sic) at law
- (l) For an Order that all costs incurred by the Plaintiff in examining, analysing the Defendant's books of account records and papers relating to the accounts of "BRUNSWICK MOTORS", "K.R.LATCHAN BUS SERVICES", "K.R. LATCHAN BUSES LIMITED" and in re-constructing the said accounts be passed by the Defendant. 40
- (m) Further or other relief as this Honourable Court seems fit.
- (n) Costs.

- | | | | |
|----|--------|--|--|
| | (v) | that all monies charged by the Defendant as commission against "BRUNSWICK MOTORS" for any purpose or on the sale of Buses to various purchasers between November, 1971 to 30th September, 1978 be disallowed; | In the Supreme Court |
| | (vi) | that interest charged by the Defendant against "BRUNSWICK MOTORS" be disallowed; | No.24 Amended Statement of Claim 25th May 1982 |
| 10 | (vii) | that accounting fees charged by the Defendant for preparing the accounts of "BRUNSWICK MOTORS", be disallowed; | (continued) |
| | (viii) | that all travelling expenses charged against or collected from "BRUNSWICK MOTORS" by the Defendant during the years be disallowed; | |
| | (ix) | that all moneys lent by the Defendant to "BRUNSWICK MOTORS" and debited by him with interest in the said Firm's account be disallowed; | |
| 20 | (x) | that the items shown as "garage and workshop" as being part of the assets of "BRUNSWICK MOTORS" in its Balance Sheet or Trading Account by the Defendant be excluded; | |
| | (xi) | that a debit be allowed to be made against "BRUNSWICK MOTORS" in its account in the sum of \$3,600.00 per annum as rent owing to "K.R.LATCHAN BUS SERVICE" or to the Defendant personally for the use of the garage and Workshop situated at Wainibokaşi, Nausori; | |
| 30 | (xii) | that a sum of \$2,400.00 per annum be allowed as a credit in favour of the Plaintiff for the use of his car for promoting the business of "BRUNSWICK MOTORS" during the relevant years; | |
| | (xiii) | that a sum of \$6,000.00 per annum either as remuneration or allowance be allowed in favour of the Plaintiff in respect of services rendered by him to "BRUNSWICK MOTORS" in managing the day to day affairs of "BRUNSWICK MOTORS", supervising Bus building arranging sales of Buses and Spare Parts and General welfare and interest of the Partnership at the material times; | |
| 40 | | | |

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(continued)

- (c) for a Declaration that the Defendant exercised undue influence over the Plaintiff to bring about a change in the composition of the said firm and the Defendant obtained for himself one half share in the firm without contributing any monies to the firm or without paying any premium to the Plaintiff to become a partner therein;
- (d) for an Order that the change in the composition of the said Firm aforesaid be set aside; 10
- (e) for an Order that the Defendant do account to the Plaintiff for all monies received by the Defendant and expended by him for and on behalf of the said firm from the 2nd February, 1971 to the 30th September, 1978;
- (f) in the alternative for a Declaration that the said firm was dissolved on the 30th September, 1978 and that therefore accounts between the Plaintiff and the Defendant as partners be settled in accordance with the requirements of Section 45 of the Partnership Act, Cap.217; 20
- (g) for a Declaration that in settling the accounts between the Plaintiff and the Defendant as aforesaid :-
- (i) all monies charged by the Defendant against the said Firm as Accountancy fees be excluded;
- (ii) all income and other transactions on sale and purchase of bus chassis and spare parts prior to the 31st December 1972 be excluded and be regarded as part of the Plaintiff's own income for all purposes; 30
- (iii) all secrets and other profits made by him in the sale of vehicles sold by the said firm between the 9th day of December, 1971 and the 30th day of September, 1978 be debited against the Defendant; 40
- (iv) that profit or earning out of the sale Buses which were, imported by "K.R. LATCHAN BUS SERVICE" from Seddon Motors Limited between 1971 and 1974 be excluded from the accounts of "BRUNSWICK MOTORS";

(c) obtained the services of "K.R. LATCHAN BUSES LIMITED" in building bus body on three (3) Chassis. They are ready for sale;

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(d) looked after the spare parts or "stock-in-trade" which were in his garage premises as at 30th September, 1978 at Wainibokasi, Nausori.

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30. THAT the Plaintiff undertakes to file the accounts of "BRUNSWICK MOTORS" of its operations since 1st October 1978 when so required by the Honourable Court.

(continued)

W H E R E F O R E the Plaintiff claims against the Defendant :-

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(a) for a Declaration that the Plaintiff formed a Firm known as "BRUNSWICK MOTORS" on the 9th December, 1971 and registered the same under the registration of Business Name Act Cap.218 under Certificate of Registration No.9197 at the office of the Administrator General, that at all material times he was the sole proprietor of the said firm that he is entitled to all the income and profits of the said firm from its inception to the date hereof.

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(b) for a Declaration that all material time there existed a confidential and fiduciary relationship between the Plaintiff and the Defendant, that the Defendant became the Plaintiff's Trustees in all matters concerning the Plaintiff's Business, that the Defendant acted as the Plaintiff's sole Business Advisor, his Accountant and his Financier and because of such confidential and fiduciary relationship, the Defendant had access to and acquired the Plaintiff's business secrets and methods employed by him in relation to his business and therefore was in a position of influence over the Plaintiff. Furthermore, by reason of such confidential and fiduciary relationship and by reason of the false representation aforesaid, the Defendant influenced the Plaintiff and induced him to accept the Defendant as a partner of the said firm, enter a change of particulars as to the composition and caused the same to be registered at the office of the Administrator General under Registration No.9979 whereby the Defendant was shown as a Partner in the said firm;

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(continued)

- "BRUNSWICK MOTORS". Likewise in respect of said period the Defendant had failed or refused to bring into accounts of "BRUNSWICK MOTORS" all outstanding moneys due by the said purchasers including the sum of \$38,800.22 appearing under the heading "Sundry Debtors of the Balance Sheet prepared by the Defendant for the year ending 31st December, 1977".
26. THAT at all material times the Defendant was :- 10
- (a) a Moneylender within the meaning of the word in the Moneylender's Act Cap.210;
 - (b) a person who lent a sum of money in consideration of a larger sum being repaid and coming within the purview of Section 3 of the said Act.
27. THAT at the relevant time, when the Defendant lent moneys to "BRUNSWICK MOTORS" he did not hold any Licence as required by Section 15 of the said Act and no note or memorandum of contract was ever entered into between the parties as required by Section 16 of the said Act. The Plaintiff therefore says that all the moneylending transactions between the Defendant and "BRUNSWICK MOTORS" and/or the Plaintiff are unenforceable at law. 20
28. THAT the Defendant has used or wrongfully converted his own use moneys belonging to "BRUNSWICK MOTORS" at such times during the period of which operating when moneys belonging to "BRUNSWICK MOTORS" were in credit with the Defendant but the Defendant's own bank account was overdrawn. 30
29. THAT since 1st October, 1978 the Plaintiff has carried out the following acts in relation to "BRUNSWICK MOTORS" :-
- (a) opened an account with National Bank of Fiji under the name of "K.R.LATCHAN" in trust for "BRUNSWICK MOTORS"; 40
 - (b) obtained the service of "K.R.LATCHAN BUSES LIMITED" to complete a partly built body in one chassis and sold same. The moneys received from this sale have been Banked with the National Bank of Fiji.

applied his skill and expertise;

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(c) supervised the sale of spare parts stored at his said garage;

(d) deposited the money received from the sale of completed buses and spare parts with the Defendant at the relevant time;

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(e) looked for customers to purchase Buses assembled and completed by "BRUNSWICK MOTORS" and in this connection travelled by ship and aircraft to different parts of Fiji and Tonga;

(continued)

(f) used his car regularly in promoting the sale of "Seddon Buses" to Bus Operators in Fiji;

(g) used his garage to house the Chassis buses and spare parts belonging to "BRUNSWICK MOTORS".

22. THAT apart from collecting monies from the sale of buses and spare parts belonging to "BRUNSWICK MOTORS" and compiling Balance Sheet and Profit and Loss Account between the period November, 1971 and 30th September, 1978, the Defendant was quite inactive in working for or in promoting the business of "BRUNSWICK MOTORS".

23. THAT in the Profit and Loss Accounts compiled the Defendant for the period November, 1971 to 30th September, 1978 the Defendant has without the Plaintiff's consent, wrongly charged:-

(a) Accountancy fees;

(b) Interest on loans allegedly made to "BRUNSWICK MOTORS".

24. THAT between the 1st January, 1975 and 30th September, 1978 the Defendant without the Plaintiff's consent had wrongly charged "BRUNSWICK MOTORS" commission for selling bus to different customers when in fact he did not carry out any such sales.

25. THAT between 1st January, 1975 and 30th September 1978 the Defendant collected monies from the price of the Bus sold to them and belonging to "BRUNSWICK MOTORS" but failed or refused to bring the same into the account of

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(continued)

- Particulars of such sale have been rendered to the Defendant. The Plaintiff says that the nett profit from the sale of the said completed Buses exceeded \$200,000. Twenty-four (24) completed Buses were sold on credit and the purchasers executed a Bill of Sale in favour of the Defendant in each case to secure the balance of purchase price. The Plaintiff says that the Defendant acted as Trustee for "BRUNSWICK MOTORS" in accepting the said Bills of Sale. 10
18. IN 1977 "K.R. LATCHAN BUS SERVICE" converted itself into a Limited Liability Company under the name of "I.K.R.LATCHAN BUSES LIMITED".
19. THAT after 31st December, 1977 "K.R.Latchan Bus Services" ceased to bank any moneys or its earnings with the Defendant and thereafter serious differences of opinion arose as to the following matters:-
- (a) the Defendant refused to finance "BRUNSWICK MOTORS"; 20
- (b) the Defendant refused to give to the Plaintiff any detailed accounts of "BRUNSWICK MOTORS";
- (c) the Defendant attempted to influence the Plaintiff's Bank (Bank of New Zealand not to advance any money to "K.R.LATCHAN BUSES LIMITED".
20. THAT because of the difference of opinion as aforesaid the Plaintiff says that in the month of August, 1978 he gave notice that with effect from 30th September 1978 the purported partnership business of "BRUNSWICK MOTORS" be dissolved. 30
21. THAT in relation to the business of "BRUNSWICK MOTORS" the Plaintiff carried out the following duties between 2nd February, 1971 and 30th September, 1978 :-
- (a) ~~took delivery of~~ the Chassis and spare parts imported from Seddon Motors Limited and transported the same to his garage at Wainibokasi, Nausori; 40
- (b) supervised the construction of Bus Body on the Chassis at all relevant times and in connection therewith used and

- | | | | |
|----|-----|---|--|
| 10 | 14. | THAT pursuant to the agreement referred to in the preceding paragraph, the Defendant and the Plaintiff on the 28th December, 1972 signed a statement of change in the particulars registered by a firm or individual as required by the Registration of Business Names Act Cap.218 and thereby sought the registration of the change in the composition of the firm "BRUNSWICK MOTORS". Such change was registered on the 28th December 1972 and on the 2nd January, 1973 a Certificate of Registration was issued by the Administrator General in that behalf. | In the
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(continued) |
| 20 | 15. | THAT sometime after the registration of the change in the composition of "BRUNSWICK MOTORS" the Defendant advised the Plaintiff that he re-adjusted the accounts in the Defendant's ledger and other Books of Accounts. | |
| 30 | 16. | THAT notwithstanding the change in the composition of "BRUNSWICK MOTORS", the Plaintiff continued to import under the name of "K.R.LATCHAN BUS SERVICE" Bus Chassis from Seddon Motors Limited until the year 1974. The Plaintiff imported more than thirty-eight (38) Chassis from the said Company under the name of "K.R.LATCHAN BUS SERVICE" between 1971 and 1974 as shown in the list marked "A" and annexed hereto. The Defendant financed the importation of the said Chassis. The Plaintiff caused Bus Body to be built on the thirty eight (38) Chassis aforesaid and sold the same as a completed Bus. Particulars of such sale have been rendered to the Defendant. Sixteen (16) completed Buses were sold on credit and the purchasers executed in favour of the Defendant a Bill of Sale over the Bus sold in each case. The Defendant acted as Trustees for "K.R.LATCHAN BUS SERVICE" in accepting the said Bills of Sale. The Plaintiff says that nett profit from the sale of the said Buses exceeded \$82,164.68 for the period aforesaid. He says that the said profit should not be regarded as profit of the firm "BRUNSWICK MOTORS" but as part of the profit of "K.R.LATCHAN BUS SERVICE". | |
| 40 | 17. | THAT between 1st January, 1975 and 30th September, 1978 the Plaintiff imported more than thirty-six (36) Bus Chassis under the name of "BRUNSWICK MOTORS" from Seddon Motors Limited. On each of the thirty-six (36) Chassis so imported, a Bus Body was built on the Chassis and a completed bus was then sold. | |
| 50 | | | |

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(continued)

Seddon Bus Chassis from the United Kingdom and build bus body on the same and sell the same in Fiji without sufficient capital resources or establish the additional business on a proper financial basis then the Plaintiff and his family businesses would get into serious financial difficulties;

- (d) that the Defendant when making the false representations referred to in sub-paragraph (b) hereof also stated to the Plaintiff that he the Defendant could not carry on lending any more money to the Plaintiff or "K.R.Latchan Bus Service" unless the Plaintiff agreed to make the Defendant as equal partner in the Plaintiff's firm "BRUNSWICK MOTORS" and further that his decision on this matter was final; 10
20
 - (e) the representations to the effect that the Plaintiff was heavily indebted as alleged in sub-paragraph (b) hereof was false to the knowledge of the Defendant, they were made with the knowledge that they were false, or without any genuine belief that they were true, and they were made with the intention that the Plaintiff should act upon the same; 30
 - (f) that when the representations set forth under sub-paragraph (b) were made the Plaintiff honestly believed the same to be true.
12. THAT at the time when the said representations were made the Defendant was fully aware of the said financial position of "K.R.LATCHAN BUS SERVICE".
13. THAT by reason of such false representations the Plaintiff was led to believe that if he did not accept his demand the Defendant was in a position to ruin the Plaintiff financially and such false representations operated upon the Plaintiff's mind as or threat or duress likely to cause financial or economic loss. Relying on such representations, the Plaintiff was induced to act and he therefore agreed to accept the Defendant's demand to make him an equal partner in "BRUNSWICK MOTORS". 40
50

"BRUNSWICK MOTORS" consisting of the Plaintiff and the Defendant or without payment of any premium to the Plaintiff. At the material time the Plaintiff was on an unequal bargaining power with the Defendant.

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10 "10.B The Plaintiff repeats the allegations contained in paragraph (10) hereof. He says between November 1971 and December 1972 the Defendant having acquired knowledge of confidential and secret matters relating to the running of the profitable business of the Plaintiff in importing Seddon Bus Chassis, building Bus body on the same and selling them at a profit as aforesaid, used such confidential secret matters to persuade the Plaintiff to make the Defendant an equal partner in the proposed partnership under the name of "BRUNSWICK MOTORS" as alleged in the preceding paragraph.

20

(continued)

PARTICULARS OF MONETARY GAIN RECEIVED BY THE DEFENDANT AT THE EXPENSE OF THE PLAINTIFF AND REFERRED TO IN PARAGRAPH 10, 10(A) AND 10(B) HEREOF AND SET FORTH IN PARAGRAPH 2(A) OF THE PARTICULARS FILED AND SERVED ON THE 18TH MAY, 1982 HEREIN.

"11. THAT the Plaintiff says as follows :-

- 30 (a) that the Defendant in the month of December 1972 at Suva made representations to the Plaintiff to the effect that the Plaintiff's late father and asked the Defendant to guide and assist the Plaintiff in his business affairs after the death of the Plaintiff's father;
- 40 (b) that the Defendant when making the representations aforesaid also made false representations to the Plaintiff to the effect that the Plaintiff was heavily indebted to the Defendant;
- (c) that the Defendant when making the false representations referred to in the preceding sub-paragraph that the Plaintiff was heavily indebted to the Defendant also stated that the Plaintiff did not appreciate his financial position, that if the Plaintiff would continue with the additional business of importing

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(continued)

- (c) the Defendant knew that from the sale of the completed bus to different bus operators, the Plaintiff made a nett profit of \$18,799.29 between November, 1971 and 31st December, 1972 after deducting depreciation. This profit was earned during a period of thirteen (13) months approximately;
- (d) the Defendant knew that the Plaintiff and his mother, his brother believed in the Defendant's representations and statement that they were indebted to him; 10
- (e) the Defendant knew that he had been acting as an advisor, Accountant, Financier and Trustee for the Plaintiff his mother and his brother;
- (f) the Defendant had been a friend, Advisor, Accountant to the Plaintiff's late father for many years before 1949 when he died. 20
10. THAT the Plaintiff repeats paragraph 9(e) above and says that the Defendant acted in a fiduciary capacity at all material times. In such capacity he acquired knowledge of confidential and secret nature, including information and methods relating to the Plaintiff's business and the profits the Plaintiff was making in his business. The Defendant for the purpose of his own gain at the expense or to the detriment of the Plaintiff took unfair and undue advantage of all such confidential and secret matters, information and methods acquired by him by reason of the fiduciary relationship aforesaid. 30
- "10.A The Plaintiff repeats the allegations contained in paragraphs (8) and (10) hereof. He says that at material times he acted on the Defendant's advice only without seeking any independent advice concerning his business affairs. He further says that the Defendant whilst holding such fiduciary relationship as aforesaid between the month of November 1971 and the month of December 1972 exercised undue influence over the Plaintiff to acquire monetary gain that is to say to make the Defendant an equal partner without contributing any moneys to the proposed partnership under the name of 40

Motors Limited care of P.O.Box 223,
Standard House, 15/16 Bankell Street,
Finsbury Square, London E.C.2., to import
Seddon Bus Chassis. Subsequently, he
acquired an exclusive agency in that
behalf.

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10 6. THAT prior to 9th December, 1971 the
Plaintiff imported more than two (2) such
Bus Chassis from the said Company and the
Defendant lent monies to him for this
purpose.

(continued)

7. THAT on the 9th December, 1971 the
Plaintiff caused the registration of the
business name of "BRUNSWICK MOTORS" to be
effected in his name. A Certificate of
Registration No.9197 was issued to him
on the 10th December, 1971 by the Admini-
strator General.

20 8. THAT between 10th December, 1971 and 28th
December, 1972 the Defendant advanced the
Plaintiff over \$20,000.00 to import Seddon
Bus Chassis. By the month of December, 1972
the Plaintiff imported under the name of
"K.R.Latchan Bus Service" six (6) Chassis,
built bus body and sold the same at a
profit. Pursuant to the earlier agreement,
he deposited the money received from the
sale of buses with the Defendant. Some
30 purchasers bought the buses on credit and
having paid a deposit, they executed Bill
of Sale over the Bus sold to them in favour
of the Defendant. The Defendant acted as
Trustee for "K.R.Latchan Bus Service" and
accepted the said Bill of Sale to secure the
balance of purchase price.

9. THAT in December, 1972 the state of affairs
which existed between the Defendant vis-à-vis
with the Plaintiff, his mother and his
brother were as follows :-

40 (a) the Defendant knew that "K.R.Latchan Bus
Service" was earning substantial income
from the business of Bus Service;

(b) the Defendant knew that the Plaintiff
had been importing Bus Chassis from
Seddon Motors Limited under the name of
"K.R.Latchan Bus Service" despite the
fact that he had registered the name
of "BRUNSWICK MOTORS" in his name as
aforesaid;

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(continued)

3. THAT between 1962 and until 30th September, 1978 the Defendant and the Plaintiff had been associated with the following business transactions :-
- (a) Moneys lent to the Plaintiff, his mother and brother by the Defendant to operate their bus and dairy business aforesaid;
- (b) Moneys lent to the Plaintiff's firm known as "Brunswick Motors" by the Defendant between 28th September, 1972 and 30th September, 1978 to import Bus Chassis from the Seddon Motors Limited of United Kingdom. 10
4. THAT as far as the loans to the firm "K.R. LATCHAN BUS SERVICE" were concerned, the Plaintiff's mother gave in 1962 a mortgage to the Defendant over her interest over a freehold land situated at WAIDALICI, Tailevu. In respect of the same loans between 1962 and 1978 his mother also gave a Bill of Sale over the buses belonging to "K.R.LATCHAN BUS SERVICES". The arrangement for payment of loan were that the daily income of "K.R. LATCHAN BUS SERVICE" had to be DEPOSITED with the Defendant at his office at Victoria Parade, Suva and later at his office at 42 Robertson Road, Suva. Pursuant to his arrangement and confining the Plaintiff to the years 1974, 1975, 1976 and 1977 the Plaintiff says that he deposited the sum of \$1,057,102.80 with the Defendant. The Defendant acted as a Banker without a licence. Whenever "K.R.LATCHAN BUS SERVICE" required moneys to meet its operational expenses, the Defendant issued his personal cheques to meet the same. The Defendant kept accounts in his Private Ledger in respect of "K.R. LATCHAN BUS SERVICE" under the name of his mother "RAM KUAR" and his name. The Plaintiffs seized to borrow from him or deposit any moneys with him after 31st December, 1977. So far the Defendant has not given any detailed accounts of the transactions in question except that he has furnished to the Plaintiff Profit and Loss Account and Balance Sheets for the years 1962 to 1977 inclusive. 20 30 40
5. THAT prior to 9th December, 1971 under the firm name "K.R.Latchan Bus Service", the Plaintiff personally negotiated with Seddon

I would have to look at journal and cash book. Alterations were made in the last 12 months in the ledger. I was not there at time. I delivered ledgers to Peat Marwick & Mitchell. Before I did so the entries were accurate.

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Baulevu Bus ledger entries commence in 1974. I would have to check cash book and journal before I would say entries accurate.

10

(Witness appears somewhat frail and not properly understanding question)

(Exhibit 40) - Before I received this letter someone who I did not know came to my office with the plaintiff. I do not know what he wanted. He wanted books and I refused to give them to him saying I did not know him. I asked him to leave my office.

(continued)

Adjourned to 9.30 tomorrow.

R.G. Kermode
JUDGE

20

No. 24

AMENDED STATEMENT
OF CLAIM

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IN THE SUPREME COURT OF FIJI
CIVIL ACTION NO:12 OF 1979

BETWEEN: RAM LATCHAN also known
 as K.R.LATCHAN Plaintiff

A N D: LESLIE REDVERS MARTIN Defendant

AMENDED STATEMENT OF CLAIM

30

1. THAT the plaintiff had been carrying on the business of a Bus Operator and a Dairy Farmer (in partnership with his mother Ram Kuar and his brother Ram Lagan) since the year 1962 and have traded under the business name "K.R. LATCHAN BUS SERVICE" from 4th May, 1965 until the end of 1977.
2. THAT at all material times the Defendant has been carrying on business as an Accountant and a Moneylender.

started. I remember going to Seddon Motors lunch with the plaintiff. I am not sure of the year. It was only time I went with the plaintiff. I did later go to Seddon Motors. I went to U.K. about once a year - once for Rotary and once as member of Olympic Council.

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10

I agree that I did tell plaintiff he owed me a lot of money. I cannot remember what I said. It is correct I did say he could not carry on business the way he was - I would have said he would go broke. Sure I said it. He had a future and we were getting bigger and bigger but I was putting in a lot of money. Prior to December basically all I could say was that he owed me a lot of money. It was a fact when I stated it that he owed me money.

(continued)

Sheet handed to me in from my private ledger. Tendered as Exhibit 42.

20

Brunswick Motors for 31.12.72 shows credit of \$20,000 capital contribution from me and the plaintiff. We discussed the \$20,000. I said to plaintiff we really have no money in capital accounts. I will put in \$5,000. He said his mother owes me \$13,000. He said make it \$10,000. In Exhibit 42 there is a debit for \$10,000 referring to Journal entry 56. There is a debit in Ram Kuar's account for \$10,000.

30

(Exhibit 15) - My signature is at the bottom on p.2. I do not remember clearly about this document. Printing was not done by me. I do not print that way.

I personally wrote up books for Brunswick Motors. They are correct. K.R.Latchan Bus Services were written up under my directives. I do not think I can say they were an accurate record.

40

(Exhibits 17 & 18) also Exhibits 3, 4, 5 & 6.

Books were written up by me or Miss Cleary. To the best of my knowledge they were accurate. Ledgers for Brunswick Motors and Ram Kuar & Sons (Exhibits 7 and 8) were written up by Miss Cleary. I did most of Brunswick Motors and some by Miss Cleary. If I can see books from which they come I could say if they were an accurate record.

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help to purchase it. We did help her. In the 1960's plaintiff's mother was assisted by her sons. Transport operators often do not get all the money from drivers. I advised them how to operate business. Moneys paid into my office. Plaintiff or his brother would send slips showing how much was collected the previous day. Takings were recorded in exercise books. Money was paid into L.R. Martin's account with Bank of New Zealand. I paid all accounts and kept all records.

10

(Court evidence hearsay. Mr. Koya - No objection)

(continued)

Plaintiff's mother told me that her husband had told her to come to me and take my advice. In earlier times mother used to do the business because plaintiff too young but he came later. When he purchased buses he came to me for assistance. I kept records of all receipts and expenditure.

Before letter of credit issued for purchase of bus chassis about 1970, I was prepared to assist him. As plaintiff became older he took over the reins to some extent. I told him that if I was to help him start by purchasing a chassis for £6,000. I could see that a lot of money might be needed. I suggested I should be part of the business. He was not prepared to say he would. That he would think about it. When third order placed I still interested in becoming a partner. I had to find the money. It was raised by me several times. He was never very affable about it. I want to know but he was not inclined to say much about it. By the third order there was a fair amount of money involved. It was over a couple of years that I raised the question. In December, 1972 I did tell the plaintiff "God knows how much money you owe me."

20

30

(Exhibits 7 & 8) - I see entry for March 1971 regarding 2 chassis. In 1971 I discussed with plaintiff about Brunswick Motors. I suggested name as I came from Brunswick in Melbourne. (Exhibit 35) - I wrote this letter. I was amazed at length of time plaintiff took to consider the question of partnership. I wrote letter but it was another 12 months before we got close to the subject.

40

(Exhibits 24, 25, 26 & 27) - letters to and from Seddon Motors.

I did not see these letters until this case

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(continued)

over Baulevu Bus Service Company assets. My mother and brother gave me full authority to act for the company. I did not complain about commission and fees. I was not his equal what he put in I accepted. People in 1977 were selling freehold land at more than \$1,000 an acre.

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No. 23

LESLIE REDVERS MARTIN

D.W.1 - LESLIE REDVERS MARTIN of
Suva Point, Retired Accountant
duly sworn:

10

I am 80. I arrived in Fiji in 1946 and started working for my uncle Mr. Pearce in Pearce & Company accountants and manufacturers. They acted as Secretaries for Rewa Dairy Company. In 1949 Mr. Pearce severed relations with his partners and formed Pearce & Martin. I did accountancy work with both firms. At that stage no requirement for registration of accountants - it was required recently. While working for Pearce & Co., I met the plaintiff's father. Pearce & Co. kept books for Rewa Dairy Company and paid farmers for milk and cream. Some came in to get their cheques. That is how I met plaintiff's father. He called in one morning. He was a small man and I could only see his face above the counter. I attended to him on that occasion. From time to time he used to call and he made contact with me. I frequently gave him advice. Advised him about farmer's supplies. I met him about 3 or 4 years after I arrived. I had not met plaintiff's mother until after plaintiff's father died. She came in one morning very shy and afraid. She came to see me. I saw her irregularly from time to time. She carried on with Rewa Dairy Co. I kept her account and income tax returns. In 1950's or 1960's she did speak about a bus. She wanted to get rid of it and get another one. She wanted

20

30

40

\$105,912 at Barclays Bank. Defendant is shown as a creditor. It shows in 1981 accounts. Defendant is shown as a creditor.

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I did not agree before December, 1972 to make defendant a partner. It was only on 28th December that reference was made to my heavy indebtedness and I could be in trouble.

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Re-

10 (Exhibit 40) Apart from annual accounts I had no other information concerning Brunswick Motors. I was banking moneys in Bank of New Zealand for K.R.Latchan Buses Ltd. I did approach that Bank but no finance were granted to me in May, 1978. I did negotiate at time to get overdraft from the Bank at the time.

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(continued)

20 At no time did get any form of graphs as shown to me from the defendant showing cash position. I put money in deposit in the Bank for Brunswick Motors. I did instruct auditors to go to defendant's office to audit. I went with Mr. Martin Mills about time I wrote the letter. Mr. Martin refused to produce books. He was very upset and chased us away.

Sherani & Company acted only on Transport Control Board work for K.R.Latchan Buses Services Limited. Mr. Shankar also acted for me on same subject.

30 (Witness mentions that I also acted for him)

Exhibit 41 - the defendant did agree I could have the agency that was before Kato wrote to him.

Adjourned to 2.15 p.m.

R.G.Kermode
JUDGE

Plaintiff re-sworn:

Re-Examination continues -

40 (Exhibit 15) - Before 28th December, 1972 the defendant did nothing as a partner. K.R.Latchan Brothers Limited all assets from K.R.Latchan Bus Services were transferred to that company. When formed K.R.Latchan Bus Services Limited it took

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(continued)

Letterheads of Brunswick Motors I think were printed in 1973 showing partners names. There was correspondence with Kato in 1978 about value of stock for 1977. In 1978 I did reduce to a very low figure. I knew it would reduce profitably and reduce income so we would pay less tax. The defendant did agree with me about the stocks - I agree he did mention about dead stock and that he did not agree but when I explained he agreed.

10

After giving notice I continued to operate the business of Brunswick Motors. I did sell the spare parts. I agree I sold most of the assets. I did not build many bodies but imported six chassis mark up in 1978 was I think 20% I am not sure. I did not build bodies and give them to K.R.Latchan Bus Limited - I did sell them to K.R.Latchan Brothers. I could have sold at cost.

Mr. Koya:

Objects that witness asked about accounts after September, 1978.

20

Court:

Objection accounted.

(Witness asked about \$8,400 administration figures in 1979 accounts)

I do not know what the figures relates to Rental \$3,600 was storage at our place in Wainibokasi from funds furnished by the Defendant. I do not know anything about the accounts Counsel is referring to. I did not prepare them. My firm did pay for buses by cheque paid into firms account. I think that was the case I do know that K.R.Latchan Buses Limited owes money to Brunswick Motors after dissolution (this after considerable pressure by Counsel). How can I say I treated Brunswick's Motors as my own after dissolution.

30

I did not move machinery and spare parts when it suited my company.

Re-
Examination

Re-Examination:

40

(Exhibit 30). There are 4 separate accounts. I see references to spare parts in 1978 balance sheets. In 1979 shows amount owing by K.R.Latchan Bus Limited to Brunswick Motors. 1980 balance sheets refers to interest bearing deposit.

In 1977 when I entered Parliament and got some courage I broke up partnership. I had learned and had trusted the defendant. I had no bank account. I did know Brunswick Motors was making a lot of money towards the end of 1977. I did not bother about what money firm had at the time. I did want to do business the way I wanted to. It was difficult with defendant an old man as a partner. He was a nuisance and I had to get rid of him. It did take me 10 months to write letter dissolving partnership. I did send in Peat Marwick & Mitchell to check books. I thought defendant would cheat me. I did not know what was going on. I did send in auditors before giving notice.

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(continued)

Morning break -

(Witness shown letter written by Mr. Kato)

In May 1978 he was my solicitor. He sent letter on my instructions. I sent authority. I was seeking funds at time for Latchman Bus Services Limited. At time I had a bank - the Bank of New Zealand. I was negotiating finance - Bank N.Z. turned me down. I wanted to know what the accounts were. I did not want to upset him. I did not go with Mr. Maul to defendant's office. Bank did not ask for security. I wanted an audited account. I agree mention of security in letter was not correct. I was suspicious at the time. I do not know if Brunswick Motors books were ever audited. I intended full audit in May 1978. I agree it was never done. I wanted to build a house a bigger one. That was urgent. I agree I did want to make sure that defendant did not trick me. Urgency had nothing to do with my house. I agree that in letter the only complaint was there was no separate bank account.

(By consent letter dated 2.5.78 with annexure signed by plaintiff tendered - Exhibit 40).

When I signed authority I knew what it meant and what it said. There is reference to partnership beginning in November, 1971. I see letter dated 26.5.70 from Mr. Kato to the defendant to which is an annexure signed by me. The defendant did not sign it. It was sent on my instructions. This was before I had told him of my suspicion.

(By consent letter and annexure tendered - Exhibit 41).

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(continued)

in the business before December, 1972. I think there were 2 or 3 times he mentioned - could have been 3 or 4 times. It could be he mentioned it several times and I have forgotten.

Mr. Koya:

Objects to form of question.

Court:

Question in order.

I agree he did say on a number of occasions "What are you going to do".

10

In December he did say, "God knows you owe me a lot of money now what are you going to do. You could be in a lot of trouble".

I agree he was lending me a lot of money. I don't think defendant from time of importation of first chassis often mentioned what I was going to do. (Exhibit 35) defendant wrote the letter. I did not know at time he had written. I saw it on file in 1977. He did not at the time mention a partnership.

20

I agree in 1971 and 1972 defendant and I discussed how best to organise Brunswick Motors. He did suggest firm should have a distinctive name. This was discussed on a number of occasions. I agree that this was done on basis that we would work together. He suggested the name Brunswick.

I am not sure that defendant and I went to U.K. to see Seddon Motors and had lunch in Board Room in 1972. The business paid for the trip. I am not sure whether it was 1972. We had lunch with the directors. One director did ask who was my father. I said the defendant was and they laughed thinking I was joking. Defendant explained to them we were working together and he was financing me. It could be we discussed partnership and I have forgotten.

30

Govind is a relative. He is not a rich man. It was I and my sister who took him to see the defendant. I see him quite often. He is a member of our family. I knew he was being called to give evidence on my side. I had no discussion with him about the case - he knew about the case. Everybody knew about the dispute. I took him to the defendant to get help for him and defendant did help him.

40

There was more than enough cash flow in. Ram Kuar & Son and Brunswick Motors to meet cash requirements of the firms. I could have borrowed money from National Bank. I did not go to any bank. My banker was L.R. Martin. I got \$250,000 credit facilities from Barclays. I have bank statements at home and can produce them this afternoon.

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(continued)

10 In 1970 I could have given freehold land as security 200 acres. If I sold I would sell at \$1,000 an acre. It could be the land was worth \$40,000 and bank would only advance two thirds of that. I agree that in 1970 I had no experience in importing chassis but I had some experience in building bodies.

20 I had letters from Seddon Motors saying I could have terms. Purchases to put down 20% and have two years. They would have charged interest. I could have done everything without the defendant's help.

A lot of buses were sold here on credit and could not have been sold unless the defendant had made finance available to them.

(Witness shown concession agreement clause 14 and reads clause referring to terms of payment.)

30 I did not agree to any other times with Seddon Motors. I agree I went to see defendant to discuss purchase on credit terms and that he said no. I did not pursue credit terms from Seddon Motors.

(Witness asked twice whether he wanted defendant to sign over benefit of agreement to K.R.Latchan Bus Services.)

40 Witness agrees he did so and did not offer defendant any money. It was in May 1978. First order for chassis was in December, 1970. I agree Seddon Motors would not ship without letter of credit. I did see the defendant and tell him about my plans. Defendant asked to see the ~~correspondence and discussed matter with him~~. In due course defendant authorised issue of letter of credit and bill of exchange drawn on his account.

I am not sure that defendant on other occasions raised question of partnership. Defendant did not say he would assist me if he had a say

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(continued)

Baulevu Bus Services with 2 buses operating 2 routes. My brother helped me. Baulevu Bus Services was a successful business. Funds came from Mr. Martin as with Brunswick Motors and K.R. Latchan Bus Services. I did want to be in business on my own - to operate my own business. I was successful in achieving that. I did earn large profits. I agree Martin lent me a lot of money but I cannot say how much because I had no account. I agree every year I knew how much I owed the defendant. I did not know there were large sums spent by Brunswick Motors in the 1970's. I agree I received invoices and that the defendant paid the labourers - I personally paid them. I know what garage and building cost. I did go to defendant to ask for money to pay the men. (Exhibit 24 dated 14.12.70) I wrote this letter on K.R.Latchan Bus Services letterhead at time when mother and brother also in the firm. In 1965 I did register firm showing I was sole proprietor. I did write letter in that manner to indicate to Seddon Motors that I owned the business. I did not go to U.K. soon after I wrote the letter. Brunswick Motors beyond to me before I took defendant in as a partner. One of my complaints is that defendant tricked me into taking him into a partnership. I also say he should not receive money lent to the firm because he is an unregistered moneylender.

10

20

(Witness shown list of cash requirements of Brunswick Motors).

30

Witness continues -

I am not good at figures. I cannot say that the firm owed the defendant a lot of money. The problem is I do not understand the figures.

(Witness directed to figures for 1975).

I had no idea firm was owing so much to defendant. I agree I received 1974 accounts and that they would show \$89,983.71 owing to defendant. In 1976 I did receive 1975 accounts. I agree accounts showed over a quarter of million dollars owing to the defendant. I did know that. Figures do show that large sums were required by Brunswick Motors to operate. I could have found money from other sources. I could have got terms from Seddon Motors.

40

(Witness shown 3 graphs prepared from defendant's accounts).

they are with Peat Marwick & Mitchell who are working on them. I did not tell Mr. Vilash to produce them.

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Mr. Koya:

Objects that witness questioned as why he will not produce books - should follow procedure to produce.

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Mr. Chernov:

Books have not been discovered.

10

Court:

(continued)

Rule questions allowed.

Witness:

20

Peat Marwick & Mitchell have offices in Sukuna House. Books could be picked up in five minutes. I rang Vilash at 10 to 9 this morning. I will produce them during recess. K.R.Latchan Bus Limited - I signed papers 16.12.77 incorporating the firm. I did have Solicitors acting for us from as far back as late 1960's. Sherani & Company, Kato, Shankar up to 1977. The defendant did advise me to go and see Mr. Kato. I told him I was going to Kato and he said it was all right. I decided not my mother to go to Kato.

30

I have been associated with Alliance Party since about 1976. I am Treasurer of a branch of the Indian Alliance and have been since 1977. Loan obtained from National Bank was in name of Latchan Bus Services Limited. I built my house and business. Baulevu business and Latchan Brothers are both company's limited by guarantee. Latchan Bus Services Limited shareholders are me and my wife. Mother did not want shares. K.R.Latchan Bus Services was wound up in 1977. I have 99% of shares, wife has 1 share. In 1977 self, mother and brother were equal shareholders. \$10,000 taken out of the firm and put into Brunswick Motors.

40

~~I agree my mother had interest in the firm worth many thousands of dollars.~~

My firm did not pay my mother anything for her share. Latchan Brothers has self mother and brother in it. In 1970 I was managing K.R.Latchan Bus Services until 1972 when my brother managed it. I was busy in Brunswick Motors. 1974 I started

In the
Supreme
Court

Plaintiff's
Evidence
No.22
Ram Latchan
(recalled)
Cross-
Examination
24th May
1982

(continued)

Court:

Counsel - can subpoena witness to produce if
required if witness will not produce
voluntarily.

I entered Parliament in 1977. It was the
year I incorporated K.R.Latchan Bus Services
L' mited. Kato & Company acted for me in incorpor-
ating the company. Previously they acted in road
service licences applications. He could have
acted for me in 1974 or 1975. I am not sure if
it was earlier. I was involved with K.R.Latchan
Bus Services from 1962. Money taken personally
to defendant. He would check and make out
deposit slips. I think we clearly did this later.
Later I made out deposit slips and took money to
defendant's office for checking. This between
1962 and 1971. In that time firm purchased more
buses and acquired more services. Defendant
provided funds for that. The defendant was fond
of my mother and did his best to assist her. He
gave advice to her and made money available to
her. I was usually present acting as interpreter
for my mother. Defendant prepared accounts for
me, my mother and brother from 1965 and signed
by us. Copies were given to the family. I did
know from the accounts the probability of K.R.
Latchan Bus Services over that period. From
1962 to 1971 we received accounts. I read them
and understood them. I understand about
valuation of stock.

10

20

30

I do not recall during 1979 having a
disagreement with the defendant about the valuation
of stock in the 1977 accounts.

Adjourned to 9 a.m. in Court No.1.

R.G.Kermode
JUDGE

25th May
1982

Tuesday the 25th day of May, 1982 at 9.00 a.m.

Appearances as before.

Mr. Koya and Shankar for the Plaintiff
Mr. Chernov and Karkar for the Defendant

40

Plaintiff Re-sworn:

I did not ask for the books - my clerk says

I did not complain to the defendant. Kato or Peat Marwick & Mitchell. I signed - agreement. I did say that partnership commenced in November, 1971.

In the
Supreme
Court

I transferred Brunswick Motors account to National Bank of Fiji. It was there for about a year and was then transferred to Barclays Bank. I got a better deal from Barclays Bank. It wanted all our accounts. I transferred all accounts personal and otherwise.

Plaintiff's
Evidence
No.22
Ram Latchan
(recalled)
Cross
Examination
24th May
1982

10

Mr. Koya:

Objects not relevant to ask what amount he borrowed from National Bank.

(continued)

Court:

Rule relevant.

Witness continues:

I had a limit of \$100,000 overdraft with National Bank of Fiji. It was in 1979.

20

I operated Baulevu Bus Services. I was Managing Director of K.R.Latchan Bus Services Ltd. K.R. Latchan Bus Ltd. and Brunswick Motors. I was then a Member of Parliament. In 1979 I was an established businessman and drove a Mercedes.

After September, 1978 I was sole controller of Brunswick Motors. I had a book-keeper clerk. He was working for other businesses.

If I had the books I have no objection to producing the books.

30

Mr. Koya:

Objects to question whether witness would produce the books tomorrow.

Court:

Rule question is in order.

Mr. Koya:

Objects to asking witness whether he would undertake to produce books tomorrow.

In the
Supreme
Court

Plaintiff's
Evidence
No.22
Ram Latchan
(recalled)
Examination
24th May
1982

(continued)

Cross-
Examination

I did not agree to Mr. Martin claiming commission. I did not agree to accountancy fees on travelling expenses shown in Brunswick Motors accounts. I never noticed whether the defendant had a notice board. On his desk he had "L.R. Martin". My reason for waiting so long to complain was because I did not know my true position. I had no bank account - I did not know how much I had and whether I could stand on my own feet until 1977. In 1977 when I went to see my accountants Peat Marwick & Mitchell I took steps to obtain accounts from the defendant. I got annual accounts for 1977. Until I started this action I had not seen all the accounts.

10

Cross-Examined:

I did sign the 1972 & 1973, 1974, 1975, 1976 and 1977 accounts - all the annual accounts of Brunswick Motors and I signed in capacity as partner in that firm. I went to see Peat Marwick and Mitchell in 1977 and since then they have been my accountants. I went to see Mr. Koya in 1978 after September. Mr. Shankar was my Solicitor before Mr. Koya. I also took advice from Mr. Kato after September 1978 - I am not sure. Saw him before Mr. Koya. I saw Kato after seeing Peat Marwick and Mitchell. I am not sure when it was, could have been a month or so later. I did not know in 1977 I could stand on my own feet. I did know services were doing well. I do not recollect complaining to Kato about commission or accountancy fees nor that I was not receiving salary or car allowance.

20

30

During all those years I did not complain to Mr. Martin about commission and other matters. I did not complain about interest nor about the large sums of money lent by the defendant to Brunswick Motors. I agree I never said to the defendant 'You can charge commission that is what I meant'. Accounts of firm never allowed for salary for me or for travelling. Every year he was charging accountancy fees. I knew he was doing it year after year. It was the same with interest.

40

We were not partners from 17.2.71. I agree I signed a document to that effect. Exhibit 17 - I see balance sheet for 31.12.72. My name and defendant on top right hand.

(Court: Not on my copy)

(Mr. Chernov - left off photocopy)

Plaintiff continues -

In the
Supreme
Court

After signed document a further 38 chassis were imported from the U.K. I annexed to my affidavit sworn on 19/3 a list of the chassis.

Plaintiff's
Evidence

No.22

(Mr. Chernov admit import of the 38 chassis but not other details on the Annexure A to affidavit. Further admits 36 imported between 1975-1977 both years inclusive)

Ram Latchan
(recalled)
24th May
1982

10

Mr. Martin financed all the 74 buses. Bodies were built on these buses. On 30.9.78, 3 chassis had no bodies on them. All moneys for buses were paid to Mr. Martin. We sold all buses at a profit. Banked moneys with defendant until December, 1977 and after that I refused to bank with him. I converted K.R. Latchan Bus Services into a liability company. I did not borrow from Bank of New Zealand. August 1978 I gave defendant notice of dissolution of the partnership.

(continued)

20

(Mr.Chernov produces notice dated 2.10.78). I cannot remember giving one before October.

Notice Tendered Exhibit 36.

30

After 30.9.78 I opened an account in Fiji National Bank for Brunswick Motors. I have not completed accounts for the firm since 1.10.78 or filed tax returns. My reasons for agreeing to have the defendant as a partner from 17.2.71 were firstly my relationship with him. Then he was a friend of my father and my mother. He looked after my interests as a trustee. Since he was my banker knowing all information about Seddon Motors Ltd. correspondence etc. - he knew all my secrets, profit we made. He also said I was heavily indebted to him and owed him money and I could not carry on the business. He said I might go bankrupt. My mother, brother and I and all our families would be ruined. I trusted him and I signed. I know Govind who gave evidence in this action. I had something to do with his transaction with Mr.Martin. About 4 or 5 years ago I was present when Govind and Martin present. Govind wanted to build a house and wanted to borrow money.

40

(By consent copy mortgage 40491 tendered Exhibit 37 and copy mortgage No.46458 tendered Exhibit 38).

Khurbur is my father. Also by consent 53/1541 Copy Stamped Bill of Sale - Exhibit 39.

In the
Supreme
Court

Plaintiff's
Evidence
No.22
Ram Latchan
(recalled)
Examination
24th May
1982

(continued)

said, "Look I cannot finance you any more". He said I was spending money like water and that if I was not careful I could go to gaol because I owed a lot of money. He had mentioned this matter before the 28th December but I thought he was joking. On the morning of the 28th December I said I would get the form from the Registrar-General's Office.

I believed at the time that I did owe him a lot of money. I always believed him. He did not show me any account at the time. I think it was the same when he first mentioned the matter in his office. He said it was very hard for me to carry on the business because I needed a lot of finance.

10

Mr. Martin filled in page 2 of the form. I think printing on p.2 is Mr. Martin's - I am not sure.

I think Mr. Martin put in date 17.2.71. I did not realise it had been done. I was supplied with a copy of Brunswick Motors account to 31.12.72. The account shows we shared the profits for 1972. During 1972 the defendant kept a record of accounts. I was assembling chassis and body building and selling buses. He did nothing else in 1972. Before I signed the form I did not treat Mr. Martin as a partner in my firm.

20

After I signed form I did not ask for accounts for Brunswick Motors. He prepared and lodged income tax returns. When I signed documents defendant did not pay me any premium or cash. I lodged the document when signed with the Registrar-General.

30

I took delivery of chassis and spare parts. I supervised construction of bodies. Spare parts were stored in a small building where I lived. Spare parts were sold to customers. Money paid to the defendant. I had to do travelling in the business. I went to Tonga. I used my private car.

After 1.1.71 a building of a small shed on my own land. It was in my own land. It was a crown lease. Later I built a bigger building of concrete and iron 120' x 50'. I am not sure when it was built. I supervised the building. The defendant paid the carpenters. I received no payment.

40

Adjourned to 2.15 p.m.

R.G.Kermode
JUDGE

consulted the defendant. I did tell the defendant I intended to get chassis from Seddon Motors.

In the
Supreme
Court

I see copy letter signed by defendant addressed to Seddon.

Plaintiff's
Evidence

No.22

By consent letter tendered Exhibit 35.

Ram Latchan
(recalled)
Examination
24th May
1982

Before June 1971, I had shown the defendant my correspondence with Seddon Motors.

(continued)

10

The defendant showed interest and said to go ahead. I showed the distribution agreement to the defendant. (Witness referred to para.14 of agreement). I told the defendant I wanted to import chassis to sell on terms in 2 years. He said he would finance import of chassis. I agreed.

I did not show documents to anyone else between 1971 and 1978. I only trusted the defendant. He told me not to let others know my business.

20

After we sold the 2 and the 6 chassis I knew K.R.Latchan Bus Services had made a profit but not the amount. Construction of bodies on buses commenced in 1971 about March. We made a small shed and assembled chassis. I did the work with mechanic. Then we started body building. I employed a builder and labourers. It was completed - the first one in 1971. Mr. Martin paid for it at my request. I cannot remember what profit we made on each bus. I did discuss profit of each bus with the defendant but with nobody else. I did not employ others to build bodies. There was competition and I wanted bodies built as I wanted them. No one else had Seddon chassis before I imported them.

30

I did come to know what it cost me to construct a body or a bus. Labourers were paid weekly.

I sought no advice independently of the defendant. (Exhibit 15) my signature is on this document. The defendant's signature is also on the document. I know his signature.

40

In December 1972 the defendant called me. I was in his office to bank money. He said I owed him a lot of money. He said I cannot finance you any more. He said the only way we can go ahead was if I gave him a half share in Brunswick's Motors. I did not say anything for a little while and he

In the
Supreme
Court

Plaintiff's
Evidence

No.22

Ram Latchan
(recalled)
Examination
24th May
1982

(continued)

opened in same way as for the first 2 chassis.

I took possession of the 6 chassis and had bodies built on them - one by P.A.Lal one of the first two the other by Shiu Narayan in Nausori. K.R.Latchan Bus Services paid - paid by Mr.Martin. The second one we only sold the chassis.

As regards the 6 chassis bodies were built on them. I have records which I have in a black book. I cannot remember who built the bodies. I kept book as a record in 1971.

10

We sold all the chassis. I arranged sales of the completed bus, some cash and some on term. Cash was deposited in defendant's account. I did have discussion with the defendant about the sale. We discussed price of sale of bus and about sale on terms secured by bill of sale. Buses were delivered to me after building the bodies. Bus purchasers paid for registration for the whole of 1971. K.R.Latchan Bus Services daily income paid to Mr. Martin. Same for 1972. In those 2 years I presented accounts to the defendant. He kept the books. I did not see the books of account or examine them. The defendant prepared annual accounts in the usual way. The defendant wrote up the books of account - from date of my father's death until September, 1978.

20

Also had an account Baulevu Bus Services. Started 1974. Defendant kept the books. Mr. Martin was advising me, my mother and brother after my father's death.

30

After my father's death K.R.Latchan Bus Services our firm did require money. Mr.Martin provided the money. He was never a partner in K.R.Latchan Bus Services. He charged interest. We accepted defendant's advice when he gave it because I respected him like a father - I called him "father" in English. Even since my father died - defendant told me that my father had asked the defendant to look after me. This was in 1962. I believed him then.

40

When negotiating with Seddon Motors I consulted the defendant. It was sometime in 1970. I showed him the correspondence and told him I wanted to import chassis. I wanted to operate my own bus service and import chassis. Pacific Transport and Millers Limited were importing chassis and before I used to purchase chassis from those companies. Everything I did I

Plaintiff to file amended pleadings within 2 days after defendant has filed amended Defence (if filed).

In the
Supreme
Court

No.21
proceedings
24th May
1982

(continued)

No. 22

RAM LATCHAN (recalled)

Plaintiff's
Evidence
No.22
Ram Latchan
(recalled)
Examination
24th May
1982

Plaintiff called re-sworn and
Examination continues -

10

I later entered into distribution agreement with Seddon Motors which I signed. I have a copy. Agreement produced is the one tendered as Exhibit 32.

20

Prior to 9.12.71 I placed orders with Seddon Motors to import chassis. I placed written orders for the 2 chassis and subsequently received documents from the U.K. The two chassis eventually arrived. Mr. Martin arranged letters of credit with the Bank of New Zealand. I produce documents covering importation of the chassis. Tendered bundle of documents - Exhibit 33.

30

I placed order before February 1971. I showed defendant correspondence with Seddon Motors and what cost would be. He said take it to Bank N.Z. and open letter of credit which I did. He helped me by paying the Bank of N.Z. Brunswick Motors not registered before February, 1971. Defendant said he was going to finance importation of the chassis. I agreed. Exhibit 14 - my signature is on it. I lodged application personally.

Before registration of Brunswick Motors I imported more Seddon Bus Chassis.

I imported 6 chassis. I produce documents covering the 6. Tendered as Exhibit 34.

The defendant paid for the 6 chassis. He financed the importation. A letter of credit was

No.21
Proceedings
24th May
1982

Monday the 24th day of May, 1982 at 9.30 a.m.

Mr. Koya:

Seeks leave to amend Statement of Claim in terms of notice filed. Not taking defendant by surprise. Defence entitled to adjournment and costs.

Mr. Chernov:

Exceptional circumstances to amend at such late stage. Attempted reformation of fraud - should be properly formulated. Suggest proper form to which no objection.

10

Should not be allowed to now plead undue influence at very late stage. It is a rolled up pleading we would require further and better particulars.

Amendment of defence is necessary. Should be confined to particulars given last week.

Mr. Koya:

20

Defence given plenty of time to consider not taken by surprise. Amended in 1980 raising undue influence. Can grant on terms. Consider only fair in view of further particulars sought by Mr. Chernov. Nothing new introduced. Refers to para.9(a) of Defence.

(Adjourned to enable Counsel to consider matter).

Mr. Koya:

Hands in agreed replacement of ll e, f and g, replaced by (e) and (h), becomes (f).

30

Court:

Leave granted on terms to file amended Statement of Claim as further amended by Counsel. Terms being that defendant in any event to have costs of application as for application made in Chambers for amendment.

Liberty to amend Defence with costs to defendant in any event.

and sell the same in Fiji without sufficient capital resources or establish the additional business on a proper financial basis then the Plaintiff and his family businesses would get into serious financial difficulties.

In the
Supreme
Court

No.20
Notice of
Application
to Amend
Statement
of Claim
24th May
1982

(continued)

10 (d) that the Defendant when making the false representations referred to in sub-paragraph (b) hereof also stated to the Plaintiff that he the Defendant could not carry on lending any more money to the Plaintiff or "K.R.Latchan Bus Service" unless the Plaintiff agreed to make the Defendant an equal partner in the Plaintiff's firm "BRUNSWICK MOTORS" and further that his decision on this matter was final.

20 (e) the representations set forth under sub-paragraph (b) to the effect that the Plaintiff was heavily indebted to the Defendant was false to the knowledge of the Defendant.

30 (f) that the representations set forth under sub-paragraph (b) were made with the knowledge that they were false or without any genuine belief that they were true.

(g) that the representations set forth under sub-paragraph (b) were made with the intention that the Plaintiff should act upon the same.

(h) that when the representations set forth under sub-paragraph (b) were made the Plaintiff honestly believed that the same to be true."

40 D A T E D this 24th day of May, 1982

KOYA & CO

Per: Sd: S.M.Koya
Solicitors for the Plaintiff

To: The above-named Defendant and or his Solicitors
Messrs. Mitchell Keil & Associates, Dominion
House, Suva.

In the
Supreme
Court

No.20
Notice of
Application
to Amend
Statement
of Claim
24th May
1982

(continued)

"10B. The Plaintiff repeats the allegations contained in paragraph (10) hereof. He says between November 1971 and December 1972 the Defendant having acquired knowledge of confidential and secret matters relating to the running of the profitable business of the Plaintiff in importing Seddon Bus Chassis, building Bus body on the same and selling them at a profit as aforesaid, used such confidential secret matters to persuade the Plaintiff to make the Defendant an equal partner in the proposed partnership under the name of "BRUNSWICK MOTORS" as alleged in the preceding paragraph.

10

PARTICULARS OF MONETARY GAIN DERIVED BY THE DEFENDANT AT THE EXPENSE OF THE PLAINTIFF AND REFERRED TO IN PARAGRAPH 10, 10A AND 10B HEREOF ARE SET FORTH IN PARAGRAPH 2(A) OF THE PARTICULARS FILED AND SERVED ON THE 18TH MAY, 1982 HEREIN.

20

- (3) THAT paragraph 11 of the Amended Statement of Claim be deleted and in its place the following new paragraph be inserted :-

"11. That the Plaintiff says as follows:-

- (a) that the Defendant in the month of December 1972 at Suva made representations to the Plaintiff to the effect that the Plaintiff's late father had asked the Defendant to guide and assist the Plaintiff in his business affairs after the death of the Plaintiff's father.
- (b) that the Defendant when making the representations aforesaid also made false representations to the Plaintiff to the effect that the Plaintiff was heavily indebted to the Defendant.
- (c) that the Defendant when making the false representations referred to in the preceding sub-paragraph that the Plaintiff was heavily indebted to the Defendant, also stated that the Plaintiff did not appreciate his financial position, that if the Plaintiff would continue with the additional business of importing Seddon Bus Chassis from the United Kingdom and build bus body on the same

30

40

NOTICE OF APPLICATION
TO AMEND STATEMENT
OF CLAIM

No.20
Notice of
Application
to Amend
Statement
of Claim
24th May
1982

IN THE SUPREME COURT OF FIJI
CIVIL JURISDICTION

NO:12 OF 1979

BETWEEN: RAM LATCHAN also known
as K.R.LATCHAN Plaintiff

10 A N D: LESLIE REDVERS MARTIN Defendant

NOTICE OF APPLICATION TO AMEND
THE STATEMENT OF CLAIM

TAKE NOTICE that at the resumed hearing of this
action Counsel for the Plaintiff will make an
application to this Honourable Court for LEAVE
to amend the Amended Statement of Claim dated
the 12th September, 1980 filed and served herein
as follows :-

20 (1) THAT a new paragraph under number "10A" after
paragraph (10) be inserted and added as
follows :-

30 "10A The Plaintiff repeats the allegations
contained in paragraphs (8) and (10) hereof.
He says that at all material times he acted
on the Defendant's advice only without
seeking any independent advice concerning his
business affairs. He further says that the
Defendant whilst holding such fiduciary
relationship as aforesaid between the month
of November 1971 and the month of December
1972 exercised undue influence over the
Plaintiff to acquire monetary gain that is
to say to make the Defendant an equal partner
without contributing any moneys to the proposed
partnership under the name of "BRUNSWICK MOTORS"
consisting of the Plaintiff and the Defendant
or without payment of any premium to the
Plaintiff. At the material time the Plaintiff
was on an unequal bargaining power with the
40 Defendant."

(2) THAT a new paragraph under number "10B" after
new paragraph 10A aforesaid be inserted and
added as follows :-

In the
Supreme
Court

Plaintiff's
Evidence
No.19'
Om Chand
Examination
21st May
1982

from the beginning. I have had business dealings with him. He helped me buy a house from my uncle. He had the original mortgage which he transferred to me in 1968. I do not remember what debt was when I took it over. I have not fully repaid the debt. Some interest may have been charged before 1970 but not since then. I have had no other dealings with him.

Cross-Examined

Defendant was a very good friend of mine. I saw him after he gave me advice. I often saw him on personal matters - a close relationship. He is more than a friend. He is like a father to me for many many years. I took over my uncle's mortgage in 1968. Mr. Martin has not insisted on strict payment under the mortgage. He has never chased me for the money. There were times when I had difficulty paying.

10

(continued)

No re-examination.

Mr. Shankar:

20

No more witnesses available.

Court:

Adjourned to 2.15 p.m.

R.G. Kermode
JUDGE

2.15 p.m.

In Chambers

Mr. Shankar says not well.

Mr. Chernov:

Accept situation.

30

Court:

Adjourned to Monday morning 9.30 a.m.

R.G. Kermode
JUDGE

Cross-Examination

In the
Supreme
Court

Plaintiff's
Evidence
No.17
William Walsh
Apted Cross-
Examination
21st May
1982

(continued)

Re-Examination

I used to work for defendant at Metropole Hotel. I met many people. I got to know defendant well. I started my business in 1965 and met many business people in Suva. I am acquainted with general reputation of the defendant. I was in Court when Mr. Niranjan gave evidence. He is definitely a very kind man and absolutely honest. Never any hint of dishonest in business. His reputation was that he would always help people.

10

Re-Examination:

Defendant helped people financially and with fatherly advice.

No.18

LOUISA MOORE

No.18
Louisa Moore
Examination
21st May
1982

P.W.6 - LOUISA MOORE, Bank Officer
Bank of New Zealand of Suva, duly sworn:

I am relieving the accountant of Bank of N.Z. this morning. I have access to Bank records. Defendant had a bank account with Bank N.Z. I was served with a summons. I have brought original bank copies of defendant's statements. I had no time to copy them. They are the original copies of the Bank records. A few statements are missing from 1.1.70 to 16.1.70 and from 13.10.72 to 1.11.72 and 2.12.74 to 13.12.74. We have not found the missing statement so far, they may be at the Bank. (Statements tendered Exhibit 31).

20

30

No Cross-Examination.

No.19

OM CHAND

No.19
Om Chand
Examination
21st May 1982

P.W.7 - OM CHAND of Waimanu Road
Confectionary Manufacturer, duly sworn:

I know the defendant and have known him for 15 years. I have known him as a friend

In the
Supreme
Court

Plaintiff's
Evidence
No.16
Narayan Singh
Niranjan
Cross-
Examination
21st May
1982

(continued)

There was credit squeezes from 1960 on when money difficult to obtain. I looked to my friends for help. I lost my agency to Carpenters. It caused me great financial and personal problems. Mr.Martin the prime person I sought help from him. I regard him as a kindly friend. I would have been bankrupt but for his assistance. His general reputation is that he is kindly person in our community. He does not have a general reputation of tricking people or of lying. I have never heard of him tricking anyone to obtain a business. I would be very surprised from my general knowledge of the defendant that he would trick and lie to get into a partnership. I would have paid a higher interest had the defendant asked for it. Help given me by the plaintiff enabled me to carry on my business. I myself offered security the defendant did not demand.

10

Re-
examination

Re-examination:

Bank was not prepared to give more than two-thirds of the amount.

20

To Court:

All loans received by mortgages on properties were under 10% interest.

No.17
William
Walsh
Apted
Examination
21st May
1982

No.17

WILLIAM WALSH APTED

P.W.5 - WILLIAM WALSH APTED
of Suva, Storekeeper, duly sworn:

My trade name is Apteds Limited. It was incorporated in 1973. I have known defendant for over 30 years. He was an accountant. I have had dealings with him. He was my landlord for some years. I purchased a building from him.

30

(Mr.Chernov objects that witness having said there were no other business dealings it is tantamount to more examination to again ask him if he had any other dealings with the defendants.)

Court:

Objection upheld.

NARAYAN SINGH NIRANJAN

In the
Supreme
Court

Friday the 21st day of May, 1982 at 9.30 a.m.

Plaintiff's
Evidence
No.16
Narayan Singh
Niranjan
Examination
21st May
1982

Appearances as before.

Mr. Shankar hands in accounts re Brunswick Motors.

(By consent Report numbered Exhibit No.30
witness interposed.)

P.W.4 - NARAYAN SINGH NIRANJAN
1 Ellis Place, Tamavua, Company Director
duly sworn:

10

I know the defendant from 1960 when he was President of the Rotary Club. I have had dealings with him. When my cars came from Japan and I had difficulty getting money from the Bank. I had to find up to £100,000 and I used to go around my friend to borrow money. Les Martin was one such friend. First money I borrowed from defendant was £1000 in 1963 - loan for 30 days. I paid nothing extra for 30 days. After that I borrowed a number of times £2000 in 1964, I borrowed £5,000.

20

On the £2,000 I paid back interest I borrowed it for 3 months. I paid interest on the £5,000 at bank rate. I borrowed for short period but I was unable to pay him. I gave no security to him. In 1974 I borrowed \$39,000. I gave security over my Lautoka building - it was bank rate. It was outstanding for 5 years. In 1975 I borrowed \$20,000. I gave a mortgage over a building at Nadi Airport. Interest was 1% less than the bank rate. It was outstanding for 5 years.

30

I did borrow money for my Labasa business \$30,000. It was more than 7 years ago. I gave mortgage over the Labasa building. I paid off within 5 years. Interest was bank rate. I know the plaintiff. He purchased a car from me. I do not know who paid for it. I was also a bus operator. I sold plaintiff a second hand bus. I still operate bus. Bus service licenses have a value.

Cross-Examined by Mr. Chernov:

Cross-
Examination

40

I was closely associated with defendant in Rotary. An association of businessmen. He was President at time. I later became President. I had a Datsun Agency which I acquired in 1960.

<u>In the Supreme Court</u>	<u>NO</u>	<u>EX NO</u>	<u>BOOK REF</u>	<u>PAGE</u>	<u>DATE</u>	<u>DETAIL</u>	<u>AMOUNT</u>	<u>LEDGER REF</u>
No.15 Agreed Facts 21st May 1982 (continued)	8	5	C/B	51	6.7.75	Received monies from FASA	20,000.00	F9
	9	5	C/B	51	22.7.75	Payment made to Mutual Finance Ltd.	20,000.00	X E1
	10	5	C/B	67	31.1.76	Received monies from Mutual Finance Ltd.	20,000.00	X E
	11	11	J/N	75	11.9.75	Debit Latchman Transport Credit Brunswick Motors	9,800.00	Dr.L 10
	12	11	J/N	50	31.10.75	Debit Ram Kuar & Sons Credit Brunswick Motors	26,000.00	Dr.R4 Cr.S 100

DATED this day of May, 1982

KOYA & CO.

Per: Sd: S.M.Koya
Solicitors for the Plaintiff

MITCHELL KEIL & ASSOCIATES

Per: Sd: Illegible
Solicitors for the Defendant

In the
Supreme
Court

No.15
Agreed
Facts
21st May
1982

(continued)

Brunswick Motors Account was in debt he allowed no interest when the same account was in credit.

2. The Brunswick Motors account was debited with "Commission for financing and sale of buses" from early 1975.
3. Mr. Martin's cash book showed receipts of principal and interest from several different persons.
4. The cheque butts showed as "Advances", a payment to Niranjana Autoport Limited of \$22,000 by two separate cheques one for \$14,000 and one for \$8,000. 10
5. Comparison of a schedule of buses sold from 1971 to 1977, showed that in several instances customers would pay a "deposit" and the balance was financed by a Bill of Sale given by the Purchaser to Mr. Martin.
6. Where Mr. Martin financed a Purchase of a bus by way of a Bill of Sale, he credited Brunswick Motors with the Bill of Sale amount and debited the Purchaser's account in his private ledger. 20
7. Accounting entries indicate that "Brunswick Motors" was operating as at November, 1971. The name Brunswick Motors was not registered until 29th December, 1971 recording the commencement date of that business as the 2nd February, 1971.

DATED this 21st day of May, 1982 30

KOYA & CO.
Per: Sd: S.M.Koya
Solicitors for
the Plaintiff

MITCHELL KEIL & ASSOCIATES
Per: Sd: F.J.Keil
Solicitors for the Defendant

In the
Supreme
Court

Plaintiff's
Evidence
No.14
Ram Latchan
Examination
20th May
1982

(continued)

ask for receipts. I agreed it was not necessary. I used to pay accounts monthly and defendant used to give me his personal cheques to pay them - more than 1 cheque. I did not have a bank account then. This system continued until income increased and a bank started in Nausori. I cannot remember the year. It could have been for 4 or 5 years. We then banked daily takings in Martin's name at Nausori Bank. I took deposit slips to defendant. Martin continued to pay accounts with his cheques. Defendant prepared annual accounts - profit and loss and balance sheets which he gave us. They were in similar form to accounts in Exhibit 18. He prepared tax returns which I used to sign. Copy of the accounts were attached to the returns. He lodged the returns and answered all queries.

10

This system continued until 31.12.77 when we ceased to deposit moneys with the defendant. I was given no other accounts than those for K.R.Latchan Bus Service.

20

Saw no ledger journals or cash books between 1962 and 31.12.77. Between 1962 and 1977 he was writing the books but I was not shown them. (Witness indicates ledger sheets). He was writing in a ledger but I did not see what he was writing. He did not show me. He showed me no books of account in name of business or my mother or my any names. I did not ask him to show me them.

30

Ceased depositing moneys after 31.12.77 with defendant. I opened our own account with Bank of New Zealand Suva in name of K.R.Latchan Bus Services Ltd. Started limited company in 1978. Incorporated sometime in January 1978. Business is still operating under that name but bank is now Barclays International. Before 9.12.71 I was corresponding with a firm in England. I wrote in name of K.R.Latchan Bus Service to Seddon Motors Ltd. re importation of chassis.

40

(Mr. Chernov: No objection to copies going in).

I wrote original of letter dated 14.9.70.
Tendered Exhibit 24.

I received reply dated 21.9.70 - Tendered Exhibit 25. I received letter from Seddon Motors dated 12.10.70. Tendered Exhibit 26.

RAM LATCHAN

P.W.3 - RAM LATCHAN f/n Khurbur Sirdar
Transport Operator, Wainibokasi, duly sworn:

Plaintiff's
Evidence
No.14
Ram Latchan
Examination
20th May 1982

10 I am 41 years old. In partnership with my mother and brother I have been in dairy business K.R.Latchan Bus Service - I started this business in 1962. Baulevu Bus Service started in 1976. Before starting Brunswick Motors we were running transport business and a dairy. I operate from Wainibokasi, Nausori and Suva.

20 I knew the defendant since 1950: I met him after the death of my father in 1949. I met him at his office at the Metropole Hotel. My mother took me to see him either to pay or borrow money. I never visited the office while my father was alive. My mother at time was operating bus service. Martin was keeping the books of my father's business when he was alive. When father was alive he ran business in his name, my father kept daily takings while he was alive. My mother carried on the business. My mother was keeping the daily takings. This continued until 1962. In 1962 my mother and I purchased another service. From then on I was managing business. I took a loan from defendant to purchase the new service. My father's business was joined with the new services and run in name of K.R.Latchan Bus Service - partners were self, mother and my brother. 30 I borrowed £6,000 from the defendant. I negotiated the loan. I gave security for the loan - a Bill of Sale over all buses and a mortgage on the dairy farm which was freehold land. Title was in my mother's name.

40 Copy Mortgage No.81973 produced with discharge 139260 Exhibit 23. Bills of Sale were given by us to Mr. Martin. Defendant charged interest which we agreed to pay and which we paid. Martin at time of loan was receiving daily takings. He said he was an accountant. At that time there was no bank in Nausori but there were banks in Suva. Defendant said to give him all the money and he would account for it. We all agreed to do so. Previous daily takings were given to him next morning by me at his office in Victoria Arcade. He had a woman Miss Cleary working for him. I saw her in Court. I used to give money personally to Martin but if he was absent to Miss Cleary. I was given no receipts. Did not

In the
Supreme
Court

Plaintiff's
Evidence
No.13
Hari Prasad
Re-
Examination
20th May
1982

(continued)

Mr. Koya:

We are in trouble as court released witnesses yesterday.

Court:

The plaintiff is available Mr. Koya.

Mr. Koya:

Not our strategy to call plaintiff.

Adjourned to 2.15 p.m.

R.G.Kermode
JUDGE

10

Mr. Chernov:

At this stage should clear up the particulars. Wish raise two matters - Para.3 of further particulars - limited to last sentence? Para.4 further particulars limited to first?

Limb of 11 b and also an allegation of fraud - not pleaded. Particulars inconsistent with fraud. Raise it now so no misunderstanding.

Court:

What do you suggest is the remedy?

20

Mr. Chernov:

An amendment to pleadings at some stage of the hearing.

Mr. Koya:

Concede that proper way to get over problem is to amend pleadings.

Court:

Very well I will leave it to you to apply to amend at some later stage Mr. Koya.

materials and some cash. I had to pay him \$300 a month. I had to pay him interest of 10%. We entered into no agreement or execute any documents. I paid \$300 a month and also paid interest. I still owe him money - for last two years. I have paid him money. I have some receipts with me. Tenders statement - Exhibit 21.

In the
Supreme
Court

Plaintiff's
Evidence
No.13
Hari Prasad
Examination
20th May 1982

53 receipts - Exhibit 22 (collectively).

10

In 1961 I knew Mr. Martin to build a house £500 to £700. I paid him £5 a month. There was no agreement in writing. I paid 5% interest. I repaid that loan. I have no receipts for that loan. I met him first about 1961. Latchan is related to me. I am married to his sister.

(continued)

Cross-Examined by Mr. Karkar:

Cross-
Examination

20

When I first met defendant I was related to the plaintiff. Since I met defendant I have seen him frequently - monthly to pay him money. We did not become friendly in the 1960's. He was my brother in law's friend.

(Witness does not answer question "did he regard Mr. Martin as a friend").

House I mention was two flats.

30

I do not remember in 1970 approaching defendant and telling him, my health and my wife's health was not good. I do not think I told him I wanted to build flats for income when I retired as a school teacher. It was my intention to get income from the flats. Defendant did not take a mortgage over my land. I took plaintiff with me when I went to see defendant in 1970. Although I have not paid for 2 years and Mr. Martin has not chased me for payment.

How could I regard him as a friend, he was older than me. I did not try to borrow money elsewhere. I used to give defendant Xmas presents because he had given me money.

40

Re-Examined:

Re-
Examination

There was a request for me to give a mortgage. I applied to NLTB but consent was not given to a mortgage.

In the
Supreme
Court

should have been not on plaintiff's instructions.
I saw no writings to indicate parties were
patterns from 1971.

Plaintiff's
Evidence
No.12
Ram Vilash
Re-
Examination
20th May
1982

I have a list of items I excluded. After
reconstructing accounts I did have discussions
with defendant's accountant and resolved some
of the items.

I found no item in Mr. Martin's account
showing any contribution by him to the partner-
ship before he contributed the \$10,000. I
would expect capital to be contributed at
commencement of partnership. (By consent witness
produced his figures of nett tangible assets in
connection with Mr. Martin's account and
reconstructed account. Exhibit No.19 a and b.

10

(continued)

Mr. Chernov:

I produce Mr. Martin's ledger sheet X6
which I was asked to produce yesterday.

No.13
Hari Prasad
Examination
20th May
1982

No.13
HARI PRASAD

20

P.W.2 - HARI PRASAD f/n Ram Govind
Vuci, Nausori, School Teacher - duly sworn:

I live at Nausori. I know the defendant.
I have had business dealings with him. It could
have been 1970 or 1971. I started paying him in
1974 after house was built. I took a loan
from him. He supplied materials for my house
and from time to time I got cash from him.

Mr. Koya:

I want recorded that my question "who financed
house is not allowed". 30

Court:

Not established yet that he required finance
for house. House completed at end of 1974.
Mr. Martin supplied materials for the house.
I employed labour. They were paid by Mr. Martin.
House is on Native Lease. House cost a little
more than \$19,000. Mr. Latchan introduced me
to Mr. Martin. Mr. Martin said he would supply

not refer to the Partnership Act (sec.25?).
Treated car the same way. Saw no agreement
regarding use of vehicle.

In the
Supreme
Court

Rent I provided was pursuant to request
in plaintiff's affidavit. I saw no agreement.
It is clear in books that buildings were erected
with partnership accounts and in Mr. Martin's
accounts building was shown as an asset in the
annual accounts.

Plaintiff's
Evidence
No.12
Ram Vilash
Cross-
Examination
20th May
1982

10

My firm has continued to act for the
plaintiff.

(continued)

Since 1978 my firm, prepared accounts for
Brunswick Motors but they are not finalised.
Income tax returns have not been returned -
plaintiff has still to furnish accounts. It
is my obligation to treat firm as a partnership
until I have evidence to the contrary.

Mr. Koya:

20

Objects to witness being asked as an
Accountant whether accounts disclosed that there
were partners.

Question allowed.

Mr. Koya:

Objects that witness asked that there was
"no doubt" that accounts disclosed there were
partners.

Question allowed.

Witness -

30

My reconstructed accounts do show that from
1973 to 1978 that firms had partners - the two
parties. Yes. I have no doubt that between 1973
and 1978 as an Accountant the books show that a
partnership existed between Mr. Latchan and Mr.Martin.

Re-Examined:

Re-
Examination

Between 1973 and 1978 I prepared accounts
for Brunswick Motors for those years.

In 1965 I did not know the plaintiff. I was
working for SPSM Limited in Labasa then. Goodwill
value was not shown in Mr. Martin's account.

40

I included goodwill because I believed it

In the
Supreme
Court

Plaintiff's
Evidence
No.12
Ram Vilash
Cross-
Examination
20th May
1982

(continued)

assets if they include goodwill.

Wheel tax in advance is not an intangible. I agree it is not refundable and it is an intangible asset. Goodwill is not necessarily an intangible. It can be a tangible asset in working out net assets. I agree in normal accounting it is an intangible asset and should be so treated.

'Goodwill' I understand is value of business trade name - I agree it refers to profitability of business. \$14,206.28 is not a figure I picked. I did not bolster up asset values by including figure of \$14,206.28 goodwill. I agree if worked out as Counsel has worked out figures nett tangible assets would be \$52,445. (p.1 of nett tangible assets 1970 part B - prepared by Mr. Chernov - witness referred to it.) Unreconstructed accounts on that basis assets would be \$46,753. I agree that for 1971 nett assets on same basis would be \$69,990 in reconstructed accounts and \$62,989 for unreconstructed accounts. (By consent figures prepared by Mr.Chernov showing nett tangible assets covering 1970-1973 inclusive in respect of Reconstructed and unreconstructed accounts in respect of Latchman Bus Services admitted by the witness as being correct on the assumption that wheel tax and goodwill are deductible items as being near tangible assets.

Exhibit 19.)

I worked by taking total assets first on right hand side of balance and took out outgoings shown on lefthand side and came up with figures shown in Exhibit 19. I did this because there was 200 acres of freehold land included in assets shown in books at figure of \$6,000. The market value today would be considerably higher. I considered rather than revalue it would have increased by at least the goodwill shown. I did not treat land as being worth at least \$14,000. I considered this justified my including goodwill. I had another office check business name register. I only saw particulars yesterday.

I did deduct \$6,000 a year for salary of the plaintiff - I considered \$6,000 a reasonable figure in my own judgment. I may have discussed salary with the plaintiff. I did not keep a diary note. It was salary for working in partnership. I do not know time he spent in business. I saw no agreement regarding payment of salary. I did

Mr. Chernov:

Attempt to stifle cross-examination.

In the
Supreme
Court

Court:

Uphold objection.

Plaintiff's
Evidence
No.12
Ram Vilash
Cross-
Examination
19th May
1982

10

Exhibit 14 - I see no inconsistency with Exhibit 15. I see Exhibit 16 it was registered 1.6.65. I would not know if business was trading under that name before 1.6.65. Plaintiff is registered proprietor of the name. I do not know that there were 3 partners. I had no belief as to who were partners in 1966 or in 1967. I only came into picture when asked to restructure accounts. In 1970 K.R.Latchan Bus Service was conducted by mother and plaintiff and I someone else. I first saw Exhibit 16 this morning.

(continued)

Adjourned to 9.30 tomorrow.

R.G.Kermode
JUDGE

20

Before the Hon. Mr. Justice Kermode

20th May
1982

Thursday the 20th day of May, 1982 at 9.30 a.m.

Appearances as before

Cross-Examination p.w. continues

Witness - resworn

I have perused my firm's file. I was personally involved in October 1978. Plaintiff first came to my firm 3.6.77.

30

Witness referred to Exhibit 1 and date 4.10.79. It is correct I was first involved with Brunswick Motors on 4.10.79.

40

Restructured accounts were sent to Mr.Koya in June 1980. I used to contact Mr. Keil if I wanted further information. I did not at any time specifically ask for Mr. Martin's personal ledger account. In my view figures given yesterday were nett tangible assets. They do contain intangibles and goodwill in calculations. Figure of \$84,846 does include goodwill. I made a mistake in comparing figures. I do not agree it is incorrect to describe figures as nett tangible

In the
Supreme
Court

Brunswick Motors. I did not personally do any work in May 1978. I came into picture about October 1978 at Mr. Latchan's request - he wanted me to reconstruct account/accounts.

Plaintiff's
Evidence

Figure of \$84,846 is nett tangible asset.

No.12

Ram Vilash
Cross-
Examination
19th May
1982

Value (1971) based on my restructured accounts. It does not include goodwill. We took total assets. \$143,715 minus goodwill \$14,206 and deduct from balance the outside liabilities \$36,667. This included accounting fees \$420 unpaid.

10

(continued)

I was given plaintiff's affidavit to assist me and accounts were restructured on what he said in his affidavit.

I took into account also that Martin introduced capital in December 1972. According to accounts (Martin's) they show that parties were partners since late 1971. I did not have access to Mr. Latchan but I agree my hypothesis is inconsistent with plaintiff's own returns of which I now have knowledge. It is true ledger shown Brunswick Motors commenced late 1971. I see Exhibit 15 front page. I did have regard to this date on which to base assumption. A4 - on second page is reference to change 17.2.71.

20

Mr. Martin did record all chassis imported after October 1971. In the first instance were assets of Brunswick Motors. Before that they were shown in Ram Kuar's account.

30

Mr. Koya:

Object that witness not here to express opinion.

Court:

Put the two alleged inconsistent documents to the witness.

I see date 2nd February, 1971.

Mr. Koya:

I object to question. Question seeks interpretation of documents which is not function of this witness.

40

Accountant. I am past President of the Institute. As far as I know defendant has not been a licensed accountant. He is not on the list. I made enquiries whether Mr.Martin was licensed.

In the
Supreme
Court

(Mr.Chernov objects to answer - upheld).

Exhibit 7 - accounts appear to have been balanced at irregular intervals.

Plaintiff's
Evidence
No.12
Ram Vilash
Examination
(continued)
19th May
1982

10

Exhibit 8 accounts appear to have been balanced at regular intervals.

K.R.Latchan account at end of 1971 was in credit \$10,398.67.

Exhibit 17 sundry debtors 30.9.78 - I did ascertain names of debtors - a list was produced. 31.12.75 amount owing by firm to Mr. Martin is shown in account.

I asked for ledger but was only given ledger sheets.

Cross-Examined:

Cross-
Examination

20

(Witness shown Exhibits 2 and 17.)

I assumed partnership commenced 1.1.72 where Martin's accounts assumed it commenced - late 1971.

Before 1.1.72 I put moneys into Latchan's account. If court decides otherwise restructured accounts would have to be amended. I did add 10% and 20% to spare parts and chassis. I have added inclusions which are not in Martin's account.

30

I agree building shown by Martin in his accounts is not shown in my restructured accounts.

Exhibit 13 Para.B item 3 - I do not have the total.

Total of item 3 and 4 - I will furnish figure tomorrow.

My firm does prepare accounts for Mr.Latchan. We are his accountants. He came to see us first on estate planning in May 1978.

40

We were asked about May 1978 to do some accounting work for Mr. Latchan in respect of

In the
Supreme
Court

I see entry of \$13,000 on Exhibit 17 deposit by K.R.Latchan. I cannot find a single debit entry in Exhibit 8 of \$13,000.

Plaintiff's
Evidence
No.12
Ram Vilash
Examination
(continued)
19th May
1982

I see entry in account for L.R.Martin interest \$1,564. Nett assets on 31.12.72 were \$38,799.

Adjourned to 2.15 p.m.

P.W.1 - Mr. Vilash resworn

Cross-Examination continues

(3 subpoenaed witness retired until Friday 9.30 a.m.) 10
K.R.Latchan Bros. 1971 1972 and 1973 nett asset values were:

1971	\$84,846
1972	\$107,000
1973	\$130,000

Account shows that apart from assets shown parties owned a freehold farm at Waidalice.

From restructured accounts profits were:

1971	\$18,797.25	20
1972	\$39,386.10	
1973	\$51,924.68	

In Exhibit 11 on p.56 31.12.72 journal entry debiting approximately 25 individual accounts and crediting interest received - \$20,311.59.

On p.89 31.12.73 journal entry debiting approximately 26 individual accounts interest received \$24,218.66.

On p.117 31.12.74 journal entry debiting about 34 individual account crediting interest received \$28,263.09. 30

On p.148 31.12.75 journal entry debiting about 39 individual account is interest received \$41,006.10. Exhibit 12 p.12 31.12.76 journal entry debiting about 50 individual accounts is interest \$52,827.84.

On p.40 31.12.77 journal entry debiting 49 individual account is interest \$47,624.55.

I am a member of Fiji Institute of Accountants and licensed to practice as Chartered 40

10 Mr. Martin treated as a partner in our accounts since 1.1.73. Item 6 - we sighted invoices of sale of chassis. We based assumption on records we saw. Bills of Sales were given to Mr. Martin. Transactions shown in defendant's book of account but not shown as a cash sale according to the entries. (Witness shown accounts filed by defendant on 21.5.80 respecting Brunswick Motors up from 1972 to 30.9.78).

In the
Supreme
Court

Plaintiff's
Evidence
No.12
Ram Vilash
Examination
(continued)
19th May 1982

They are the same accounts which were shown to me at time I prepared accounts.

As regards exclusions item 1, I excluded because Mr. Martin a partner in Brunswick Motors (Particulars shown in Reconciliation Statements for each year).

My inclusions covered 4 items. Not shown in defendant's account but he showed accountancy fees.

20 Added percentages on spares etc. because no agreement that spares be transferred at cost to partnership.

Figure of \$47,992.57 should now be \$49,688.84 after checking with defendant's accountant.

Brunswick Motors from 10.12.71 to 31.12.72 made a profit and was included in Ram Kuar's account by Mr. Martin.

(Mr.Chernov will object to witness being shown last two pages of his letter.

30 Mr. Koya: - Very well).

I see Exhibit No.15 it was registered on 29.12.72. Exhibit 14 filed 9.12.71.

(By consent defendant's accounts Brunswick Motors accounts Exhibit 17, and K.R.Latchan Bus Service and Baulevu Bus Exhibit 18. Previously filed in Court.)

40 ~~Exhibit 17 and Exhibit 11 shown witness 1972 -~~ nett profits shown as being shared by two partners. A journal entry was made crediting the parties and debiting Mr. Martin's private ledger. Ram Kuar and defendant's accounts debited with \$10,000 each. L.R.M. \$10,000 J X 6 is a journal entry in respect of Mr. Martin's private account. There were no entries for goodwill of K.R.Latchan's business.

In the
Supreme
Court

Baulevu Bus Services not in existence in 1973 it commenced business in 1974. Other two were in existence. We did not check 1976-7 or 1978.

Plaintiff's
Evidence

As regards item 14 I would have to see ledgers and back statements to give examples.

No.12

Ram Vilash
Examination
(continued)
19th May
1982

(Mr.Chernov - if witness making a general statement from June 1971 onwards we have no objection to item 14 going in as is).

(Mr. Koya - we will leave item 9 meantime as we have not got copy of Bill of Sale).

10

I had opportunity to peruse Mr. Martin's account in preparing restructured accounts for the 3 firms. Had to prepare 3 accounts and not only Brunswick Motors because of overflow of items from one business to another. To show proper positions we prepared 3 accounts. We had almost all the documents required. We looked at ledgers, cash book journals, bank statements, cheque books, invoices, dockets, statements. We also had Mr. K.R.Latchan's affidavit, also Mr. Martin's opposition. We did not have access to Mr.Martin's private ledger. We had general accounts prepared by Mr. Martin for the 3 enterprises. I had assistance of myself and carried out work in my office.

20

In preparing accounts I made certain assumptions my first assumption was that.....

(Part of letter written by witness put to witness containing assumptions.) They are the assumptions I made.

30

(Admitted by consent Exhibit No.13).

Mr. Latchan's affidavit was dated 19th March 1979. Item 3 of assumptions assumed a stranger would not build on the land.

As regards item 4 we searched business names register and found amendment filed in December 1972.

By consent registration of business name in name Brunswick Motors admitted Exhibit No.14.

Statement of change signed by both parties. Exhibit No.15. Also by consent registration of business name K.R.Latchan Bus Service Exhibit 16.

40

Correct date of registration of particulars is 29 December 1972 not 28th as shown in item No.4.

is now being typed.

In the
Supreme
Court

Mr. Chernov:

As regards particulars supplied this morning raises fraud. Would it be convenient to raise matter now.

Plaintiff's
Evidence
No.12
Ram Vilash
Examination
(continued)
19th May 1982

Court:

If particulars do not concern Mr. Vilash I would prefer that we proceed with examination of Mr. Vilash.

10

Mr. Chernov:

Very well.

P.W.1 - Mr. Vilash resworn:

As regards Exhibit 1 item 8 on page 2 I have had another look at the books and have fraud the item in the ledger.

20

As regards item 9 I only had copy Bill of Sale to peruse. As regards item 10 I have had further information and am now satisfied that the sum of \$5,760.38 was not suppressed in Ram Kuar's ledger account. As regards item 11 I was later given opportunity to check and am now satisfied subject to minor differences that moneys have been accounted for. As regards item 12 I have since had access to the journal. (Mr. Koya - item 13 covered by admitted facts). As regards item 14 account I refer to Mr. Martin - - -.

(Mr. Chernov: Object to item 14 being proved in manner witness mentioned.)

Mr. Koya:

30

I will come to that later.

Yesterday Mr. Chau and I checked the cash situation for 3 different years. Check samples were taken over several months in each year and we agreed that the group of companies amounted to between 30 and 50 per cent spread over the three years of the cash in Mr. Martin's account.

40

(Mr. Chernov - years taken were 1973 - 4 & 5 and 30 to 50 per cent of receipts for the sample months taken was from the 3 enterprises being B.R. Latchan Bus Services, Baulevu Bus Services and Brunswick Motors)

In the Supreme Court	1975 (Cont'd)	<u>NAME OF PERSON</u>	<u>AMOUNT</u>	
No.11 Further Particulars 18th May 1982 (continued)		LATCHMAN & SONS	15,145.00	
		LATCHAMAN TRANSPORT	6,350.00	
		RABI HOLDINGS	8,140.00	
		" "	7,958.00	
		LATCHMAN, LABASA	8,520.00	
		" "	10,613.00	
		NIRANJAN AUTOPORT LTD. LABASA	159,964.00	10
		" LAUTOKA	22,232.00	
		GEORGE TRANSPORT	992.00	
		NAIRS AUTOPORT	4,680.00	
		" "	5,083.00	
	" "	13,590.00		
	OM CHAND	13,115.00		
	PERUMAL NAIDU	13,455.00		
	RAM DAYAL	3,078.00		
	" "	4,362.00		
	RAM DULARE	4,811.00	20	
	S. BEGUM	4,082.00		
	E.M.SALATO	17,100.00		
	G. CHAN	4,619.00		
	B. ALI	7,439.00		
	"	13,491.00		
	MRS. M. BEDDEOES	1,676.00		

Plaintiff's
Evidence
No.12
Ram Vilash
Examination
(continued)
19th May
1982

No. 12

RAM VILASH (Continued)

Wednesday the 19th day of May, 1982 at 9.30 a.m.

Appearances as before 30

Mr. Koya:

Mr. Shankar has to go to hospital today.

Court:

Sorry to hear that. Mr. Shankar is released.

Mr. Koya:

We have drafts on matters on which we have agreed.

Mr. Koya:

We have also agreed on other matters which 40

	1973 (Cont'd)	<u>NAME OF PERSON</u>	<u>AMOUNT</u>	<u>In the Supreme Court</u>
		HOP TIY CO.LTD.	32,325.00	
		KWONG TIY LTD.	50,000.00	
		YEE KAM CHEE	20,000.00	No.11
		A.H.KHAN	3,476.00	Further
		LATCHMAN & SONS	9,800.00	Particulars
		" "	9,481.00	18th May
		NIRANJAN AUTOPORT LTD.	2,466.00	1982
10		" "	30,010.00	
		" "	7,017.00	(continued)
		" "	7,532.00	
		NAIRS TRANSPORT	10,474.00	
		" "	10,866.00	
		OM CHAND	13,067.00	
		RAM DAYAL	8,752.00	
		" "	6,041.00	
		RAM DULARE	9,174.00	
		S. BEGUM	4,490.00	
20		E. SALATO	9,901.00	
		SHORE BUSES LIMITED	4,924.00	
		B. MAR	5,000.00	
	1974	MRS.M.BEDDOS	2,102.00	
		BAKIR ALI	11,538.00	
		" "	11,538.00	
		GERALD CHAN	6,183.00	
		CITY TRANSPORT	4,490.00	
		HOP TIY & CO.	15,735.00	
		KWONG TIY CO.LTD.	40,000.00	
30		YEE KAM CHEE	15,000.00	
		A.H.KHAN	3,277.00	
		LATCHAMAN BUS TRANSPORT LTD.	7,888.00	
		" "	9,481.00	
		" "	7,895.00	
		NIRANJAN AUTOPORT LTD.	20,489.00	
		" "	26,276.00	
		NIRANJAN & SONS LTD.	3,354.00	
		NIRANJAN BUS SERVICE	3,926.00	
40		NAIRS TRANSPORT	7,129.64	
		" "	8,521.79	
		OM CHAND	13,090.00	
		RAM DAYAL	5,924.00	
		" "	3,551.00	
		RAM DULARE	8,401.00	
		S. BEGUM	4,365.00	
		E.M.SALATO	14,784.00	
	1975	H.P.GOVIND	19,343.00	
50		HOP TIY CO.	9,489.00	
		JEAN'S RENTAL	18,698.00	
		KWONG TIY CO.LTD.	35,000.00	
		YEE KAM CHEE	15,000.00	
		A.H.KHAN	2,750.00	
		Y.A.R.KHAN	10,182.00	

In the
Supreme
Court

This is the annexure marked "A" referred to
in paragraph 32(c) and (e) of the Defendant's
request for Particulars.

No.11 Further Particulars 18th May 1982 (continued)	1970	<u>NAME OF PERSON</u>	<u>AMOUNT</u>	
		G.K.YEE	1,860.00	
		Y.K. YUEN	1,100.00	
		STANLEY CHAN	6,848.99	
		GERALD CHAN	8,000.00	
		H.P.GOVIND	251.00	
		HOP TIY CO.	37,548.35	10
		KWONG TIY CO.LTD.	68,000.00	
		YEE KAM CHEE	32,000.00	
		A.H.KHAN	4,200.00	
		MC NICHOLL IND.LTD.	14,000.00	
		NIRANJAN AUTOPORT	7,667.74	
		OM CHAND	13,500.00	
		K. KUAR & SONS	328.20	
		S. BEGUM	5,125.00	
		S. PICKERING	961.00	
		F.M. SALATO	5,675.00	20
		P.J. TAYLOR	3,783.00	
		WING ON TIY CO.LTD.	4,000.00	
		W. APTED LIMITED	10,925.00	
	1971	MC NICHOLL	40,000.00	
		M. BEDDOSS	2,801.00	
		(and 1970 names brought forward in the records)		
	1972	BRUNSWICK MOTORS	49,780.00	
		HOP TIY CO.LTD.	36,519.00	
		KWONG TIY CO.LTD.	57,000.00	30
		NIRANJAN'S AUTOPORT LTD.	24,666.00	
		" " (Lautoka)	30,000.00	
		" "	5,055.00	
		" "	7,017.00	
		" "	7,532.00	
		OM CHAND	13,184.75	
		RAM DAYAL	8,752.00	
		" "	6,041.00	
		RAM DULARE	9,174.25	
		S. BEGUM	4,663.00	40
		E.M. SALATO	5,743.00	
		SHORE BUSES LTD.	4,924.00	
		YEE KAM CHEE	27,000.00	
		WING ON TIY LTD.	2,500.00	
		ROAD CONSTRUCTION LTD.	946.00	
		B. MAR	5,000.00	
	1973	MRS. M.BEDDOS	2,441.00	
		G. CHAN	7,436.00	
		CITY TRANSPORT LTD.	4,490.00	

Some of those names and amounts and extracted from the Defendant's Books of Accounts are shown in the annexed list marked "A".

In the
Supreme
Court

- (d) AS TO PARAGRAPH 26 OF THE AMENDED STATEMENT OF CLAIM. Under paragraph 32(d) of the Defendant's request for particulars

No.11
Further
Particulars
18th May
1982

10

The Plaintiff does not know the each date upon which the Defendant lent money to each person but the dates are recorded in the Defendant's Books or other records from which the Defendant has compiled his Books showing names of borrowers and amount owing by each such Borrower, and interest accrued. Some of the page references of those books of accounts have been referred to under 32(c) above.

(continued)

- (e) AS TO PARAGRAPH 26 OF THE AMENDED STATEMENT OF CLAIM. Under paragraph 32(e) of the Defendant's request for particulars

20

The Plaintiff does not know the amount of each money so lent by the Defendant to each person (borrower) but says that they are recorded in the Defendant's Books of Accounts and other records kept by the Defendant. The Plaintiff, however, says that the annexure "A" to this paper shows the names of some of those persons and amount owing by each such person.

D A T E D this 18th day of May, 1982

30

KOYA & CO.

Per: Sd: S.M.Koya
Solicitors for the
Plaintiff

TO: The above-named Defendant and or his Solicitors Messrs. Mitchell Keil & Associates, Dominion House, Suva.

In the	1970	\$18,365.98
Supreme	1971	22,450.00
Court	1972	20,311.59
	1973	24,151.66
No.11	1974	21,690.47
Further	1975	23,611.55

Particulars
18th May
1982

(continued)

These are some figures extracted from the Defendant's Books of Accounts recorded at pages 278, (1970) 25 (1971) 56 (1972) 89 (1973) 117 (1974) showing names of the Borrowers and interest accrued and/or interest. 10

The Defendant has been regularly and continuously on business of a Moneylender, and held himself out as a Moneylender. He has advertised himself as a Financier.

The Defendant is presumed and deemed to be a Moneylender within the meaning of the Moneylender's Act and by operation of law.

- (b) AS TO PARAGRAPH 26 OF THE AMENDED STATEMENT OF CLAIM. Under paragraph 32(b) of the Defendant's request for particulars 20

The actual dates are not known to the Plaintiff as they are kept and recorded by the Defendant in his Books of Accounts or other records but as stated above, the transactions occurred during the years 1970 to 1975. The Plaintiff says that the Defendant also carried on business prior to 1970 until 1975, and also carried on and continued after 1975.

- (c) AS TO PARAGRAPH 26 OF THE AMENDED STATEMENT OF CLAIM. Under paragraph 32(c) of the Defendant's request for particulars 30

The names and amounts of money lent by the Defendant to each person is not fully known to the Plaintiff. Each such name and the amount lent to each such person are recorded in the Defendant's Books of Accounts, but in respect of the years 1970 to 1975, the Plaintiff says that the name of each borrower and the amount lent and/or owing by each borrower are shown in the Defendant's Books of Accounts as follows:- 40

1970 at page 278
1971 at page 25
1972 at page 56
1973 at page 89
1974 at page 117
1975 at page 147

(b) AS TO PARAGRAPH 26 OF THE AMENDED STATEMENT OF CLAIM. Under paragraph 32(b) of the Defendant's request for particulars In the Supreme Court

The Defendant's requests to provide date of each such loan or moneylending transaction, or the date of receipt of interest are not known to the Plaintiff but they are all recorded in the Defendant's Books of Accounts. No.11 Further Particulars 18th May 1982

(continued)

10 (c) AS TO PARAGRAPH 26 OF THE AMENDED STATEMENT OF CLAIM. Under paragraph 32(c) of the Defendant's request for particulars

The Defendant lent moneys to the following persons in consideration of large sums being repaid :-

<u>Year</u>	<u>NAMES</u>	<u>AMOUNT (approx)</u>
1971	W. APTED	\$5425.00
"	MRS. BEDDOS	2801.00
"	S. CHAN	6848.00
20	G. CHAN	5773.00
"	HOP TIY & CO.	36,000.00
"	KWONG TIY CO.LTD.	62,000.00
"	KAM CHEE	28,000.00
"	A.H.KHAN	3,873.00
"	T.M.C.NICHOLL	40,000.00
"	NAIRANJAN	
"	AUTOPORT	6,741.00
"	ONI CHAN	13,000.00
"	J. BEGUM	4,890.00
30	E.M. SALATO	5,740.00
"	WONG ON TIY CO.	13,000.00
"	L.K.FONG	2,000.00

Money lending transactions have been extracted from the Defendant's Books of Accounts.

AS TO PARAGRAPH 26 OF THE AMENDED STATEMENT OF CLAIM. Under paragraph 32(a) of the Defendant's request for particulars

40 (a) The Defendant has for the several years been lending substantial sums of money to various persons in consideration of larger sums being repaid, and/or in consideration of interest being paid by each borrower on such loans, and collected and charged substantial and large sums of moneys by way of interest. All such transactions are recorded in the Books of Accounts kept by the Defendant. The Defendant collected interest between 1970 and 1975 as follows :-

In the
Supreme
Court

No.11
Further
Particulars
18th May
1982

(continued)

(b) AS TO PARAGRAPH 25 OF THE AMENDED STATEMENT OF CLAIM. Under paragraph 31(b) of the Defendant's request for particulars

The amount is not known to the Plaintiff but the same is recorded in the Defendant's Books of Accounts.

(c) AS TO PARAGRAPH 25 OF THE AMENDED STATEMENT OF CLAIM. Under paragraph 31(c) of the Defendant's request for particulars

The Plaintiff believes that the Defendant collected all such monies under Bill of Sale or Sale and Purchase Agreement. Particulars of such Bills of Sale are known to the Defendant and they are :-
They are as enumerated in Item (1) of the Plaintiff's Supplementary List of Documents filed in this action.

10

Furthermore the names of some of the purchasers, the years of sale, description of bus, purchase price and shown in the Plaintiff's Affidavit sworn on the 19th of March, 1979 and filed in this Honourable Court.

20

Particulars of Bill of Sales are not known to the Plaintiff.

(d) AS TO PARAGRAPH 25 OF THE AMENDED STATEMENT OF CLAIM. Under paragraph 31(d) of the Defendant's request for particulars

The Defendant's request for the amount outstanding under each Bill of Sale is not known to the Plaintiff.

30

8. AS TO PARAGRAPH 26 OF THE AMENDED STATEMENT OF CLAIM. Under paragraph 32(a) of the Defendant's request for particulars

(a) The Defendant has been lending money and charged or collected interest on each such loan, as recorded by the Defendant in his Books of Account. The Defendant every year lent monies to several persons and received large sums of interests on such loans each year as recorded in his Books of Accounts. The Defendant held out himself as a Financier.

40

The Defendant therefore carried on business of money lending and was presumed to be a moneylender under the provisions of moneylender's Act.

In 1972.....\$18,799.29
 In 1973.....\$42,065.42
 In 1974.....\$20,723.65

In the
 Supreme
 Court

TOTAL \$81,588.36

No.11
 Further
 particulars
 18th May
 1982

The above figures have been extracted from the Defendant's Annual Accounts.

6. AS TO PARAGRAPH (17) OF THE AMENDED STATEMENT OF CLAIM. Under paragraph 23(b) of the Defendant's request for particulars

(continued)

10

(a) The financing of the importation of chassis was made according to an arrangement between the Plaintiff and the Defendant whereby the Defendant on his volition took upon himself to finance the chassis of the buses.

(b) AS TO PARAGRAPH (17) OF THE AMENDED STATEMENT OF CLAIM. Under paragraph 23(d) of the Defendant's request for particulars

The amount of \$200,000 is made up as follows:-

20

1975.....\$87,420.19
 1976.....\$92,533.16
 1977.....\$50,607.50
 1978 up to 30/9/78.....229,560.85

The above figures have been extracted from the Defendant's Annual Accounts.

(c) AS TO PARAGRAPH (17) OF THE AMENDED STATEMENT OF CLAIM. Under paragraph 23 (h) of the Defendant's request for particulars

30

On the basis that the buses belonged to the firm of K.R.LATCHAN BUS SERVICE and sold by the Plaintiff, the Defendant's acceptance of the Bills of Sale to secure the balance purchase from each purchaser constituted the Defendant as a Trustee for K.R.LATCHAN BUS SERVICE. Furthermore the Defendant was at the material time Adviser, Financier, Accountant and Trustee to the Plaintiff and his family.

40

7. AS TO PARAGRAPH 25 OF THE AMENDED STATEMENT OF CLAIM. Under paragraph 31(a) of the Defendant's request for particulars

The date in question is not known to the Plaintiff. The Defendant has recorded the same in his Books of Accounts.

In the
Supreme
Court

No.11
Further
Particulars
18th May
1982

(continued)

own Books of Accounts particularly, by
his private Ledger.

- (d) AS TO PARAGRAPH (16) OF THE AMENDED STATEMENT
OF CLAIM. Under paragraph 22(f) of the
Defendant's request for particulars

The amount of profit derived from each sale
is not known to the Plaintiff but the
aggregate profit of the calendar year in
question has been shown by the Defendant in
his own Books of Accounts and Annual Accounts. 10

- (e) AS TO PARAGRAPH (16) OF THE AMENDED STATEMENT
OF CLAIM. Under paragraph 22(j) of the
Defendant's request for particulars

On the basis that the buses belonged to the
firm of K.R.LATCHAN BUS SERVICE and sold by
the Plaintiff, the Defendant's acceptance
of the Bills of Sale to secure the balance
purchase from each purchaser constituted the
Defendant as a Trustee for K.R.LATCHAN BUS
SERVICE. Furthermore the Defendant was at 20
the material time Adviser, Financier,
Accountant and Trustee to the Plaintiff and
his family.

- (f) AS TO PARAGRAPH (16) OF THE AMENDED STATEMENT
OF CLAIM. Under paragraph 22(k) of the
Defendant's request for particulars

By reason of arrangement and understanding
between the Plaintiff and the Defendant, by
reason of the Defendant's conduct, by reason
of the position of the Adviser, Financier, 30
Accountant and Trustee held by the Defendant
for the Plaintiff and his family and by
reason of the Defendant's general conduct
towards the Plaintiff and his family includ-
ing the confidence reposed by the Plaintiff
in the Defendant. The Plaintiff further says
that having regard to the Defendant's conduct
and the positions aforesaid held by the
Defendant he became a Trustee by operation of
law. 40

- (g) AS TO PARAGRAPH (16) OF THE AMENDED STATEMENT
OF CLAIM. Under Paragraph 22(l) of the
Defendant's request for particulars

The aggregate profit of \$81,588.36 are made
up as follows :-

That when the said representation was made the Plaintiff honestly believed that the same was true.

In the
Supreme
Court

(b) At the end of November, 1972 as recorded by the Defendant in his ledger the Plaintiff's accounting in the name of BRUNSWICK MOTORS with the Defendant was in credit to the extent of \$5,538.26.

No.11
Further
Particulars
18th May
1982

10 (c) The Defendant knew and as recorded by him in his ledger relating to the Plaintiff's account under the name of RAM KUAR (K.R. LATCHAN TRANSPORT) at the end of November, 1971, was in credit to the extent of \$16,000 (approximately).

(continued)

(d) AS TO PARAGRAPH (13) OF THE AMENDED STATEMENT OF CLAIM. Under paragraph (19) (b) of the Defendant's request for particulars

20 (a) The false pretences were made in early part of December, 1972. The actual date or dates are not known to the Plaintiff.

5. AS TO PARAGRAPH (16) OF THE AMENDED STATEMENT OF CLAIM. Under paragraph 22() of the Defendant's request for particulars

30 (a) There was merely an understanding between the Plaintiff and the Defendant to import the Bus chassis. There was an agreement in writing dated the 1st day of November, 1972 between the Plaintiff and Seddon Motors Limited. The Defendant now possess a copy of the said agreement.

(b) AS TO PARAGRAPH (16) OF THE AMENDED STATEMENT OF CLAIM. Under paragraph 22(c) of the Defendant's request for particulars

The financing of the importation of chassis was made according to an arrangement between the Plaintiff and the Defendant whereby the Defendant on his volition took upon himself to finance the chassis of the buses.

40 (c) AS TO PARAGRAPH (16) OF THE AMENDED STATEMENT OF CLAIM. Under paragraph 22(d) of the Defendant's request for particulars

The amount lent by the Defendant to the Plaintiff for the purpose of importing each of the said chassis is not known to the Plaintiff, but such amount has been recorded by the Defendant in his

In the
Supreme
Court

No.11
Further
Particulars
18th May
1982

(continued)

request for particulars

The Defendant acted as an adviser, accountant, financier, agent and Trustee to the Plaintiff, his mother and his family. He kept all books of Accounts and records relating to the businesses carried on by the Plaintiff and or his family either as K.R. LATCHAN BUSES or BAULEVU BUS SERVICE or BRUNSWICK MOTORS. The Defendant gave advice to the Plaintiff on all business matters during the relevant time. The Defendant knew the method used by the Plaintiff in conducting his business or businesses and in particular he knew that by importing chassis from Sedden Motors the Plaintiff was making reasonable profit and that he would make substantial profit after the Defendant had acquired sole agency to import such chassis. The Defendant having acquired knowledge of all matters concerning the said business, wrote to SEDDAN MOTORS on 25th January, 1971 on the subject of expanding the business.

- (b) AS TO PARAGRAPH (10) OF THE AMENDED STATEMENT OF CLAIM. Under paragraph (15)(g) of the Defendant's request for particulars

The matters referred to above arose or occurred between the 14th September, 1970 and 28th December, 1972.

- (c) AS TO PARAGRAPH (10) OF THE AMENDED STATEMENT OF CLAIM. Under paragraph (15)(h) of the Defendant's request for particulars

The detriment or loss caused to the Plaintiff for the period in question is set forth in under paragraph (2) (a) to (d) inclusive of this paper.

4. AS TO PARAGRAPH (13) OF THE AMENDED STATEMENT OF CLAIM. Under paragraph (19) (a) of the Defendant's request for particulars

- (a) The representations set forth under Paragraph (11)(b) to the effect that the Plaintiff was heavily indebted to the Defendant was false to the knowledge of the Defendant. That the said representations were made with the knowledge that they were false or without any genuine belief that they were true.

That the said representations were made with the intention that the Plaintiff should act upon the same.

In the
Supreme
Court

(1) Exhibit 7. 31/12/74 Brunswick Motors
a/c in debt \$89,983.71 interest charged by
journal entry \$2,581.81. (entries marked).

Plaintiff's
Evidence
No.10

(By consent action adjourned to enable
witness and Mr. Chau to consider accounts.)

Ram Vilash
Examination

Adjourned to 9.30 tomorrow morning but
liberty reserved for either party to ask that
action continue this morning?

18th May
1982
(continued)

No.11
Further
Particulars
18th May
1982

No.11

FURTHER PARTICULARS

10

IN THE SUPREME COURT OF FIJI
CIVIL JURISDICTION

No.12 of 1979

BETWEEN: RAM LATCHAN also known
as K.R. LATCHAN Plaintiff

A N D: LESLIE REDVERS MARTIN Defendant

FURTHER PARTICULARS RELATING TO THE PLAINTIFF'S
AMENDED STATEMENT OF CLAIM AS ORDERED BY THE
COURT ON 17TH MAY 1982

1. AS TO PARAGRAPH (6) OF THE AMENDED STATEMENT 20
OF CLAIM. Under Paragraph (7)(d) of the
Defendant's request for Particulars

On the understanding that the Plaintiff did
not have sufficient monies in credit with the
Defendant, the Plaintiff requested the
Defendant to lend monies to finance to
importation of the two (2) chassis in question.
There was no written agreement. It was
understood between the parties that the
Defendant would charge interest for the 30
monies so lent.

2. AS TO PARAGRAPH (10) OF THE AMENDED
STATEMENT OF CLAIM
Under Paragraph (15)(e) of the Defendant's
request for Particulars

(a) The monetary gain derived by the Defendant

Exhibit 5 p.25 September 2nd 1974 payment to Jans Rental \$15,000. I do not have corresponding ledger sheet. Exhibit 5 p.25 September 13 1974 payment to C. McNicols "advance W.N.G.Ltd. \$36,100. No ledger a/c is available to me. Exhibit 5 p.39 February 21, 1975 payment to M.Fenn \$12,000. We do not have the ledger account.

In the
Supreme
Court

Plaintiff's
Evidence
No.10
Ram Vilash
Examination

(Ct: How many more examples have you got.)

18th May
1982
(continued)

10 Witness: A whole page.

Court:

Are all these examples necessary?

Mr. Koya:

Yes to establish system.

Mr.Chernov:

Mr. Koya must follow rules of evidence. Of course Mr. Martin has made advances. Mr. Koya has misconstrued entries in documents. If we have specific facts sought we will.

20 Mr. Koya:

Unless Court rules me out I propose to continue.

Court:

Carry on Mr. Koya.

Mr. Chernov:

Is evidence of witness to establish loans?

Court:

My understanding it is in support of statements made by witness in his report.

30 (Agreed by Counsel that witness can prepare list showing entries in cash book and ledger limited to establishing statement made by witness in his report that defendant advanced money from a/c.

"Like a bank Mr. Martin was using funds to advance monies to other people.....")

(Witness referred to page 2 of his report items 1-15).

In the
Supreme
Court

Plaintiff's
Evidence
No.10
Ram Vilash
Examination

17th May
1982
(continued)

Since I made report this is the first time I have seen the books. There is an entry in page 68 of the journal Exhibit 11 debiting Nairs Transport \$10,200, crediting Brunswick Motors. Shown as a credit on Exhibit 7.

Adjourned to 9.30 tomorrow.

R.G.Kermode
JUDGE

18th May
1982

Tuesday the 18th day of May, 1982 at 9.30 a.m.

Appearances as before

10

Three witness under subpoena.

(Mr.Apted only witness present. Released until 2.15 tomorrow afternoon).

Other two called (Mr.Govind excluded because Mr. Shanker says have made special arrangements for him. Mr. Narayan and O.M.Chand called not present. Mr. Koya informed.)

(Mr. Koya seek indulgence to file particulars this afternoon).

Mr. Chernov:

20

No objections.

Court:

Particulars to be filed and furnished to defendant's solicitors not later than 4 p.m. today.

(Mr. Narayan appears - warned to appear at 2.15 p.m. tomorrow).

P.W.1 - Re-sworn - continues

Year 1974 April 20th cash book page 9 (Exhibit 5). Entry re Brunswick a/c S.100. \$14,966.80 (Witness marks cash book and corresponding entry in ledger - date in ledger is 11th April (Exhibit 7). Also in Exhibit 5 p.15 there is entry for June 20th \$40,000 a/c R.4 a/c R4 is Ram Kuar's a/c in Exhibit 8. Entry in Exhibit 8 is for same sum and is dated 19th June.

30

Baulevu Bus Service - headed K.R. Latchan -
but trading as Baulevu Bus Service August 30th
1978 to 31st December, 1978.

In the
Supreme
Court

Exhibit 9

Plaintiff's
Evidence
No.10
Ram Vilash
Examination

10

I was not given Mr. Martin's private
ledger. From being shown papers in Mr.Keil's
office I gained impression that Mr. Martin was
using his accounts to make advances for various
purposes. I did see ledger from which sheets
came. I only glanced through it. Seemed that
defendant used one account and kept accounts
in various ledger accounts.

17th May
1982
(continued)

In Ram Kuar's account there is charge for
interest. 31/6/69 \$40 - source is a journal
entry. She had a credit balance.

20

On 31st July 1970 there was a credit balance
of \$890.04(?). On 31/12/70 increased to
\$6730.96 credit. There was no credit interest.
Defendant's ledger was quite a large one. I only
looked at it for about 10 minutes.

(Mr. Chernov produce 3 journals for L.R.Martin
1948 - 1970, 1971 - 1976, September 1976 -
31/12/81).

(Witness shown the 3 journals).

I did not see the 1948-1970 journals.

Tendered Exhibit 10.

Tendered 1971 - 1976 - Exhibit 11.

Tendered September 1976 - 31/12/81 to page 11812.

30

Witness asked to find example to support remark
in Report. "Like a Bank Mr. Martin was using these
funds". I was looking at accounts only up to 1971.

(Question put to witness again).

There is journal entry in page 29 of Exhibit 11.
Shows Ram Kuar purchased from Brunswick Motors
2 chassis. There is no cash book to show entries.
Show in Ram Kuar's ledger account.

(Witness asked to mark entries).

(Shown to Defence Counsel).

She had a credit balance of \$10398.67 at the time.

In the
Supreme
Court

Court:

Where are the books?

Plaintiff's
Evidence
No.10
Ram Vilash
Examination

Mr. Koya:

I want the books mentioned in Notice to Produce.

Mr. Chernov:

We will produce books if we are told what books are required.

17th May
1982
(continued)

Mr. Koya:

Reads from Notice to Produce.

10

Court:

Mr. Koya call for production of book required as and when required.

When I furnished accounts I returned all books to defendant's accountant Mr. Chau. I covered period 1971 - 1978.

(Mr. Koya: Calls for cash books)

Mr. Chernov produces 2 cash books 1968 -1978 and two further books to April 1982.

(Witness shown the 4 books - they are books I used for preparation of my accounts.)

20

Books tendered at request of Mr.Chernov - admitted Exhibits 3, 4, 5 & 6. I also examined three sets of loose ledger sheets relating to Brunswick Motors, Ram Kuar & Sons and K.R.Latchan Bus Service. I did not see ledger from which sheets came. I asked for the ledger. Mr. Koya calls for 3 bundles of ledger sheets. Mr.Chernov produces the 3 bundle of ledger sheets. (Witness shown the 3 bundle of ledger sheets)

30

They are the sheets I have been referring to Mr. Chernov seeks to have them introduced.

Mr. Koya: I will put in in due time.

Tender Brunswick Motor sheets 2/11/71 to 20/9/78 Exhibit No.7. Tender Ram Kuar & Son's October 1969 to 1978. Exhibit No.8 I believe Ram Kuar & Sons were trading as K.R.Latchan Bus Service. Tender

Mr. Chernov:

In the
Supreme
Court

No objection to report going in but do not admit the truth of contents. As to letter which Mr. Koya wants admitted would agree to first two pages but not to last two pages which seeks to draw conclusions.) Report put to witness.

Plaintiff's
Evidence
No.10
Ram Vilash
Examination

I prepared preliminary report. Copy produced is my report. Rendered Exhibit No.1.

17th May
1982

10

By June 1980 I was able to comply with instructions and prepare restructured accounts. I made copies available to both parties' solicitors. By letter 2.6.80 sent a set to Mr. Koya and another set to defendant's plaintiff's accountant Mr. Chau.

(continued)

(Court: Mr. Koya are you referring to the accounts already filed by you in book form?)

(Witness shown the accounts)

20

Accounts filed are the ones I am referring to. Admitted as Exhibit No.2 (collectively).

I prepared accounts from ledgers shown me and cheque books. We did not have access to defendant's bank statements. Ledger sheets were loose sheets given to us not in ledger form. I was given a cash book and a journal. We were given receipt books and vouchers. I do not think we were given details of defendant's bank deposit slips. Were shown cheque butts in book form - Bank of N.Z. Not shown Bank Statements of Mr. Martin.

30

Had defendant's annual financial statements prepared by him. All payments went into one bank account and one cash book. I saw defendant's own cash book. It showed other accounts as well. There was one small cash book relating to the three relevant accounts but entries were journal entries from other source.

We keep separate cash book for a client's account it is the only way to keep proper accounts.....

40

We were to find source to prepare restructured accounts.

(Mr.Chernov objects to details of accounts being given without producing book)

In the
Supreme
Court

No. 10

RAM VILASH

Plaintiff's
Evidence
No.10
Ram Vilash
Examination
17th May
1982

P.W.1 - RAM VILASH of Tamavua
Chartered Accountant, duly sworn:

I am partner in Peat Marwick Mitchell & Co.
I started practice in 1970 as sole practitioner.
Became partner 1.1.75.

In October 1979 I went to offices of
Mitchell Keil & Co. to examine some books of
accounts. I think it was 4th October I made notes 10
of my inspection. I went with the plaintiff on
that occasion. I was met by Mr. Keil and the
defendant. I went to inspect defendant's books
of accounts and made a report. I introduced myself
to Mr. Martin and told him I was instructed to
inspect books and to restructure accounts. We
were taken to room where books were and I asked Mr.
Martin to explain to me the basis of his accounts
in respect of Brunswick Motors. That was the
account I was to investigate. I did ask him about 20
K.R.Latchan Bus Service and his company. Mr.Martin
told me that he could not help me as much as my
client. He mentioned Miss Cleary and that she
could furnish more information. She was the
person who wrote the books and kept records. She
was not there at the time. She was present when
I went back that afternoon but defendant was not
there then. She explained how accounts were kept
but I did not consider it satisfactory as she
referred to journal entries purporting to transfer 30
accounts from one client to another. K.R.Latchan's
accounts, Brunswick Motors, Ram Kuar & Sons and
Baulevu Bus Services information transferred from
one account to another by journal entries which
came from another source. She explained all
accounts and moneys were kept by defendant. He
kept money in Bank account in his own name. He
wrote all cheques himself.

Adjourned to 2.15 p.m.

2.15 p.m.

40

Witness re-sworn -

(Mr. Koya - we have given Defence Counsel a copy
of witnesses report. Suggest report be admitted.
Also want to put in letter from Peat Marwick.

documents in Notice to Produce.

In the
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Court

Court:

Not for me to say.

Are you ready to open your case Mr.Koya?

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Mr. Koya:

(continued)

Issues - Brunswick Motors a one man business operated by plaintiff. Whether defendant brought about change in composition of the firm.

10

Mr. Koya reminded that I have read the pleadings.

Mr. Koya:

If I cannot handle case the way I want to I will have to retire from the case.

I wish to consult my client.

Court:

Very well you may consult your client.

Mr. Koya:

Seek short adjournment.

20

Court:

Very well will adjourn to 12.30 p.m.

12.30 p.m.

Mr. Koya:

I will call my first witness.

Court:

You have some witnesses in Court on Subpoena.

Can they be released? (Witnesses called - 4 appear. Mr. Govind, Mr. Chand, Mr. Apted and Mr. Narayan released and warned to appear 9.30 a.m. tomorrow).

30

In the
Supreme
Court

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(continued)

Court:

Request not granted. Tuesday afternoon will be available to Counsel for the accounts as I will be engaged in Chambers.

Court:

Can we consider proposed prayer for relief on Counterclaim.

Mr. Koya:

No objection to 1 & 2. Object to No.3. Agree to 4. Do not agree to 5. Agree to 6. No objection to 7. No objection to anything except para.3.

10

Court:

Without reading paras. 1 to 26 of the Defence I cannot say whether No.3 arises on the Counterclaim. This is an issue that can be argued by Counsel but I propose to allow the amendments.

Leave to amend granted.

Mr. Koya:

Have a further application. Wish to see Mr. Martin's books of accounts dealing with moneylending. Want order for inspection. Refers Marshall v. Goulston Discount (Northern) Ltd. 1966 3 All E.R. 994 - 995.

20

Counsel for Defendant:

Had no notice of inspection. At this stage cannot see whether relevant. Inspection of documents by the parties. One of the particulars sought was in regard to moneylending. Until particulars furnished cannot say whether application a good one. Plaintiff gave Notice to produce dated 13th May 1982.

Not mentioned in notice.

Court:

I will rule on this after plaintiff complying with order for particulars when Counsel will have a further opportunity of arguing the matter.

Mr. Koya:

I want to know if defendant is producing

Mr. Koya:

Seek precise details of what is meant by fully and precisely.

In the
Supreme
Court

Court:

Plaintiff offered to furnish full accounts.

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Mr. Koya:

We will furnish accounts. It is no problem, will consult accountant.

(continued)

Court:

10 To end of 1981.

Mr. Koya:

Happy to do so.

Court:

Can you furnish by Wednesday?

Counsel for Defendant:

As to time for furnishing particulars. Require by tomorrow morning unless given by then defendant will not know particulars - cannot assess what can be met.

20 Mr. Koya:

Impossible to comply.

Court:

I consider that Counsel for defendant's request for furnishing particulars by tomorrow morning is in order. Request was made on 2nd March 1982 and particulars were not furnished until 13th May.

30 Order that plaintiff furnish particulars requested by 9.30 a.m. tomorrow morning (except for accounts of Brunswick Motors) which are to be furnished by Friday 21st May 1978 at 9.30 a.m.

Mr. Koya:

Compelled to seek adjournment to Friday.

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(continued)

Mr. Koya:

No objection to furnishing.

Para.22 of request (b) (c) (d) (f) (j) (k)
and (l).

Mr. Koya:

We happy to furnish. Para. 23 of Request
(b) (d) & (h).

Mr. Koya:

We can furnish.

Para. 31 (a) to (d) inclusive.

Mr. Koya cannot give precise figures.

10

Court:

Do what you can.

Mr. Koya:

Yes Sir.

Court:

Request para. 32 all required.

Mr. Koya:

Can answer some.

Court:

Answer what you can. Para. 34(a) to (e)
inclusive.

20

Mr. Koya:

We will furnish what we can.

Para. 35 (a) and (b).

Mr. Koya:

Object to furnishing. Can provide provisional
accounts but would seek debit certain items which
can only do if Court rules in our favour.

Court:

30

Refers para.30 of Statement of Claim. Rule
that particulars are necessary and should be
furnished.

particulars.

In the
Supreme
Court

Seek request 9 particulars.
Particulars of para.7 of Request are
required

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request (d)
Para. 15 of Request Para.; 10 S/C
Seek (e) (f) (g) & (h) - particulars are
very necessary. Particulars not proper
particulars. Request para.19 refer para.
13 S/C. Want answers to (a) and (b).
Request 22 require answers to (b) (c) (d)
(f) (j) (k) and (l) no particulars provided
and we entitled because of width and
generality of S/C.
Request 23 - para. (b) (d) (h)
Request 31. para. 25 S/C seek (a) (b) (c)
& (d) but not (e)
Request 32 refers to para. 26 S/C - plaintiff
says not entitled. Whole lot required.
Request 34 refer para. 28 must be substantiated
by particulars (a) to (e) inclusive required.
Request 35 para. 29 S/C require (a) and (b).
Para. 30 S/C - believe Court has not made
any order.
Do not resale from position that we entitled
to all particulars. We strongly prejudiced
if particulars not provided.

(continued)

Counsel for defendant -

Hands in Proposed Prayer for Relief.

Mr. Koya:

No order was made by Madhoji J. Prepared to
furnish further particulars if Mr. Martin hands
over all books of accounts. He is an accounting
partner.

Application is irregular.

Mr. Martin is an accounting party. He was
collecting money and banked in his own bank account.
He charged interest.

Court:

Rule that defendant is entitled to further
particulars in 7(d) of REquest of Particulars.

(Court - can we move to Para. 15 of Request?)

Mr. Koya will furnish (e) and (h). Request para.
19(a) and (b).

In the
Supreme
Court

No.8
Further
particulars
13th May
1982

(continued)

33. PARTICULARS UNDER PARAGRAPH (27)
Request for further particulars is not
justified.
34. PARTICULARS UNDER PARAGRAPH (28)
Request for further particulars is not
justified.
35. PARTICULARS UNDER PARAGRAPH (29)
Request for further particulars is not
justified at this stage.

DATED this 13th day of May, 1982.

10

KOYA & CO.

Per: Sd: Ramesh Patel
Solicitors for the Plaintiff

To: The Defendant and or his Solicitors Messrs.
Mitchell Keil & Associates of Dominion
House, Suva.

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1982

No. 9

PROCEEDINGS

IN THE SUPREME COURT OF FIJI
Civil Jurisdiction

20

Civil Action No.12 of 1979

Before the Hon. Mr. Justice Kermode
Monday the 17th day of May, 1982 at 9.30 a.m.

BETWEEN: RAM LATCHAN aka
K.R.LATCHAN Plaintiff
- and -
LESLIE REDVERS MARTIN Defendant

Mr. S.M.Koya with Mr. G.P.Lala for the plaintiff
Mr. A.Chernov Q.C. with Mr. Karkar for the
defendant

30

Mr. Chernov:

Two matters will be amending and also

records. See Plaintiff's Affidavit sworn on the 19th day of April, 1979 and filed herein. See the annextures thereto.

In the
Supreme
Court

23. PARTICULARS UNDER PARAGRAPH (17)

See the Plaintiff's Books of Accounts and other records. See the Plaintiff's Affidavit sworn on the 19th March, 1979 and filed herein with the annextures.

No.8
Further
Particulars
13th May
1982

(continued)

24. PARTICULARS UNDER PARAGRAPH (18)

10

See paragraph (18) of the Amended Statement of Claim. Request for further particulars is not justified.

25. PARTICULARS UNDER PARAGRAPH (19)

Request for further particulars is not justified.

26. PARTICULARS UNDER PARAGRAPH (20)

Request for further particulars is not justified

27. PARTICULARS UNDER PARAGRAPH (21)

20

Request for further particulars is not justified.

28. PARTICULARS UNDER PARAGRAPH (22)

Request for further particulars is not justified.

29. PARTICULARS UNDER PARAGRAPH (23)

Request for further particulars is not justified.

30. PARTICULARS UNDER PARAGRAPH (24)

30

Request for further particulars is not justified.

31. PARTICULARS UNDER PARAGRAPH (25)

Request for further particulars is not justified.

32. PARTICULARS UNDER PARAGRAPH (26)

Request for further particulars is not justified.

In the
Supreme
Court

No.8
Further
Particulars
13th May
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(continued)

15. PARTICULARS UNDER PARAGRAPH (10)
The Defendant has all the relevant particulars of the relevant allegations. He acted as the Plaintiff's Banker, Accountant, Financier friend and Trustee. The confidential nature of the Plaintiff's Bus Service business and the importing Chassis from the United Kingdom and the profits he was making were known to the Defendant. He did not at any time bank any monies paid by the Plaintiff either on behalf of Baulevu Bus Service or Brunswick Motors, Latchan Bus Service or Brunswick Motors, in any case in a separate bank account with any trading bank. Each fact leading to the allegation is well known to the Defendant. 10
16. PARTICULARS UNDER PARAGRAPH (11) (a)
See Paragraph 11(a) of the Amended Statement of Claim.
17. PARTICULARS UNDER PARAGRAPH (11) (b) 20
See Paragraph 11(b) of the Amended Statement of Claim. See Defendant's Books of Accounts and other records.
18. PARTICULARS UNDER PARAGRAPH (12)
See the Defendant's said Affidavit. See the Defendant's Books of Accounts and other records.
19. PARTICULARS UNDER PARAGRAPH (13)
See paragraph (13) of the Amended Statement of Claim. See the Plaintiff's Affidavit sworn on the 19th March, 1979. 30
20. PARTICULARS UNDER PARAGRAPH (14)
See Paragraph (14) of the Amended Statement of Claim and Statement of Change in the firm registered on the 28th December, 1972.
21. PARTICULARS UNDER PARAGRAPH (15)
See Paragraph (15) of the Amended Statement of Claim and the Defendant's said Affidavit.
22. PARTICULARS UNDER PARAGRAPH (16)
See Defendant's Books of Accounts and other 40

Part (1) of his List of Documents dated 20th June 1979. See also his Books of Accounts.

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7. PARTICULARS UNDER PARAGRAPH (6)

The Plaintiff repeats his answers as set forth in the preceding paragraph.

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8. PARTICULARS UNDER PARAGRAPH (8)

The Plaintiff repeats his answers as set forth under the preceding paragraph. See also the Plaintiff's Affidavit (with annexures) sworn on the 19th March, 1979.

(continued)

9. PARTICULARS UNDER PARAGRAPH (9) (a)

The Defendant kept all records pertaining to "K.R.LATCHAN BUS SERVICE" and relevant Books of Account. See the Defendant's Books of Accounts and Ledger.

10. PARTICULARS UNDER SUB PARAGRAPH (9) (b)

The Plaintiff repeats his answers as set forth in the preceding paragraph. See also the Defendant's said Affidavit.

11. PARTICULARS UNDER SUB PARAGRAPH (9) (c)

The Plaintiff repeats his answers as set forth in the preceding paragraph. See also the Defendant's Books of Accounts including the Ledger on the basis upon which the allegations were made.

12. PARTICULARS UNDER SUB PARAGRAPH (9) (d)

The exact dates are not known but the Plaintiff says representations were made at or about the time as alleged in the Statement of Claim.

13. PARTICULARS UNDER PARAGRAPH (9) (e)

The Defendant's said Affidavit and his Books of Accounts that the circumstances in which the Defendant acted adviser, an Accountant, a Financier and a Trustee.

14. PARTICULARS UNDER PARAGRAPH (9) (f)

The Plaintiff repeats his answers as set forth in the preceding paragraph.

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No. 8

FURTHER PARTICULARS

No.8
Further
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IN THE SUPREME COURT OF FIJI
CIVIL JURISDICTION NO.12 OF 1979

BETWEEN: RAM LATCHAN also known
as K.R.LATCHAN Plaintiff

A N D: LESLIE REDVERS MARTIN Defendant

FURTHER PARTICULARS RELATING TO THE
PLAINTIFF'S AMENDED STATEMENT OF CLAIM
AS REQUESTED BY THE DEFENDANT

10

1. PARTICULARS UNDER PARAGRAPH (1)

There was no written agreement.

2. PARTICULARS UNDER PARAGRAPH (3)

See Defendant's Affidavit sworn on the 17th
April, 1979 and filed herein.

3. PARTICULARS UNDER PARAGRAPH (3) (4)

See Defendant's Books of Account and in
particular his Ledger for the relevant
period. See also his said Affidavit.

4. PARTICULARS UNDER PARAGRAPH (3) (b)

20

See Defendant's Books of Account in particular
his Ledger for the relevant period. See also
his said Affidavit.

5. PARTICULARS UNDER PARAGRAPH (4)

The Defendant is in possession of the relevant
facts and his Books of Accounts including
his Ledger do show all the transactions
referred to under this paragraph and see also
his said Affidavit.

6. PARTICULARS UNDER PARAGRAPH (5)

30

The Defendant is in possession of the
relevant facts. See also the Defendant's
"Bundle of various copy letters to Seddan
Motors Limited of England from 1971 to 1975"
and referred as item (5) in Schedule (1)

- (i) used,
- (ii) wrongfully converted to his own use -

In the
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moneys belonging to Brunswick Motors as therein alleged.

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- (b) State each amount of moneys so -

- (i) used,
- (ii) wrongfully converted -

by the defendant as therein alleged.

(continued)

10

- (c) State each act, fact, matter, circumstance or thing upon which the plaintiff relies in support of the allegation that the defendant has -

- (i) used,
- (ii) wrongfully converted to his own use -

moneys belonging to Brunswick Motors.

20

- (d) State the date or dates upon which the account therein referred to should have been in credit but was overdrawn.

- (e) State by what amount the said account should have been in credit but was overdrawn as therein alleged on each such date.

35. Under paragraph 29 thereof:-

- (a) State the amount of profits derived by the plaintiff from Brunswick Motors since 1st October 1978 to the date of this request.

30

- (b) State fully and precisely how the said amount of profits was calculated or made up.

Sd: Illegible

MITCHELL, KEIL & ASSOCIATES
Solicitors for the Defendant

DATED the 2nd day of March, 1982

In the
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Court

referred to related.

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(continued)

32. Under paragraph 26 thereof:-

- (a) State each act, fact, matter, circumstance or thing relied upon in support of the allegation therein made that the defendant was at all material times a money lender.
- (b) State the date or dates upon which each such act, fact, matter, circumstance or thing referred to in sub-paragraph (a) hereof arose or occurred. 10
- (c) State the name of each person to whom the defendant lent any and what sum of money in consideration of a larger sum being repaid.
- (d) State each date upon which the defendant so lent money to each such person.
- (e) State each amount of money so lent by the defendant to each such person.

33. Under paragraph 27 thereof:-

20

- (a) State each date upon which the defendant lent moneys to Brunswick Motors as therein alleged on each such date.
- (b) State each amount of moneys so lent by the defendant to Brunswick Motors as therein alleged.
- (c) State whether the defendant so lent moneys to Brunswick Motors pursuant to any agreement, arrangement, transaction or understanding between the plaintiff and the defendant and/or any other and what person, and if so, give the usual particulars of such agreement, arrangement, understanding or transaction. 30
- (d) Give the usual particulars of each of the money lending transactions referred to in the second sentence thereof.

34. Under paragraph 28 thereof:-

- (a) State each date upon which the defendant - 40

(f) State whether the defendant charged interest on loans pursuant to any agreement or arrangement between the plaintiff and the defendant and/or any other and what person, and if so, give the usual particulars of such agreement, arrangement, understanding or transaction.

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30. Under paragraph 24 thereof:-

10

(a) State each date upon which the Defendant charged Brunswick Motors commission as therein alleged.

(continued)

(b) State each amount of commission so charged by the defendant on each such date.

20

(c) State whether the defendant charged commission pursuant to any agreement, arrangement, transaction or understanding between the plaintiff and the defendant and/or any other and if so what person, and if so, give the usual particulars of any such agreement, arrangement, transaction or understanding.

(d) State the name of each such customer therein referred to.

31. Under paragraph 25 thereof:-

30

(a) State each date upon which the defendant collected moneys as therein alleged.

(b) State each amount of moneys so collected by the defendant on each such date.

40

(c) State whether the defendant collected such moneys as therein alleged pursuant to any agreement, arrangement or understanding between the plaintiff and the defendant and/or any other and what person and if so, give the usual particulars of such agreement, arrangement, transaction or understanding.

(d) Identify with precision each and every amount of outstanding moneys therein referred to.

(e) State what the amount of \$38,822 therein

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(continued)

allegations referred to in sub-
paragraph (g) thereof and further
state the date or dates upon which
each such act, fact, matter, circum-
stance or thing arose or occurred.

28. Under paragraph 22 thereof:-

(a) State each date upon which the defendant collected moneys from the sale of buses and spare parts as therein alleged. 10

(b) State each amount of money so collected by the defendant on each such date.

(c) State whether the defendant collected the moneys as therein alleged pursuant to any agreement, arrangement, transaction or understanding between the plaintiff and the defendant and/or any other and what person, and if so, state the usual particulars of such agreement, arrangement, transaction or understand- 20
ing.

29. Under paragraph 23 thereof:-

(a) State each date upon which the defendant charged for accountancy fees as therein alleged.

(b) State each amount of accountancy fees so charged by the defendant on each such date.

(c) State whether the defendant charged accountancy fees as therein alleged pursuant to any agreement, arrangement, transaction or understanding between the plaintiff and the defendant and/or any other and what person, and if so, state the usual particulars of such agreement, arrangement, transaction or understanding. 30

(d) State each date upon which the defendant charged for interest on loans allegedly made to Brunswick Motors as therein alleged. 40

(e) State each amount of interest on loans so charged by the defendant on each such date.

(c) Give the usual particulars of the notice therein referred to.

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27. Under paragraph 21 thereof:-

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(continued)

10 (a) State each act, fact, matter, circumstance or thing giving rise to the allegations referred to in sub-paragraph (a) thereof and stating the date or dates upon which each such act, fact, matter, circumstance or thing arose or occurred.

(b) State each act, fact, matter, circumstance or thing giving rise to the allegations referred to in sub-paragraph (b) thereof and further state the date or dates upon which each such act, fact, matter, circumstance or thing arose or occurred.

20 (c) State each act, fact, matter, circumstance or thing giving rise to the allegations referred to in sub-paragraph (c) thereof and further state the date or dates upon which each such act, fact, matter, circumstance or thing arose or occurred.

30 (d) State each act, fact, matter, circumstance or thing giving rise to the allegation referred to in sub-paragraph (d) thereof and further state the date or dates upon which each such act, fact, matter, circumstance or thing arose or occurred.

(e) State each act, fact, matter, circumstance or thing giving rise to the allegation referred to in sub-paragraph (e) thereof and further state the date or dates upon which each such act, fact, matter, circumstance or thing arose or occurred.

40 (f) State each act, fact, matter, circumstance or thing giving rise to the allegations referred to in sub-paragraph (f) thereof and further state the date or dates upon which each such act, fact, matter, circumstance or thing arose or occurred.

(g) State each act, fact, matter, circumstance or thing giving rise to the

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of such agreement, arrangement,
transaction or understanding.

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(continued)

24. Under paragraph 18 thereof:-

State whether the said conversion therein referred to was effected pursuant to any agreement, arrangement, transaction or understanding between the plaintiff and the defendant and/or any other and what person and if so, give the usual particulars of such agreement, arrangement, understanding or transaction.

10

25. Under paragraph 19 thereof:-

(a) State whether K.R.Latchan Bus Services ceased to bank any moneys or its earnings with the defendant as therein alleged pursuant to any agreement, arrangement, transaction or understanding between the plaintiff and the defendant and/or any other and what person, and if so, give the usual particulars of such agreement, arrangement, transaction or understanding.

20

(b) Give the usual particulars of the defendant's refusal to finance Brunswick Motors as alleged in subparagraph (a) thereof.

(c) Give the usual particulars of the defendant's refusal to give to the plaintiff any and what detailed accounts of Brunswick Motors as alleged in subparagraph (b) thereof.

30

(d) Give the usual particulars of the defendant's attempts to influence the Plaintiff's bank as alleged in subparagraph (c) thereof and further say whether such attempts were successful or unsuccessful.

26. Under paragraph 20 thereof:-

(a) State each act, fact, matter, circumstance or thing giving rise to the difference of opinion therein alleged.

40

(b) State the date or dates upon which each such act, fact, matter, circumstance or thing arose or occurred.

so, give the usual particulars of such agreement, arrangement, transaction or understanding.

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- (c) State the date or dates upon which of the said bus bodies was -
- (i) built,
(ii) sold -
- by the plaintiff as therein alleged.

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- (d) State how the amount of \$200,000 therein referred to was made up or calculated.

(continued)

- (e) State whether the purchasers therein referred to bought the buses on credit as therein alleged pursuant to any agreement, arrangement, transaction or understanding with the plaintiff or the defendant or both, and if so, state the usual particulars of such agreement, arrangement, transaction or understanding.

- (f) Identify each bill of sale therein referred to.

- (g) State whether the purchasers therein referred to executed such bills of sale pursuant to any agreement, arrangement, transaction or understanding with the plaintiff or the defendant or both, and if so, give the usual particulars of such agreement, arrangement, transaction or understanding.

- (h) State each act, fact, matter, circumstance or thing giving rise to the trust therein referred to.

- (i) State whether the defendant acted as trustee as therein alleged pursuant to any agreement, arrangement, transaction or understanding between the plaintiff and the defendant and if so, give the usual particulars of such agreement, arrangement or understanding.

- (j) State whether the said acceptance was made pursuant to any agreement between the plaintiff and the defendant and any other and what person or persons, and if so, give the usual particulars

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(continued)

- (f) State the amount of profit derived by the plaintiff in respect of each such sale.
- (g) State whether the purchasers therein referred to bought the buses on credit as therein alleged pursuant to any agreement, arrangement, transaction or understanding with the plaintiff or the defendant or both, and if so, state the usual particulars of such agreement, arrangement, transaction or understanding. 10
- (h) Identify each bill of sale therein referred to.
- (i) State whether the purchasers therein referred to executed such bills of sale pursuant to any agreement, arrangement, transaction or understanding with the plaintiff or the defendant or both, and if so, give the usual particulars of such agreement, arrangement, transaction or understanding. 20
- (j) State each act, fact, matter, circumstance or thing giving rise to the trust therein referred to.
- (k) State whether the defendant acted as trustee as therein alleged pursuant to any agreement, arrangement, transaction or understanding between the plaintiff and the defendant, and if so, give the usual particulars of such agreement, arrangement or understanding. 30
- (l) State how the amount of \$82,164.68 therein referred to is made up or calculated.

23. Under paragraph 17 thereof:-

- (a) State the date or dates upon which each of the 36 bus chassis were imported by the plaintiff under the name Brunswick Motors from Seddon Motors Ltd. between 1st January 1975 and 13th September 1978.40
- (b) State whether each of the said bus chassis were so imported by the plaintiff pursuant to any agreement, arrangement, transaction or understanding between the plaintiff and the defendant or the plaintiff and Seddon Motors Ltd. and if

(g) Give the usual particulars of the agreement by which the plaintiff agreed to accept the defendant's demand to make him an equal partner in Brunswick Motors.

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20. Under paragraph 14 thereof:-

Give the usual particulars of the agreement therein referred to.

21. Under paragraph 15 thereof:-

(continued)

10

Give the usual particulars of the advice therein referred to.

22. Under paragraph 16 thereof:-

(a) State the date or dates upon which each of the said 38 bus chassis were imported by the plaintiff under the name K.R.Latchan Bus Service from Seddon Motors Ltd. until the year 1974.

20

(b) State whether each of the said bus chassis was so imported by the plaintiff pursuant to any agreement, arrangement, transaction or understanding between the plaintiff and the defendant and/or between the plaintiff and Seddon Motors Ltd., and if so, give the usual particulars of each such agreement, arrangement, transaction or understanding.

30

(c) State whether the defendant financed the importation of the said chassis as therein alleged pursuant to any agreement, arrangement, transaction or understanding between the plaintiff and the defendant, and if so, give the usual particulars of such agreement, arrangement, transaction or understanding.

(d) State the amount of money lent by the defendant to the plaintiff for the purpose of importing each of the said bus chassis.

40

(e) State the date or dates upon which each completed bus was -

- (i) built,
- (ii) sold -

by the plaintiff as therein alleged.

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plaintiff was indebted to the defendant
in the month of December 1972.

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(continued)

18. Under paragraph 12 thereof:-

- (a) State each act, fact, matter, circumstance or thing giving rise to the defendant's awareness of the financial position of K.R.Latchan Bus Service.
- (b) State the date or dates upon which each such act, fact, matter, circumstance or thing arose or occurred.
- (c) Describe fully and precisely the financial position of K.R.Latchan Bus Service in the month of December 1972.

10

19. Under paragraph 13 thereof:-

- (a) State each act, fact, matter, circumstance or thing giving rise to the allegation that the said representations were false and further state in what particular or particulars were such representations false.
- (b) State the date or dates upon which each such act, fact, matter, circumstance or thing referred to in subparagraph (a) hereof arose or occurred.
- (c) State each act, fact, matter, circumstance or thing by reason of which the plaintiff was led to believe the matters stated therein.
- (d) State the date or dates upon which each such act, fact, matter, circumstance or thing referred to in subparagraph (c) hereof arose or occurred.
- (e) State each act, fact, matter, circumstance or thing relied upon in support of the allegation that the said false representations operated upon the plaintiff's mind as a threat or duress likely to cause financial or economic loss.
- (f) State the date or dates upon which each such act, fact, matter, circumstance or thing referred to in subparagraph (e) hereof arose or occurred.

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sub-paragraph (a) hereof arose or occurred.

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(c) State each item of -

- (i) secret and confidential knowledge,
- (ii) information and methods relating to the plaintiff's business,
- (iii) information relating to the profits the plaintiff was making in his business -

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(continued)

10

acquired by the defendant as therein alleged.

(d) State the date or dates upon which the defendant had acquired each item of knowledge and information referred to in sub-paragraph (c) hereof.

(e) State fully and precisely each and every amount of monetary gain derived by the defendant at the expense or to the detriment of the plaintiff.

20

(f) State each act, fact, matter circumstance or thing constituting the unfair and undue advantage taken by the plaintiff of the confidential and secret matters, information and methods acquired by the defendant by reason of the alleged fiduciary relationship.

(g) State the date or dates upon which each such act, fact, matter, circumstance or thing referred to in sub-paragraph (f) arose or occurred.

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(h) State fully and precisely each and every item of expense or detriment caused to the plaintiff as therein alleged.

16. Under sub-paragraph 11(a) thereof:-

State the usual particulars of the representations therein referred to.

17. Under sub-paragraph 11(b) thereof:-

(a) State the usual particulars of the representations therein referred to.

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(b) State the amount (if any) by which the

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- (d) State the precise amount of the indebtedness to the defendant by -
- (i) the plaintiff,
 - (ii) the plaintiff's mother,
 - (iii) the plaintiff's brother -
- as therein alleged.
13. Under sub-paragraph 9(e) thereof:-
- (a) State each act, fact, matter, circumstance or thing giving rise to the allegation that the defendant has been acting as - 10
- (i) an adviser,
 - (ii) an accountant,
 - (iii) a financier,
 - (iv) a trustee -
- for the plaintiff, his mother and his brother.
- (b) State the date or dates upon which each such act, fact, matter, circumstance or thing arose or occurred. 20
14. Under sub-paragraph 9(f) thereof:-
- (a) State each act, fact, matter, circumstance or thing giving rise to the allegation that the defendant had been -
- (i) a friend,
 - (ii) an adviser,
 - (iii) accountant -
- to the plaintiff's late father as therein alleged. 30
- (b) State the date or dates upon which each such act, fact, matter, circumstance or thing arose or occurred.
15. Under paragraph 10 thereof:-
- (a) State each act, fact, matter circumstance or thing giving rise to the fiduciary capacity therein referred to.
- (b) State the date or dates upon which each such act, fact, matter, circumstance or thing referred to in 40

9. Under sub-paragraph 9(a) thereof:-

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- (a) State each act, fact, matter, circumstance or thing giving rise to the defendant's knowledge as therein alleged.
- (b) State the date or dates upon which each such act, fact, matter, circumstance or thing arose or occurred.

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10. Under sub-paragraph 9(b) thereof:-

(continued)

10

- (a) State each act, fact, matter, circumstance or thing giving rise to the defendant's knowledge as therein alleged.
- (b) State the date or dates upon which each such act, fact, matter, circumstance or thing arose or occurred.

11. Under sub-paragraph 9(c) thereof:-

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- (a) State each act, fact, matter, circumstance or thing giving rise to the defendant's knowledge as therein alleged.
- (b) State the date or dates upon which each such act, fact, matter, circumstance or thing arose or occurred.
- (c) State fully and precisely the manner in which the sum of \$18,799.29 was calculated or arrived at.

12. Under sub-paragraph 9(d) thereof:-

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- (a) State each act, fact, matter, circumstance or thing giving rise to the defendant's knowledge as therein alleged.
- (b) State the date or dates upon which each such act, fact, matter, circumstance or thing arose or occurred.
- (c) State the usual particulars of -
 - (i) the representations,
 - (ii) the statement -attributed to the defendant as therein alleged.

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(continued)

- plaintiff in respect of each such sale.
- (f) State each amount of money received from the sale of the buses which was deposited by the plaintiff with the defendant as therein alleged.
 - (g) State the date or dates upon which each such amount was so deposited by the plaintiff with the defendant.
 - (h) State whether the purchasers therein referred to bought the buses on credit as therein alleged pursuant to any agreement, arrangement, transaction or understanding with the plaintiff or the defendant or both, and if so, state the usual particulars of such agreement, arrangement, transaction or understanding. 10
 - (i) Identify each bill of sale therein referred to.
 - (j) State whether the purchasers therein referred to executed such bills of sale pursuant to any agreement, arrangement, transaction or understanding with the plaintiff or the defendant or both, and if so, give the usual particulars of such agreement, arrangement, transaction or understanding. 20
 - (k) State each act, fact, matter, circumstance or thing giving rise to the trust therein referred to. 30
 - (l) State whether the defendant acted as trustee as therein alleged pursuant to any agreement, arrangement, transaction or understanding between the plaintiff and the defendant or K.R. Latchan Bus Service or both, and if so, give the usual particulars of such agreement, arrangement, transaction or understanding.
 - (m) State whether the said acceptance was made pursuant to any agreement between the plaintiff and the defendant and/or any other and what person or persons, and if so, give the usual particulars of such agreement, arrangement, understanding or transaction. 40

negotiations therein referred to.

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- (b) State the usual particulars of the exclusive agency therein referred to.

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7. Under paragraph 6 thereof:-

- (a) State the date or dates upon which the plaintiff imported any bus chassis from the said company prior to 9th December 1971.

(continued)

- (b) State the number of bus chassis imported by the plaintiff from the said company prior to 9th December 1971.

- (c) State the amount of money lent by the defendant to the plaintiff for the purpose of importing each bus chassis prior to 9th December 1971.

- (d) State whether any moneys lent by the defendant to the plaintiff as therein alleged was so lent pursuant to any agreement, arrangement, transaction or understanding, and if so, give the usual particulars of such agreement, arrangement, transaction or understanding.

8. Under paragraph 8 thereof:-

- (a) State the precise amount advanced by the defendant to the plaintiff to import the said bus chassis between 10th December 1971 and 28th December 1972.

- (b) State the amount of each sum so advanced by the defendant to the plaintiff between 10th December 1971 and 28th December 1972.

- (c) State the date or dates upon which the defendant so advanced each such sum between 10th December 1971 and 28th December 1972.

- (d) State the date upon which each of the said six chassis built bus bodies was -

- (i) imported,
(ii) sold -

by the plaintiff as therein alleged.

- (e) State the amount of profits derived by the

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(continued)

personal cheques as therein
alleged pursuant to any agreement,
arrangement, transaction or
understanding between the plaintiff
and the defendant and/or any other
and what person, and if so, state
the usual particulars of such
agreement, arrangement, transaction
or understanding.

- (ii) the date of each occasion upon which the defendant issued his personal cheques as therein alleged, 10
- (iii) the amount of each cheque so issued,
- (iv) the nature of each transaction in respect of which each such cheque was so issued.
- (g) In respect of the allegation therein contained that "The defendant kept accounts in his private ledger in respect of 'K.R.Latchan Bus Service' under the name of his mother 'Ram Kuar' and his name" - 20
- (i) state whether the defendant kept such accounts pursuant to any agreement, arrangement, transaction or understanding between the plaintiff and the defendant, or between the defendant and the plaintiff's mother,
- (ii) if yes, give the usual particulars of such agreement, arrangement, transaction or understanding. 30
- (h) In respect of the allegation therein contained that the defendant has not given any detailed accounts of the transactions in question, give the usual particulars of any requests made by
- (i) the plaintiff,
- (ii) the plaintiff's mother, 40
- (iii) the plaintiff's brother -

to the defendant to furnish such accounts.

6. Under paragraph 5 thereof:-

- (a) State the usual particulars of the

10 (d) State whether each such amount or amounts of money so lent by the defendant on each such date was so lent by the defendant to the plaintiff's firm known as "Brunswick Motors" pursuant to any agreement, arrangement, transaction or understanding between the defendant and the said firm, or any other and what person, and if so, give the usual particulars of each such agreement, arrangement, transaction or understanding.

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(continued)

(e) State the purpose for which each such amount of money was so lent by the defendant to the plaintiff's firm known as "Brunswick Motors".

5. Under paragraph 4 thereof:-

- 20 (a) Identify precisely the mortgage therein referred to.
- (b) Identify precisely the bill of sale therein referred to.
- (c) State the usual particulars of the arrangement therein referred to.
- (d) In respect of the sum of \$1,057,102.80 alleged to have been deposited as therein alleged, state -
- (i) the amount of each such deposit.
- (ii) the date upon which each such amount was so deposited,
- (iii) the purpose of making each such deposit.
- (e) State each act, fact, matter, circumstance or thing upon which the Plaintiff relies in support of the allegation that the defendant acted as banker without license.
- 30 (f) In respect of the allegation therein contained that "Whenever 'K.R.Latchan Bus Service' required moneys to meet its operational expenses, the defendant issued his personal cheques to meet the same", state -
- (i) whether the defendant issued his
- 40

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(continued)

- (ii) the plaintiff's mother,
- (iii) the plaintiff's brother.

(c) State each amount or amounts so lent by the defendant to -

- (i) the plaintiff,
- (ii) the plaintiff's mother,
- (iii) the plaintiff's brother -

on each such date.

(d) State whether each such amount or amounts of money so lent by the defendant on each such date was so lent by the defendant to -

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- (i) the plaintiff,
- (ii) the plaintiff's mother,
- (iii) the plaintiff's brother -

pursuant to any agreement, arrangement, transaction or understanding between the defendant and -

- (x) the plaintiff,
- (y) the plaintiff's mother,
- (z) the plaintiff's brother -

20

and if so, give the usual particulars of such agreement, arrangement, transaction or understanding.

(e) State the purpose for which each such amount of money was so lent by the defendant to -

- (i) the plaintiff,
- (ii) the plaintiff's mother,
- (iii) the plaintiff's brother.

30

4. Under sub-paragraph 3(b) thereof:-

(a) State the amount of money lent by the defendant to the plaintiff's firm known as "Brunswick Motors".

(b) State the date or dates upon which the defendant lent any money to the plaintiff's firm known as "Brunswick Motors".

(c) State each amount or amounts so lent by the defendant to the plaintiff's firm known as "Brunswick Motors".

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10 same was in writing, identify sufficiently the document or documents (if more than one) constituting the same and say in whose possession each such document now is and where it may be inspected and if lost or destroyed say where a copy thereof may be inspected and if there be no copy give the material substance thereof. Insofar as the same was oral say when, where and between what actual persons the conversation or conversations (if more than one) constituting the same took place and give the material substance of each such conversation. Insofar as the same was to be implied, set forth (with all material dates and places) each act, fact, matter, thing and circumstance giving rise to such implication or implications (if more than one). Insofar as such agreement, transaction or thing was constituted wholly or partly by a document, conversation or act of a person acting or purporting to act on behalf of another, give the like particulars as are sought above of the authority (express, implied or ostensible) on behalf of that other to make such document, engage in such conversation or do such act.

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No.7
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1982

(continued)

20 1. Under paragraph 1 thereof :-

State the usual particulars of the partnership therein referred to.

30 2. Under paragraph 3 thereof :-

In respect of the association therein referred to, state whether the said association arose out of any agreement, arrangement, transaction or understanding between the plaintiff and the defendant and/or any other and what person, and if so, state the usual particulars of such agreement, arrangement, transaction or understanding.

40 3. Under sub-paragraph 3(a) thereof:-

(a) State the amount of money so lent by the defendant to -

- (i) the plaintiff,
- (ii) the plaintiff's mother,
- (iii) the plaintiff's brother.

(b) State the date or dates upon which the defendant lent any money to -

- (i) the plaintiff,

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fit under the provisions of the
Partnership Ordinance Cap.217 and the
Plaintiff do have the costs of this
action.

No.6
Reply to
Defence
and Defence
to Counter-
claim
9th December
1980

DATED this 9th day of December, 1980

KOYA & CO.
Per: Sd: S.M.KOYA
Solicitor for the Plaintiff

(continued)

TO: The Defendant and/or his Solicitors,
Messrs. Mitchel Keil and Associates,
Dominion House, Suva.

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No.7
Request
for Further
and Better
Particulars
2nd March
1982

No. 7

REQUEST FOR FURTHER AND
BETTER PARTICULARS

IN THE SUPREME COURT OF FIJI

CIVIL ACTION NO.12 OF 1979

B E T W E E N:

RAM LATCHAN also known
as K.R.LATCHAN Plaintiff

- and -

LESLIE REDVERS MARTIN Defendant

20

REQUEST FOR FURTHER AND BETTER
PARTICULARS OF AMENDED STATEMENT
OF CLAIM

TAKE NOTICE that the defendant requires within
fourteen days of the date hereof the following
further and better particulars of the
plaintiff's Amended Statement of Claim herein.

NOTE: In this Request, wherever "the usual
particulars" are sought of any agreement,
arrangement, transaction, understanding or thing
say whether the same was wholly or partly in
writing, oral or to be implied. Insofar as the

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D A T E D this 16th day of October, 1980

In the
Supreme
Court

Sd: Illegible

MITCHELL, KEIL & ASSOCIATES
Solicitors for the Defendant

No.5
Defence
16th October
1980

(continued)

No. 6

REPLY TO DEFENCE AND
DEFENCE TO COUNTERCLAIM

No.6
Reply to
Defence and
Defence to
Counterclaim
9th December
1980

IN THE SUPREME COURT OF FIJI

No.12 of 1979

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BETWEEN: RAM LATCHAN also known
as K.R. LATCHAN Plaintiff
A N D : LESLIE REDVERS MARTIN Defendant

REPLY TO DEFENCE

- (1) The Plaintiff joins issue with the Defendant on all such matters which have been disputed by the Defendant in his Defence.

DEFENCE TO COUNTER-CLAIM

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- (1) The Plaintiff repeats the allegations mentioned in paragraphs (1) to (28) of the Amended Statement of Claim and says that he ought to be declared as the sole proprietor and owner of the firm known as "BRUNSWICK MOTORS".
- (2) The Plaintiff denies that the Defendant was at any time a partner in the said firm.
- (3) That if this Honourable Court holds that the Defendant was a partner in the said firm, then and in such case the Plaintiff says that an Order for dissolution be made with effect

40

In the
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No.5
Defence
16th October
1980

(continued)

holding himself out agreeing to, accepting and conducting himself as an equal partner with the Defendant in the partnership of "Brunswick Motors" the Plaintiff is now estopped from claiming that the partnership did not exist on the terms hereinbefore set out.

22. Of the matters complained of by the Plaintiff in the Statement of Claim which are denied by the Defendant the Defendant repeats paragraphs 1 to 20 hereof and says that the Plaintiff at all material times freely agreed to and continued to accept and acknowledge the Defendant as his equal partner in the partnership of Brunswick Motors and accepted and acknowledged the Defendant's transactions and responsibilities carried out in relation thereto the Defendant has thereby waived any of the matters complained of. 10

23. Of the matters complained of by the Plaintiff in the Statement of Claim which are denied by the Defendant, the Defendant repeats paragraphs 1 to 20 hereof and says by the Plaintiff at all material times accepting the Defendant as an equal partner in the partnership of Brunswick Motors and the transactions carried out by the Defendant in relation to the partnership the Plaintiff has acquiesced in the matters complained of. 20

24. The Defendant repeats paragraphs 1 to 20 hereof and says the Defendant will plead laches on behalf of the Plaintiff. 30

25. Furthermore certain matters referred to in the Statement of Claim arose more than 6 years before the commencement of this action and are barred by virtue of the Limitation Act 1971.

26. By reason of the matters aforesaid the Plaintiff is not entitled to any of the reliefs sought and the Defendant asks that the Plaintiff's claim be dismissed with costs.

COUNTER-CLAIM

27. The Defendant repeats paragraphs 1 to 26 hereof and Counter-claims for an Order that the equal partnership of Brunswick Motors existing between the Plaintiff and the Defendant be dissolved with effect from the 30th day of September 1978 under the provisions of the Partnership Ordinance Cap.217 and that the Defendant have the costs of this action. 40

partner with the Defendant in the Brunswick Motors partnership the functions set out in paragraphs 21(a) to (g) and had at no time during that period queried or questioned that his responsibilities should be otherwise or that payment should be made to him as claimed in the reliefs sought for carrying out his responsibilities.

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No.5
Defence
16th October
1980

10

Save as aforesaid the Defendant denies the allegations in paragraph 21 of the Statement of Claim.

(continued)

15. The Defendant repeats paragraph 9(b) hereof and says that at all material times it was the ability through his own resources to finance the partnership and being able to finance on terms the sale of buses by Brunswick Motors and generally carrying out his agreed responsibilities that the partnership was so successful.

20

Save as aforesaid the Defendant denies the allegations in paragraph 22 of the Statement of Claim.

16. The Defendant says that the Plaintiff had at all times agreed to the inclusion in the accounts of the partnership of accountancy fees, comprising the cost of staff, and interest on funds advanced to the partnership and commission to Defendant for providing finance to enable sales on terms by the partnership.

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Save as aforesaid the Defendant denies the allegations in paragraphs 23 and 24 of the Statement of Claim.

17. The Defendant repeats paragraph 10 hereof. Save as aforesaid the Defendant denies the allegations in paragraph 25 of the Statement of Claim.

18. The Defendant denies each and every allegation in paragraphs 26 and 27 of the Statement of Claim.

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19. The Defendant says that on occasions when his account with the partnership was in debit he paid interest on outstanding amounts. ~~Save as aforesaid the Defendant denies the~~ allegations in paragraph 28 of the Statement of Claim.

20. The Defendant has no knowledge of the matters set out in paragraph 29 of the Statement of Claim.

21. The Defendant repeats paragraph 1 to 20 hereof and says that the Plaintiff at all material times

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No.5
Defence
16th October
1980

partnership of Brunswick Motors has since been carried on on that basis. Save as aforesaid the Defendant denies each and every allegation in paragraphs 8, 9, 10, 11, 12, 13, 14 and 15 of the Statement of Claim in particular that his dealings with the Plaintiff and his family established a trustee or fiduciary relationship between them.

(continued)

10. The Defendant says that a substantial number of bus chassis were imported for and on behalf of and by the partnership on which bus bodies were built and complete buses sold on cash or terms basis. In each case where buses were sold on terms, which sales were arranged by the Plaintiff, the purchasers would give a Bill of Sale over the purchased vehicle to the Defendant and upon its proper execution stamping and registration the Defendant would from his own funds credit the partnership at that time with that amount so that the full purchase price of the bus so sold was in fact received by the partnership business as if a cash sale had taken place. In these terms transactions the Defendant denies that he at any time acted as Trustee for the Plaintiff and/or K.R.Latchan Bus Service. Save as aforesaid the allegations in paragraphs 16 and 17 of the Statement of Claim are denied.

11. Other than that a company called K.R.Latchan Buses Limited was incorporated at the Companies Office, the Defendant denies each and every allegation in paragraph 18 of the Statement of Claim.

12. The Defendant denies each and every allegation in paragraph 19 of the Statement of Claim.

13. The Plaintiff has at all material times accepted and acted in accordance with being, with the Defendant an equal partner in the partnership of Brunswick Motors. That it was the Plaintiff's failure in 1978 to supply information of the business under his control to the Defendant to enable the proper accounts of the business to be prepared. The Plaintiff gave notice to determine the partnership with effect from the 30th September 1978. Save as aforesaid the Defendant denies the allegations in paragraph 20 of the Statement of Claim.

14. The Defendant repeats paragraph 9(b) hereof and says that the Plaintiff had at all material times accepted as his responsibility as an equal

Plaintiff paid for from the Defendant's funds. Save as aforesaid the Defendant denies the allegations in paragraph 6 of the Statement of Claim.

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8. The Defendant admits paragraph 7 of the Statement of Claim.

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Defence
16th October
1980

10 9. (a) The Plaintiff in 1971 and 1972 continued to import Seddon bus chassis again without finance or making arrangements for finance for the payment of the chassis. It became clear to the Defendant from his knowledge of the business affairs of the Plaintiff's family that although the dairy and bus service businesses produced a certain income the businesses were not in a financially strong position so as to support the Plaintiff's separate establishment and continuation of the bus importing business. It appeared to the Defendant that the Plaintiff did not appreciate that position. That if the Plaintiff would continue with the said additional business without sufficient capital resources or having the business established on a proper financial basis then he and the family businesses would get into serious financial difficulties.

(continued)

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30 40 (b) This was explained to the Plaintiff sometime in 1972 and he then appeared to fully understand and appreciate the position. The Defendant suggested to the Plaintiff who accepted, that the business of Brunswick Motors should be operated between them on an equal partnership basis, with each partner having designated responsibilities. The Plaintiff would be in charge of the day to day operations of the business of ordering, importing bus chassis, building bus bodies and selling the completed buses including maintaining sufficient stocks of spare parts and generally looking after the business. The Defendant would have the responsibility for looking after the accounts of the business and financial aspects and providing finance to the business and credit facilities as required from time to time. Each partner would contribute, and did contribute the sum of \$10,000 as capital to the venture. This capital is the sum of \$20,000 referred to in paragraph 8 of the Statement of Claim.

50 (c) After agreeing and to give effect to this the Plaintiff and the Defendant filed change of particulars of the partnership of Brunswick Motors which was registered at the Office of the Administrator General on the 29th December 1972 to be effective from the 17th February 1971. The business of the

In the
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No.5
Defence
16th October
1980

(continued)

5. (a) The Plaintiff's mother gave the Defendant a Mortgage No.81973 over her one-third interest in the property in Certificate of Title 3580. The Defendant says that this is a matter between the Defendant and the Plaintiff's mother and not with the Plaintiff.

(b) To assist the Plaintiff's family and to ensure that proper financial control was kept for the bus service operation having fully explained the matter to the Plaintiff's mother and later the Plaintiff and his brother and with their full agreement, the takings of the bus service business were collected by Plaintiff's family and brought to the Defendant's office for checking and confirmation with the records prepared and supplied by the Plaintiff's family. After this the Plaintiff or someone on the family's behalf would deposit those takings with the Defendant's bank on behalf of the Plaintiff's family. Full particulars of the amounts of each banking were at all times known to the Plaintiff's family and were entered in records kept by the Defendant to the credit of the Plaintiff's family.

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(c) All accounts for the dairy and bus businesses income and outgoings were supplied to the Defendant by the Plaintiff's family and after checking the details were received or paid by the Defendant from the funds held with respect to the Plaintiff's family's businesses.

(d) This arrangement was at all times freely accepted by the Plaintiff's mother and later the Plaintiff and his brother. At no time did any of them intimate that they were not satisfied with the arrangement or not knowing their financial position having all records themselves or available of income and outgoings in addition to the annual accounts. Save as aforesaid the Defendant denies each and every allegation in paragraph 4 of the Statement of Claim.

30

6. The Defendant became aware that the Plaintiff intended to commence a separate additional business of importing bus chassis for construction of bus bodies and sale of complete buses and had contacted Seddon Motors Limited of England to this effect. Save as aforesaid the Defendant denies the allegations in paragraph 5 of the Statement of Claim.

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7. Subsequently the Plaintiff without any finance or arrangement for finance purchased 2 Seddon chassis which the Defendant at the request of the

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Save as aforesaid the Defendant denies the allegations in paragraph 1 of the Statement of claim.

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Court

2. As to paragraph 2 of the Statement of Claim the Defendant at all material times has been engaged in various businesses including as accountant. It is denied that the Defendant has at any time carried on the business of moneylender.

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Defence
16th October
1980

(continued)

10

3. (a) The Defendant knew the Plaintiff's father as a Tailevu dairy farmer for a number of years before his death in 1949 during which time the Defendant had helped the Plaintiff's father to obtain prompt and speedy payment for his dairy cream supply from the Rewa Dairy through its agent Pearce & Company and also assisted him in purchasing needed farm supplies from that company. At no time did the Defendant carry out accountancy work or lend moneys to the Plaintiff's father.

20

(b) After the Plaintiff's father's death in August 1949 his widow Ram Kuar having been advised to do so by her late husband came to see the Defendant and requested his assistance in her business affairs which at that time consisted solely in the operation of the family dairy farm. This assistance was freely given by the Defendant.

30

(c) Sometime later the Plaintiff's mother requested and sought the Defendant's assistance, in particular his financial assistance, the family business having insufficient financial resources, to purchase a bus and establish and operate a bus service. This assistance was given. This business subsequently grew and required the purchase and financing of a number of other buses. This assistance requested and agreed to and accepted at first by the Plaintiff's mother and later by the Plaintiff on becoming a partner in the business and also by his brother continued until sometime in December 1977. Save as aforesaid the Defendant denies the allegations in paragraph 3(a) of the Statement of Claim.

40

4. The Defendant says that at all material times commencing from 17th February 1971 he was a full equal partner with the Plaintiff in the partnership of "Brunswick Motors" each partner having agreed duties and functions with respect to the partnership. Save as aforesaid the Defendant denies the allegations in paragraph 3(b) of the Statement of Claim.

(xiii) that a sum of \$6000.00 per annum either as remuneration or allowance be allowed in favour of the Plaintiff in respect of services rendered by him to "BRUNSWICK MOTORS" in managing the day to day affairs of "BRUNSWICK MOTORS", supervising Bus building arranging sales of Buses and Spare Parts and General welfare and interest of the Partnership at the material times;

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No.4
Amended
Statement
of Claim
12th
September
1980

(continued)

(xiv) that a debit of 10% on all spare parts and a debit of 20% on all Chassis taken over by or sold to "BRUNSWICK MOTORS" in favour of the Plaintiff be allowed.

(h) For a Declaration that from the 9th December, 1971 until 30th September 1978 the Plaintiff for and on behalf of the said Firm has been depositing moneys with the Defendant and that the Defendant had at all material times banked the said moneys in his own Bank account with the Bank of New Zealand, Suva, and that in his Ledger Account the Defendant had at all material times showed the monies lying to the credit or debit of the said Firm and that the Defendant used the said monies for his personal use at a time when the Defendant's own account with his Bank was overdrawn.

(i) For an Order that the Defendant do pay to the Plaintiff such damages or compensation as may be just and equitable for the use of the monies so received for and on behalf of the Plaintiff and the said Firm.

(j) For an Order that the Defendant do pay to the Plaintiff such damages or compensation as may be just and equitable for the use of confidential information, matters or methods of his business, or for use of Plaintiff's secrets.

(k) For a Declaration that all moneys lent to "BRUNSWICK MOTORS" and/or the Plaintiff by the Defendant together with any interest charged by him since the inception of "BRUNSWICK MOTORS" irrevocable at law.

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Amended
Statement
of Claim
12th
September
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(continued)

- (iv) that profit or earning out of the sale of Buses which were, imported by "K.R.Latchan Bus Service" from Seddon Motors Limited between 1971 and 1974 be excluded from the accounts of "BRUNSWICK MOTORS";
- (v) that all moneys charged by the Defendant as commission against "BRUNSWICK MOTORS" for any purpose or on the sale of Buses to various purchasers between November, 1971 to 30th September, 1978 be disallowed; 10
- (vi) that interest charged by the Defendant against "BRUNSWICK MOTORS" be disallowed;
- (vii) that accounting fees charged by the Defendant for preparing the accounts of "BRUNSWICK MOTORS" be disallowed;
- (viii) that all travelling expenses charged against or collected from "BRUNSWICK MOTORS" by the Defendant during the years be disallowed; 20
- (ix) that all moneys lent by the Defendant to "BRUNSWICK MOTORS" and debited by him with interest in the said Firm's accounts be disallowed;
- (x) that the items shown as "garage and workshop" as being part of the Assets of "BRUNSWICK MOTORS" in its Balance Sheet or Trading Account by the Defendant be excluded; 30
- (xi) that a debit be allowed to be made against "BRUNSWICK MOTORS" in its account in the sum of \$3600.00 per annum as rent owing to "K.R. LATCHAN BUS SERVICE" or to the Defendant personally for the use of the garage and Workshop situated at Wainibokasi, Nausori; 40
- (xii) that a sum of \$2400.00 per annum be allowed as a credit in favour of the Plaintiff for the use of his car for promoting the business of "BRUNSWICK MOTORS" during the relevant years;

No.9979 whereby the Defendant was shown as a Partner in the said Firm;

In the Supreme Court

- 10 (c) for a Declaration that the Defendant exercised undue influence over the Plaintiff to bring about a change in the composition of the said firm and the Defendant obtained for himself one-half share in the said firm without contributing any moneys to the firm or without paying any premium to the Plaintiff to become a Partner therein;

No.4 Amended Statement of Claim 12th September 1980

(continued)

- (d) for an Order that the change in the composition of the said Firm aforesaid be set aside;

- 20 (e) for an Order that the Defendant do account to the Plaintiff for all moneys received by the Defendant and expanded by him for and on behalf of the said firm from the 2nd February, 1971 to the 30th September, 1978.

- 30 (f) in the alternative for a Declaration that the said firm was dissolved on the 30th September, 1978 and that therefore accounts between the Plaintiff and the Defendant as partners be settled in accordance with the requirements of Section 45 of the Partnership Act, Cap. 217;

- (g) for a Declaration that in settling the accounts between the Plaintiff and the Defendant as aforesaid :-

(i) all monies charged by the Defendant against the said Firm as Accountancy fees be excluded;

40 (ii) all income and other transactions on sale and purchase of bus chassis and spare parts prior to the 31st December 1972 be excluded and be regarded as part of the Plaintiff's own income for all purposes;

(iii) all secret or other profits made by him in the sale of vehicles sold by the said firm between 9th day of December, 1971 and the 30th day of September, 1978 be debited against the Defendant;

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(continued)

three (3) Chassis. They are ready
for sale;

(d) looked after the spare parts or
"stock-in-trade" which were in his
garage premises as at 30th September,
1978 at Wainibokasi, Nausori.

30. THAT the Plaintiff undertakes to file the
accounts of "BRUNSWICK MOTORS" of its
operations since 1st October, 1978 when so
required by this Honourable Court.

10

W H E R E F O R E the Plaintiff claims against
the Defendant :-

(a) for a Declaration that the Plaintiff
formed a Firm known as "BRUNSWICK MOTORS"
on the 9th December, 1971 and registered
the same under the registration of
Business Name Act, Cap.218 under
Certificate of Registration No.9197
at the office of the Administrator
General, that at all material time he
was the sole proprietor of the said
firm that he is entitled to all the
income and profits of the said Firm from
its inception to the date hereof.

20

(b) for a Declaration that at all material
time there existed a confidential and
fiduciary relationship between the
Plaintiff and the Defendant, that the
Defendant became the Plaintiff's
Trustees in all matters concerning
the Plaintiff's business, that the
Defendant acted as the Plaintiff's
sole Business Advisor, his Accountant
and his Financier and because of such
confidential and fiduciary relationship,
the Defendant had access to and acquired
the Plaintiff's business secrets and
methods employed by him in relation
to his business and therefore was in a
position of influence over the Plaintiff.
Furthermore, by reason of such
confidential and fiduciary relationship
and by reason of the false representa-
tion aforesaid, the Defendant influenced
the Plaintiff and induced him to accept
the Defendant as a Partner of the said
Firm, enter a change of particulars as
to the composition and caused the same
to be registered at the office of
Administrator General under registration

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refused to bring into accounts of "BRUNSWICK MOTORS" all outstanding moneys due by the said purchasers including the sum of \$38,800.22 appearing under the heading "Sundry Debtors of the Balance Sheet prepared by the Defendant for the year ending 31st December, 1977".

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26. THAT at all material times the Defendant was :-

(a) a Moneylender within the meaning of the word in the Moneylender's Act Cap.210;

(b) a person who lent a sum of money in consideration of a larger sum being repaid and coming within the purview of Section 3 of the said Act.

27. THAT at the relevant time, when the Defendant lent moneys to "BRUNSWICK MOTORS" he did not hold any Licence as required by Section 15 of the said Act and no note or memorandum of contract was ever entered into between the parties as required by Section 16 of the said Act. The Plaintiff therefore says that all the moneylending transactions between the Defendant and "BRUNSWICK MOTORS" and/or the Plaintiff are unenforceable at law.

28. THAT the Defendant has used or wrongfully converted his own use moneys belonging to "BRUNSWICK MOTORS" at such times during the period of which operating when moneys belonging to "BRUNSWICK MOTORS" were in credit with the Defendant but the Defendant's own bank account was overdrawn.

29. THAT since 1st October, 1978 the Plaintiff has carried out the following acts in relation to "BRUNSWICK MOTORS" :-

(a) opened an account with National Bank of Fiji under the name of "K.R. LATCHAN" in trust for "BRUNSWICK MOTORS";

(b) obtained the service of "K.R. LATCHAN BUSES LIMITED" to complete a partly built body in one chassis and sold same. The moneys received from this sale have been banked with the National Bank of Fiji;

(c) obtained the services of "K.R. LATCHAN BUSES LIMITED" in building bus body on

(continued)

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(continued)

- at his said garage;
- (d) deposited the money received from the sale of completed buses and spare parts with the Defendant at the relevant time;
- (e) looked for customers to purchase Buses assembled and completed by "BRUNSWICK MOTORS" and in this connection travelled by ship and aircraft to different parts of Fiji and Tonga;
- (f) used his car regularly in promoting the sale of "Seddon Buses" to Bus Operators in Fiji; 10
- (g) used his garage to house the Chassis buses and spare parts belonging to "BRUNSWICK MOTORS".
22. THAT apart from collecting moneys from the sale of buses and spare parts belonging to "BRUNSWICK MOTORS" and compiling Balance Sheet and Profit and Loss Account between the period November, 1971 and 30th September, 1978, the Defendant was quite inactive in working for or in promoting the business of "BRUNSWICK MOTORS". 20
23. THAT in the Profit and Loss Accounts compiled by the Defendant for the period November, 1971 to 30th September, 1978 the Defendant has without the Plaintiff's consent, wrongly charged :-
- (a) Accountancy fees;
- (b) Interest on loans allegedly made to "BRUNSWICK MOTORS". 30
24. THAT between the 1st January, 1975 and 30th September, 1978 the Defendant without the Plaintiff's consent had wrongly charged "BRUNSWICK MOTORS" commission for selling bus to different customers when in fact he did not carry out any such sales.
25. THAT between 1st January, 1975 and 30th September 1978 the Defendant collected moneys from the purchasers representing the balance of purchased price of the bus sold to them and belonging to "BRUNSWICK MOTORS" but failed or refused to bring the same into the account of "BRUNSWICK MOTORS". Likewise in respect of said period the Defendant had failed or 40

- | | | |
|----|---|---|
| | (24) completed Buses were sold on credit and the purchasers executed a Bill of Sale in favour of the Defendant in each case to secure the balance of purchase price. The Plaintiff says that the Defendant acted as Trustee for "BRUNSWICK MOTORS" in accepting the said Bills of Sale. | In the
Supreme
Court |
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1980 |
| 10 | 18. IN 1977 "K.R. LATCHAN BUS SERVICE" converted itself into a Limited liability Company under the name of "K.R. LATCHAN BUSES LIMITED". | (continued) |
| | 19. THAT after 31st December, 1977 "K.R.Latchan Bus Services" ceased to bank any moneys or its earnings with the Defendant and thereafter serious differences of opinion arose as to the following matters :- | |
| | (a) the Defendant refused to finance "BRUNSWICK MOTORS"; | |
| 20 | (b) the Defendant refused to give to the Plaintiff any detailed accounts of "BRUNSWICK MOTORS"; | |
| | (c) the Defendant attempted to influence the Plaintiff's Bank (Bank of New Zealand) not to advance any money to "K.R.LATCHAN BUSES LIMITED". | |
| 30 | 20. THAT because of the difference of opinion as aforesaid the Plaintiff says that in the month of August, 1978 he gave notice that with effect from 30th September, 1978 the purported partnership business of "BRUNSWICK MOTORS" be dissolved. | |
| | 21. THAT in relation to the business of "BRUNSWICK MOTORS" the Plaintiff carried out the following duties between 2nd February, 1971 and 30th September, 1978 :- | |
| 40 | (a) took delivery of the Chassis and spare parts imported from Seddon Motors Limited and transported the same to his garage at Wainibokasi, Nausori; | |
| | (b) supervised the construction of Bus body on the Chassis at all relevant times <u>and in connection therewith used and applied his skill and expertise;</u> | |
| | (c) supervised the sale of spare parts stored | |

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(continued)

- registered by a firm or individual as required by the Registration of Business Names Act Cap.218 and thereby sought the registration of the change in the composition of the firm "BRUNSWICK MOTORS". Such change was registered on the 28th December 1972 and on the 2nd January, 1973 a Certificate of Registration was issued by the Administrator General in that behalf.
15. THAT sometime after the registration of the change in the composition of "BRUNSWICK MOTORS", the Defendant advised the Plaintiff that he re-adjusted the accounts in the Defendant's ledger and other Books of Accounts. 10
16. THAT notwithstanding the change in the composition of "BRUNSWICK MOTORS", the Plaintiff continued to import under the name of "K.R.LATCHAN BUS SERVICE" Bus Chassis from Seddon Motors Limited until the year 1974. The Plaintiff imported more than thirty eight (38) Chassis from the said Company under the name of "K.R. Latchan Bus Service" between 1971 and 1974 as shown in the list marked "A" and annexed hereto. The Defendant financed the importation of the said Chassis. The Plaintiff caused Bus Body to be built on the thirty eight (38) Chassis aforesaid and sold the same as a completed Bus. Particulars of such sale have been rendered to the Defendant. Sixteen (16) completed Buses were sold on credit and the purchasers executed in favour of the Defendant a Bill of Sale over the Bus sold in each case. The Defendant acted as Trustee for "K.R. Latchan Bus Service" in accepting the said Bills of Sale. The Plaintiff says that nett profit from the sale of the said Buses exceeded \$82,164.68 for the period aforesaid. He says that the said profit should not be regarded as profit of the firm "BRUNSWICK MOTORS" but as part of the profit of "K.R.LATCHAN BUS SERVICE". 20 30 40
17. THAT between 1st January, 1975 and 30th September, 1978 the Plaintiff imported more than thirty-six (36) Bus Chassis under the name of "BRUNSWICK MOTORS" from Seddon Motors Limited. On each of the thirty six (36) Chassis so imported, a Bus body was built on the Chassis and a completed bus was then sold. Particulars of such sale have been rendered to the Defendant. The Plaintiff says that the nett profit from the sale of the said completed Buses exceeded \$200,000. Twenty four 50

and says that the Defendant acted in a fiduciary capacity at all material times. In such capacity he acquired knowledge of confidential and secret nature, including information and methods relating to the Plaintiff's business and the Profits the Plaintiff was making in his business. The Defendant for the purpose of his own gain at the expense or to the detriment of the Plaintiff took unfair and undue advantage of all such confidential and secret matters, information and methods acquired by him by reason of the fiduciary relationship aforesaid.

In the
Supreme
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No.4
Amended
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of Claim
12th
September
1980

(continued)

10
11. THAT in the light of the foregoing state of affairs the Defendant personally in the month of December, 1972 at Suva :-

20 (a) made representations to the Plaintiff to the effect that his late father had asked him to guide the Plaintiff and assist him after his death;

30 (b) made representations to the Plaintiff to the effect that the Plaintiff was heavily indebted to the Defendant and that he could not carry on lending any more money to him or "K.R.Latchan Bus Service" unless he agreed to make him an equal partner in his firm "BRUNSWICK MOTORS". He made it clear that his decision on this matter was final.

12. THAT at the time when the said representations were made the Defendant was fully aware of the said financial position of "K.R. LATCHAN BUS SERVICES".

40 13. THAT by reason of such false representations the Plaintiff was led to believe that if he did not accept his demand the Defendant was in a position to ruin the Plaintiff financially and such false representation operated upon the Plaintiff's mind as or threat or duress likely to cause financial or economic loss. Relying on such representations, the Plaintiff was induced to act and he therefore agreed to accept the Defendant's demand to make him an equal partner in "BRUNSWICK MOTORS".

14. THAT pursuant to the agreement referred to in the preceding paragraph, the Defendant and the Plaintiff on the 28th December, 1972 signed a statement of change in the particulars

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Amended
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(continued)

Pursuant to the earlier agreement, he deposited the money received from the sale of buses with the Defendant. Some purchasers bought the buses on credit and having paid a deposit, they executed Bill of Sale over the Bus sold to them in favour of the Defendant. The Defendant acted as Trustee for "K.R.Latchan Bus Service" and accepted the said Bill of Sale to secure the balance of purchase price.

10

9. THAT in December, 1972 the state of affairs which existed between the Defendant vis-a-vis with the Plaintiff, his mother and his brother were as follows:-

(a) the Defendant knew that "K.R.Latchan Bus Service" was earning substantial income from the business of Bus Service;

(b) the Defendant knew that the Plaintiff had been importing Bus Chassis from Seddon Motors Limited under the name of "K.R.Latchan Bus Service" despite the fact that he had registered the name of "BRUNSWICK MOTORS" in his name as aforesaid;

20

(c) the Defendant knew that from the sale of the completed bus to different bus operators, the Plaintiff made a nett profit of \$18,799.29 between November, 1971 and 31st December, 1972 after deducting depreciation. This profit was earned during a period of thirteen (13) months approximately;

30

(d) the Defendant knew that the Plaintiff and his mother, his brother believed in the Defendant's representations and statement that they were indebted to him;

(e) the Defendant knew that he had been acting as an Advisor, Accountant, Financier and Trustee for the Plaintiff his mother and his brother;

40

(f) the Defendant had been a friend, Advisor, Accountant to the Plaintiff's late father for many years before 1949 when he died;

10. THAT the Plaintiff repeats paragraph 9(e) above

SERVICE". The arrangement for payment of the loans were that the daily income of "K.R.LATCHAN BUS SERVICE" had to be DEPOSITED with the Defendant at his office at Victoria Parade, Suva and later at his office at 42 Robertson Road, Suva. Pursuant to his arrangement and confining the Plaintiff to the years 1974, 1975, 1976 and 1977 the Plaintiff says that he deposited the sum of \$1,057,102.80 with the Defendant. The Defendant acted as a Banker without a licence. Whenever "K.R.LATCHAN BUS SERVICE" required moneys to meet its operational expenses, the Defendant issued his personal cheques to meet the same. The Defendant kept accounts in his Private Ledger in respect of "K.R.LATCHAN BUS SERVICE" under the name of his mother "RAM KUAR" and his name. The Plaintiffs ceased to borrow from him or deposit any moneys with him after 31st December, 1977. So far the Defendant has not given any detailed accounts of the transactions in question except that he has furnished to the Plaintiff Profit and Loss Account and Balance Sheets for the years 1962 to 1977 inclusive.

In the
Supreme
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(continued)

5. THAT prior to 9th December, 1971 under the firm name "K.R.Latchan Bus Service", the Plaintiff personally negotiated with Seddon Motors Limited care of P.O.Box 223, Standard House, 15/16 Bankell Street, Finsbury Square, London E.C.2., to import Seddon Bus Chassis. Subsequently, he acquired an exclusive agency in that behalf.
6. THAT prior to 9th December, 1971 the Plaintiff imported more than two (2) such Bus Chassis from the said Company and the Defendant lent moneys to him for this purpose.
7. THAT on the 9th December, 1971 the Plaintiff caused the registration of the business name of "BRUNSWICK MOTORS" to be effected in his name. A Certificate of Registration No.9197 was issued to him on the 10th December, 1971 by the Administrator General.
8. THAT between 10th December, 1971 and 28th December, 1972 the Defendant advanced the Plaintiff over \$20,000.00 to import Seddon Bus Chassis. By the month of December, 1972 the Plaintiff imported under the name of "K.R.Latchan Bus Service" six (6) Chassis, built bus body and sold the same at a profit.

In the
Supreme
Court

No. 4

AMENDED STATEMENT OF
CLAIM

No.4
Amended
Statement
of Claim
12th September
1980

IN THE SUPREME COURT OF FIJI

Civil Action No.12 of 1979

BETWEEN: RAM LATCHAN also known
as K.R. LATCHAN Plaintiff

A N D: LESLIE REDVERS MARTIN Defendant

AMENDED STATEMENT OF CLAIM

1. THAT the Plaintiff had been carrying on the business of a Bus Operator and a Dairy Farmer (in partnership with his mother Ram Kuar and his brother Ram Lagan) since the year 1962 and have traded under the business name "K.R. LATCHAN BUS SERVICE" from 4th May, 1965 until the end of 1977. 10
2. THAT at all material times the Defendant has been carrying on business as an Accountant and a Moneylender.
3. THAT between 1962 and until 30th September, 1978 the Defendant and the Plaintiff had been associated with the following business transactions:- 20
 - (a) Moneys lent to the Plaintiff, his mother and brother by the Defendant to operate their bus and dairy business aforesaid;
 - (b) Moneys lent to the Plaintiff's firm known as "Brunswick Motors" by the Defendant between 28th September, 1972 and 30th September, 1978 to import Bus Chassis from the Seddon Motors Limited of United Kingdom. 30
4. THAT as far as the loans to the firm "K.R. LATCHAN BUS SERVICE" were concerned, the Plaintiff's mother gave in 1962 a mortgage to the Defendant over her interest in a freehold land situated at WAIDALICI, Tailevu. In respect of the same loans between 1962 and 1978 his mother also gave a Bill of Sale over the buses belonging to "K.R.LATCHAN BUS 40

Affidavit, I am advised by my Solicitors and I say that the matters brought in this action are not Statute barred.

In the
Supreme
Court

16. IT is now clear :-

No.3
Affidavit
of Ram
Latchan
24th April
1979

(a) that the Defendant is an accounting party and he is unwilling to furnish accounts to the Plaintiff or file same in these proceedings;

(continued)

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(b) that there is serious dispute as to material facts in these proceedings;

(c) that just, expeditious and economical disposal of the Summons herein can be best secured by "hearing of Summons on oral or mainly on oral evidence" as contemplated by Order 28(4)(3) of the Rules of the Supreme Court;

20

(d) that in the circumstances appropriate Orders and directions be made under Order 28(4) of the Rules of the Supreme Court.

SWORN by the said RAM LATCHAN)
at Suva this 24th day of) Sd: K.R. Latchan
April, 1979 before me)

Sgd: Illegible
A Commissioner for Oaths

In the
Supreme
Court

No.3
Affidavit
of Ram
Latchan
24th April
1979

(continued)

that change of particulars of the composition of "Brunswick Motors" was registered with the Registrar of Business Names on 29th December, 1972, effective from 17th February, 1971.

8. IN reply to paragraph (9) of the said Affidavit I say that Brunswick Motors imported Seddon Bus Chassis from 1975 to September, 1978.
9. IN reply to paragraph (10) of the said Affidavit I say that the Defendant in his capacity as an Accountant kept all books of Account and I further say that to the best of my knowledge and belief no actual money was paid by me to the partnership account but the amount in question may have been shown in the Defendant's Ledger Book. 10
10. IN reply to paragraph (11) of the said Affidavit I say that to the best of my knowledge and belief the Defendant merely adjusted figures in his Ledger Book and carried out his moneylending transactions. 20
11. IN reply to paragraph (12) of the said Affidavit I say that the Defendant acted as an Accountant and charged fees for the accounting work done. He charged interest for all monies lent and advanced to the partnership business.
12. I deny paragraph (14) of the said Affidavit.
13. I deny paragraph (15) of the said Affidavit and say :- 30
 - (a) that the Defendant at all material times was a Moneylender within the meaning of the word in the Money Lenders Act Cap.210;
 - (b) that before and after the inception of "Brunswick Motors" K.R.Latchan Bus Service imported Chassis from Seddon Motors until the year 1974.
14. I deny the allegations contained in paragraph (16) of the said Affidavit and I have acquiesced and actively supported that there was an equal partnership. I contend that I am not estopped from asserting the claim made by me in my said Affidavit. 40
15. IN reply to paragraph (17) of the said

AFFIDAVIT OF RAM LATCHAN

No.3

Affidavit of
Ram Latchan
24th April
1979

IN THE SUPREME COURT OF FIJI

CIVIL ACTION NO. 12 OF 1979

BETWEEN: RAM LATCHAN also known as
K.R.LATCHAN Plaintiff

A`N D : LESLIE REDVERS MARTIN Defendant

REPLY TO DEFENDANT'S AFFIDAVIT

10 I, RAM LATCHAN father's name Khurbur Sirdar of
Wainibokasi, Nausori, Businessman make oath and
say as follows :-

1. AS to paragraph (1) and (2) of the Defendant's Affidavit, I say that the Defendant was an Accountant for my father and he also lent monies to him from time to time. The Defendant charged Accountancy fees for work done and also charged interest for all monies lent and advanced to my father.
- 20 2. IN reply to paragraph (3) of the said Affidavit, I verily believe that my mother Ram Kuar had given a Bill of Sale over a number of buses and a mortgage over her interest on a freehold land at Waidalice. The Defendant charged interest for monies lent and advanced to my mother.
3. I admit paragraph (4) of the said Affidavit.
4. IN reply to paragraph (5) of the said Affidavit I repeat paragraph (6) of my Affidavit dated 19th March, 1979 and say that the Defendant had been acting as an Adviser, Accountant, Financier and Trustee for my mother and my brother and myself.
- 30 5. IN reply to paragraph (6) of the said Affidavit I say Brunswick Motors was formed in or about 1971 and K.R.Latchan Bus Service imported from United Kingdom Seddon Bus Chassis from 1971 to 1974.
6. IN reply to paragraph (7) of the said Affidavit, I repeat paragraphs (11) and (12) of my Affidavit dated 19th March, 1977.
- 40 7. I admit that paragraph (8) of the said Affidavit

In the
Supreme Court

No.2
Affidavit of
Ram Latchan
19th March 1979
(continued)

"B"

"BRUNSWICK MOTORS"
1975 TO 30TH SEPTEMBER, 1978

Sheet No.4

ITEM	YEAR OF SALE	BUS NO.	PURCHASED BY	FULL PURCHASE PRICE	CASH SALE	CREDIT SALE UNDER BILL OF SALE
34.	1977	AQ254	J.P.Sharma & Co.	27,078.00	-	27,078.00
35.	1977	Tonga	Paula Fukafuka	27,180.41	27,180.41	-
36.	1977	AQ734	K.R.Latchan Buses Service	27,078.00	27,078.00	-

In the
Supreme Court

No.2
Affidavit of
Ram Latchan
19th March 1979
(continued)

"B"

"BRUNSWICK MOTORS"
1975 TO 30TH SEPTEMBER, 1978

Sheet No.3

ITEM	YEAR OF SALE	BUS NO.	PURCHASED BY	FULL PURCHASE PRICE	CASH SALE	CREDIT SALE UNDER BILL OF SALE
23.	1976	AC059	Raghwan Nair	19,900.00	-	19,900.00
24.	1976	AI146	Parbati Nair	19,900.00	-	19,900.00
25.	1976	AI257	K.R.Latchan	26,113.50	26,113.50	-
26.	1976	AI415	Lilawati(t/a Balmukund Co)	25,625.00	-	25,625.00
27.	1976	AJ001	Samlal & Sons	26,145.00	-	26,145.00
28.	1976	AL044	City Transport Limited	25,000.00	-	25,000.00
29.	1976	AM037	Western Transport	26,958.00	-	26,958.00
30.	1976	AM036	Western Transport	26,958.00	-	26,958.00
31.	1976	AN013	Perumal	26,545.00	-	26,545.00
32.	1977	A0532	J.P.Sharma & Co.	27,078.00	-	27,078.00
33.	1977	A0897	Sam Lal & Sons	27,078.00	-	27,078.00

In the
Supreme Court

No.2
Affidavit of
Ram Latchan
19th March 1979
(continued)

"B"

"BRUNSWICK MOTORS"
1975 TO 30TH SEPTEMBER, 1978

Sheet No.2

ITEM	YEAR OF SALE	BUS NO.	PURCHASED BY	FULL PURCHASE PRICE	CASH SALE	CREDIT SALE UNDER BILL OF SALE
12.	1975	AV622	K.R.Latchan Bus Service	24,852.00	24,852.00	-
13.	1975	AV710	Niranjan Bus Service	24,412.00	-	24,412.00
14.	1976	AV810	City Transport Limited	23,560.00	-	23,560.00
15.	1976	AV875	K.R.Latchan	24,852.00	24,852.00	-
16.	1976	AB040	City Transport Limited	23,980.00	-	23,980.00
17.	1976	AD092	K.R.Latchan Bus Service	24,852.00	24,852.00	-
18.	1976	AF005	A.Khalil Khan	24,067.00	-	24,067.00
19.	1976	AG030	Amalgamated Transport	23,000.00	23,000.00	-
20.	1976	AG138	Latchman & Sons	19,700.00	-	19,700.00
21.	1976	AG251	K.R.Latchan Bus Service	25,444.00	25,444.00	-
22.	1976	AG490	City Transport Ltd.	24,000.00	-	24,000.00

"B"

"BRUNSWICK MOTORS"
1975 TO 30TH SEPTEMBER, 1978

Sheet No.1

In the
Supreme Court

No.2
Affidavit of
Ram Latchan
19th March 1979
(continued)

ITEM	YEAR OF SALE	BUS NO.	PURCHASED BY	FULL PURCHASE PRICE	CASH SALE	CREDIT SALE UNDER BILL OF SALE
1.	1975	Tonga	Paula Fokafuka	17,709.23	17,709.23	-
2.	1975	Tonga	Sione Tualau	17,709.23	17,709.23	-
3.	1975	AT82	Latchman & Sons	17,738.00	-	17,738.00
4.	1975	AT478	Bakar Ali	18,633.00	-	18,633.00
5.	1975	AT756	Latchman & Sons	17,738.00	-	17,738.00
6.	1975	Tonga	E.M.Jones	17,985.00	17,985.00	-
7.	1975	AU114	Perumal	18,550.00	-	18,550.00
8.	1975	AU821	Latchman & Sons	19,832.00	-	19,832.00
9.	1975	AV115	Perumal	19,832.00	-	19,832.00
10.	1975	AV165	K.R.Latchan Bus Service	24,272.00	24,272.00	-
11.	1975	AV538	Sawani Bus Service	24,852.00	-	24,852.00

In the
Supreme Court

No.2
Affidavit of
Ram Latchan
19th March 1979
(continued)

"A"

"K. R. LATCHAN BUS SERVICE"
1971 - 1974

Sheet No.4

ITEM	YEAR OF SALE	BUS NO.	PURCHASED BY	FULL PURCHASE PRICE	CASH SALE	CREDIT SALE UNDER BILL OF SALE
34.	1974	AP260	Pacific Transport Ltd.	15,343.81	15,343.81	-
35.	1974	AP609	City Transport Limited	13,680.00	13,680.00	-
36.	1974	AP717	K.R.Latchan Bus Service	15,968.00	15,968.00	-
37.	1974	E.M.Jones- Tonga	E.M.Jones Limited	15,957.37	15,957.37	-
38.	1974	AR541	S. Nair Transport	17,606.26	-	17,606.26

In the
Supreme Court

No.2
Affidavit of
Ram Latchan
19th March 1979
(continued)

"A"

"K. R. LATCHAN BUS SERVICE"
1971 - 1974

Sheet No.3

ITEM	YEAR OF SALE	BUS NO.	PURCHASED BY	FULL PURCHASE PRICE	CASH SALE	CREDIT SALE UNDER BILL OF SALE
23.	1973	AM12	Latchan Bus Limited	12,800.00	-	12,800.00
24.	1973	AM214	Shore Buses Limited	12,350.00	12,350.00	-
25.	1973	AM452	Latchman Buses Limited	12,800.00	-	12,800.00
26.	1973	AM796	Y.A.R. Khan	13,686.00	-	13,686.00
27.	1973	AM453	City Transport Limited	13,015.00	13,015.00	-
28.	1973	AM810	Bakar Ali	14,789.00	-	14,789.00
29.	1973	AM923	Bakar Ali	14,789.00	-	14,789.00
30.	1973	AN337	K.R.Latchan Bus Service	14,769.00	14,769.00	-
31.	1974	AN487	Londoni Transport Ltd.	13,800.00	13,800.00	-
32.	1974	AN759	Pacific Transport Ltd.	14,966.80	14,966.80	-
33.	1974	AN986	City Transport Limited	13,680.00	13,680.00	-

In the
Supreme Court

No.2
Affidavit of
Ram Latchan
19th March 1979
(continued)

"A"

"K. R. LATCHAN BUS SERVICE"
1971 - 1974

Sheet No.2

ITEM	YEAR OF SALE	BUS NO.	PURCHASED BY	FULL PURCHASE PRICE	CASH SALE	CREDIT SALE UNDER BILL OF SALE
12.	1972	AH232	Niranjan Bus Service	12,100.00	-	12,100.00
13.	1972	AH661	K.R.Latchan Bus Service	13,000.00	13,000.00	-
14.	1972	AJ81	S. Nair Transport	12,800.00	-	12,800.00
15.	1973	AJ675	City Transport Limited	12,300.00	-	12,300.00
16.	1973	AJ878	Lautoka General Transport	13,000.00	13,000.00	-
17.	1973	AK143	K.R.Latchan Bus Service	13,000.00	13,000.00	-
18.	1973	AK475	Cautata Bus Company	13,648.00	13,648.00	-
19.	1973	AK617	S. Nair Transport	13,200.00	-	13,200.00
20.	1973	AK970	Latchman Buses Limited	12,800.00	-	12,800.00
21.	1973	AL578	Shore Buses Limited	12,350.00	12,350.00	-
22.	1973	AM36	K.R.Latchan Bus Service	13,000.00	13,000.00	-

In the
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No.2
Affidavit of
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19th March 1979
(continued)

"A"

"K. R. LATCHAN BUS SERVICE"
1971 - 1974

Sheet No.1

ITEM	YEAR OF SALE	BUS NO.	PURCHASED BY	FULL PURCHASE PRICE	CASH SALE	CREDIT SALE UNDER BILL OF SALE
1.	1971	AC66	K.R.Latchan Bus Service	7,000.00	7,000.00	
2.	1971	AC293	City Transport Limited	7,000.00	7,000.00	
3.	1972	AD902	City Transport Limited	11,100.00	11,100.00	
4.	1972	AE231	City Transport Limited	7,600.00	7,600.00	
5.	1972	AE236	Ram Dayal Transport	11,700.00	-	11,700.00
6.	1972	AE494	K.R.Latchan Bus Service	12,200.00	12,200.00	
7.	1972	AE856	Cautata Bus Company	11,950.00	11,950.00	
8.	1972	AF233	Shore Buses Limited	11,600.00	-	11,600.00
9.	1972	AF280	Ram Dayal Transport	12,200.00	-	12,200.00
10.	1972	AF917	Ram Dulare	12,200.00	-	12,200.00
11.	1972	AF596	Niranjan & Sons	12,100.00	-	12,100.00

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(continued)

(g) that the item shown as "garage and Workshop" as being part of the Assets of "BRUNSWICK MOTORS" in its Balance Sheet or Trading Account by the Defendant be excluded;

(h) that a debit be made against "BRUNSWICK MOTORS" in its accounts in the sum of \$3,600.00 as rent owing to "K.R.LATCHAN BUS SERVICE" or to the Defendant personally for the use of the Garage and Workshop situate at Wainibokasi, Nausori;

(i) that a sum of \$2,400.00 per annum be allowed as a credit in favour of the Plaintiff for the use of his car for the promotion and, benefit of "BRUNSWICK MOTORS" business during the years;

(j) that a sum of \$6,000.00 per annum either as remuneration or allowance be allowed in favour of the Plaintiff in respect of services rendered by him to "BRUNSWICK MOTORS" in managing the day to day affairs of "BRUNSWICK MOTORS", supervising Bus building arranging sales of Buses and spare parts and general welfare and interest of the partnership at the material time.

32. THAT in addition to the reliefs set forth under items (a) to (j) I request that following additional declaration be made :-

"(a) For a Declaration that all moneys lent by the Defendant together with any interest charged by him since the inception of "BRUNSWICK MOTORS" irrecoverable at law."

SWORN by the said RAM LATCHAN)
alias K.R.LATCHAN at Suva) Sd: K.R.Latchan
this 19th day of March, 1979)
before me)

Sd: Illegible
A Commissioner for Oaths

built body in one chassis and sold same. The moneys received from this sale have been banked with the National Bank of Fiji;

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Court

(c) obtain the services of "K.R.Latchan Buses Limited" I build bus body on three (3) Chassis. They are ready for sale;

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(d) Looked after the spare parts or "stock-in-trade" which were in my garage premises as at 30th September, 1978 at Wainibokasi, Nausori.

(continued)

30. THAT I undertake to file the accounts of "BRUNSWICK MOTORS" of its operations since 1st October, 1978 when so required by this Honourable Court.

31. THAT in addition to the reliefs set forth in the Originating Summons issued herein, I also claim under the heading "g" in the completion of final accounts of "BRUNSWICK MOTORS" :-

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(a) that profit or earnings out of the sale of Buses which were, imported by "K.R. Latchan Bus Service" from Seddon Motors Limited between 1971 and 1974 be excluded from the accounts of "BRUNSWICK MOTORS";

30

(b) that all moneys charged by the Defendant as commission against "BRUNSWICK MOTORS" on the sale of buses to various purchasers between November, 1971 to 30th September, 1978 be disallowed;

(c) that interest charged by the Defendant against "BRUNSWICK MOTORS" be disallowed;

(d) that accounting fees charged by the Defendant for accepting the accounts of "BRUNSWICK MOTORS" be disallowed;

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(e) that all travelling expenses charged against or collected from "BRUNSWICK MOTORS" by the Defendant during the years be disallowed;

(f) that all moneys lent by the Defendant to "BRUNSWICK MOTORS" and debited by him with interest in the said firm's accounts be disallowed;

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- (a) Accountancy fees;
- (b) Interest on loans allegedly made to "BRUNSWICK MOTORS".

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24. THAT between the 1st January, 1975 and 30th September, 1978 the Defendant without my consent and wrongly charged "BRUNSWICK MOTORS" commission for selling bus to different customers when in fact he did not carry out any such sales.

(continued)

25. THAT between 1st January, 1975 and 30th September, 1978 the Defendant collected moneys from the purchasers representing the balance of purchase price of the bus sold to them and belonging to "BRUNSWICK MOTORS" has failed or refused to bring the same unto the account of "BRUNSWICK MOTORS". Likewise in respect of the said period the Defendant has failed or refused to bring into accounts of "BRUNSWICK MOTORS" all outstanding moneys due by the said purchasers including the sum of \$38,800.22 appearing under the heading "Sundry Debtors of the Balance Sheet prepared by the Defendant for the year ending 31st December, 1977.

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26. THAT at all material times the Defendant was a Moneylender within the meaning of the word in the Moneylenders Act Cap.210.

27. THAT at the relevant time, when the Defendant lent moneys to "BRUNSWICK MOTORS" he did not hold any licence as required, by Section 15 of the said Act, and no note or memorandum of contract was ever entered into between the parties as required by Section 16 of the said Act. The Plaintiff therefore says that all the moneylending transactions between the Defendant and "BRUNSWICK MOTORS" are unforceable at law.

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28. THAT I verily believe that the Defendant has used moneys belonging to "BRUNSWICK MOTORS" at such times during the period of its operations when moneys belonging to "BRUNSWICK MOTORS" were in credit with the Defendant and when the Defendant's own bank account was overdrawn.

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29. THAT since 1st October, 1978 I have carried out the following acts :-

- (a) opened an account with National Bank of Fiji under the name of "K.R.LATCHAN in trust for "BRUNSWICK MOTORS";
- (b) obtained the services of "K.R.Latchan Buses Limited" to complete a partly

(c) the Defendant attempted to influence my Bank (Bank of New Zealand) not to advance any money to my company "K.R.Latchan Buses Limited". In the Supreme Court

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20. THAT because of the difference of opinion as aforesaid I verily believe in the month of August, 1978 I gave notice that with effect from 30th September, 1978 that the purported partnership business of "BRUNSWICK MOTORS" be dissolved.

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21. THAT in relation to the business of "BRUNSWICK MOTORS" I carried out the following duties between 2nd February, 1971 and 30th September, 1978 :-

(continued)

(a) took delivery of the Chassis and spare parts imported from Seddon Motors Limited and transported the same to my garage at Wainibokasi, Nausori;

20

(b) supervised the construction of Bus Body on the Chassis at all relevant times;

(c) supervised the sale of spare parts store at my said garage;

(d) deposited the moneys received from the sale of completed buses and spare parts with the Defendant at the relevant time;

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(e) looked for customers to purchase Buses assembled and completed by "BRUNSWICK MOTORS" and in this connection travelled by a ship and aircraft to different parts of Fiji and Tonga;

(f) used my car regularly on promoting the sale of "Seldon Buses" to Bus Operators in Fiji;

(g) used my garage to house the Chassis, buses and spare parts belonging to "BRUNSWICK MOTORS",

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22. THAT apart from collecting moneys from the sale of buses and spare parts belonging to "BRUNSWICK MOTORS" and compiling Balance Sheet and Profit and Loss Account for the period November, 1971 and 30th September, 1978, the Defendant was quite mature in the affairs of "BRUNSWICK MOTORS".

23. IN the Profit and Loss Account completed by the Defendant for the period November, 1971 to 30th September, 1978 the Defendant has without my consent and wrongly charged :-

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(continued)

Limited until the year 1974. To the best of my recollection I imported more than thirty-eight (38) Chassis from the said Company under the name of "K.R.Latchan Bus Service" between 1971 and 1974 as shown in the list marked "A" and annexed hereto. The Defendant financed the importation of the said Chassis. I caused Bus Body to be built on thirty-eight (38) of such Chassis and sold the same as a completed Bus to persons or firms whose name appear in the annex- 10
ture marked "A". Sixteen (16) completed Buses were sold on credit and the purchasers executed in favour of the Defendant a Bill of Sale over the Bus sold in each case. The Defendant to the best of my knowledge and belief acted as Trustee for "K.R.Latchan Bus Service" in accepting the said Bill of Sale. I verily believe that nett profit from the sale of the said Buses exceeded \$82,164.68 for the period aforesaid I say that the said profit should not be regarded as profit 20
of the firm "BRUNSWICK MOTORS" but as part of the profit of "K.R.Latchan Bus Service".

17. THAT between 1st January, 1975 and 30th September, 1978 I imported more than thirty-six (36) Bus Chassis under the name of "BRUNSWICK MOTORS" from Seddon Motors Limited as appears in the list marked "B" annexed hereto. In each of the thirty-six (36) Chassis so imported a Bus Body was built on the Chassis and a completed Bus was sold to the persons or firms whose names 30
appear on the said list. I verily believe that nett profit from the sale of the said completed Buses exceeded \$20,948.74. Twenty-four (24) completed Bus were sold on credit and the purchasers executed a Bill of Sale in favour of the Defendant in each case to secure the balance of purchase price. I verily believe and say that the Defendant acted as Trustee for "BRUNSWICK MOTORS" in accepting the said Bill of Sale.

18. IN 1977 "K.R.Latchan Bus Service" converted 40
itself into a Limited liability Company under the name of "K.R.LATCHAN BUSES LIMITED".

19. THAT after 31st December, 1977 "K.R.Latchan Bus Service" ceased to bank any moneys or its earnings with the Defendant and thereafter serious differences of opinion arose as to the following matters :-

- (a) the Defendant refused to finance "BRUNSWICK MOTORS";
- (b) the Defendant refused to give any 50
detailed accounts of "BRUNSWICK MOTORS";

my brother;

- (f) the Defendant had been a friend, Adviser, Accountant to my late father for many years before 1949 when he died.

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12. THAT in the light of the foregoing state of affairs the Defendant personally in the month of December, 1972 called me at his office at 42 Robertson Road, Suva and :-

(continued)

- 10 (a) made representations to me to the effect that my late father had asked him to guide me and assist me after his death;
- (b) made representations to me to that effect that I was heavily indebted to him and that he could not carry on lending any more money to me or "K.R.Latchan Bus Service" unless I agreed to make him an equal partner in my firm "BRUNSWICK MOTORS". He made it clear that his decision on this matter was final.
- 20

13. THAT having heard the Defendant and notwithstanding the fact that even at that point of time he had not furnished any detailed accounts to me, my said brother and my mother in respect of our dealing, I believed him. I also realised that if I did not accept his demand he was in a position to ruin me. In the circumstances, I was constrained to accept his demand.

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14. THAT pursuant to the agreement referred to in the preceding paragraph, on 28th December, 1972 the Defendant and I signed a statement of change in the particulars registered by a firm or individual as required by the Registration of Business Names Act Cap.218 and thereby sought the registration of the change in the composition of the firm "BRUNSWICK MOTORS". Such change was registered on the 29th December, 1972 and on the 2nd January, 1973 a Certificate of Registration was issued by the Administrator General in that behalf.

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15. THAT sometime after the registration of the change in the composition of "BRUNSWICK MOTORS", the Defendant advised me that he re-adjust the accounts in his ledger and other Books of Account.

16. THAT notwithstanding the change in the composition I continued to import under the name of "K.R.Latchan" Bus Chassis from Seddon Motors

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(continued)

Defendant lent moneys to me for this purpose.

9. THAT on the 9th December, 1971 I caused the registration of the business name of "BRUNSWICK MOTORS" to be effected in my name. A Certificate of Registration No.9197 was issued to me on the 10th December, 1971 by the Administrator General.

10. THAT between 10th December, 1971 and 28th December, 1972 the Defendant advanced me over \$20,000.00 to import Seddon Bus Chassis. By the month of December, 1972 I imported under the name of "K.R.Latchan Bus Service" six (6) Chassis, built bus body and sold the same at a profit. Pursuant to earlier agreement, I deposited the moneys received from the sale of Buses with the Defendant. Some purchasers bought the Buses on credit and having paid a deposit, they executed Bill of Sale over the Bus sold to them in favour of the Defendant. I verily believe and say subject to the verification the Defendant acted as Trustee for "K.R.Latchan Bus Service" and accepted the said Bill of Sale.

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11. THAT in December, 1972 the state of affairs which existed between the Defendant vis-a-vis with me my mother and my brother were as follows :-

(a) the Defendant knew that "K.R.Latchan Bus Service" was earning substantial income from the business of Bus Service;

(b) the Defendant knew that I had been importing Bus Chassis from Seddon Motors Limited under the name of "K.R.Latchan Bus Service" despite the fact that I had registered the name of "BRUNSWICK MOTORS" in my name as aforesaid;

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(c) the Defendant knew that from the sale of the completed bus to different bus operators, we made a nett profit of \$18,799.29 between November, 1971 and 31st December, 1972 after deducting depreciation. This profit was earned during a period of thirteen (13) months approximately;

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(d) the Defendant knew that my mother, my brother and myself believed in his statement that we were indebted to him;

(e) the Defendant knew that he had been acting as an Adviser, Accountant, Financier and Trustee for my mother and

(a) Moneys lent to me, my mother and brother by the Defendant to operate our Bus and Dairy businesses aforesaid;

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(b) Moneys lent to my firm known as "Brunswick Motors" by the Defendant between 28th December, 1972 and 30th September, 1978 to import Bus Chassis from the Seddon Motors Limited of United Kingdom.

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(continued)

6. THAT as far as the loans to "K.R.LATCHAN BUS SERVICE" were concerned, my mother gave a Mortgage to the Defendant over her interest in a freehold land situate at WAIDALICI, Tailevu in 1962. In respect of the same loans between 1962 and 1978, my mother also gave a Bill of Sale over the buses belonging to "K.R.LATCHAN BUS SERVICE". The arrangement for payment of the loans were that the daily income of "K.R.LATCHAN BUS SERVICE" had to be DEPOSITED with the Defendant at his office at Victoria Parade, Suva and later at his office at 42 Robertson Road, Suva. Pursuant to this arrangement and confining myself to the years 1974, 1975, 1976 and 1977 I say that I deposited the sum of \$1,057,102.80 with the Defendant. He acted as a Moneylender and Banker without a licence. Whenever "K.R.LATCHAN BUS SERVICE" required moneys to meet its operational expenses, the Defendant issued his personal cheques to meet the same. To the best of my knowledge information and belief and from what the Defendant informed me, he kept accounts in his Private Ledger in respect of "K.R.LATCHAN BUS SERVICE" under the name of my mother "Ram Kuar" and under my name. He has informed me that his ledger sheets show the relevant credit and debit items. We ceased to borrow from him or deposit any moneys with him after 31st December, 1977. So far the Defendant has not given any detailed accounts of the transactions in question except that he has furnished to me Profit and Loss Account and Balance Sheets for the years 1962 to 1977 inclusive as our Accountant.

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7. THAT prior to 9th December, 1971 under the firm name "K.R.LATCHAN BUS SERVICE" I personally negotiated with Seddon Motors Limited care P.O.Box 223, Standard House, 15/16 Bankell Street, Finsbury Square, London E.C.2., to import Seddon Bus Chassis. Subsequently I acquired an exclusive agency in that behalf.

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8. THAT prior to 9th December, 1971 I verily believe imported more than two (2) such Bus Chassis from the said Company. To the best of my recollection the

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No.1
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16th January
1979

(continued)

This Summons was taken out by Messrs. Koya and Co., Solicitors for the Plaintiff whose address for service is at their Chambers at Popular's Building at Vidilo Street, Lautoka and/or at their Branch Office at 22 Cumming Street, Suva.

No.2
Affidavit
of Ram
Latchan
19th March
1979

No. 2
AFFIDAVIT OF RAM LATCHAN

IN THE SUPREME COURT OF FIJI

Civil Action No.12 of 1979

BETWEEN: RAM LATCHAN also known as K.R.LATCHAN Plaintiff 10
A N D : LESLIE REDVERS MARTIN Defendant

A F F I D A V I T

I, RAM LATCHAN Father's name Khurbur Sirdar of Wainibokasi, Nausori, Businessman, make oath and say as follows :-

1. THAT I am the Plaintiff in this action.
2. THAT I have been carrying on the business of a Bus Operator and a Dairy Farmer (in partnership with my mother Ram Kuar and brother Ram Lagan) since the year 1962 and have traded under the business name of "K.R.LATCHAN BUS SERVICE" from 4th May, 1965 until the end of 1977. 20
3. THAT I have known the Defendant since 1959.
4. THAT at all material times the Defendant has been carrying on business as an Accountant and a Moneylender.
5. THAT between 1962 and until 30th September, 1978 the Defendant and I have been associated with the following business transactions:- 30

accounts between the Plaintiff and the Defendant as aforesaid the Defendant be debited with the following items :-

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16th January
1979

(i) all monies charged by the Defendant against the said Firm as Accountancy fees;

(ii) all monies charged against the said Firm by the Defendant as commission;

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(iii) all secret or other profits made him in the sale of vehicles sold by the said firm between 2nd day of February, 1971 and the 30th day of September, 1978.

(continued)

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(h) For a Declaration that from the 2nd day of February, 1971 until 30th September, 1978 the Plaintiff for and on behalf of the said Firm has been depositing monies with the Defendant, that the Defendant had at all material times banked the said monies in his own Bank Account with the Bank of New Zealand Suva, and that in his ledger account the Defendant had at all material times showed the monies lying to the credit or debit of the said Firm and that the Defendant used the said moneys for his personal use at a time when the Defendant's own account with his Bank was overdrawn.

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(i) For an Order to pay to the Plaintiff such damages or compensation as may be just and equitable for the use of the monies so received for said and on behalf of the Plaintiff and the said Firm;

(j) Further or other relief as this Honourable Court seems fit;

(k) Costs.

IF the Defendant does not enter an appearance, such judgment may be given or order made against or in relation to him as the Court may think just and expedient.

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DATED this 16th day of January, 1979

NOTE: This Summons may not be served more than 12 calendar months after above date unless renewed by Order of the Court.

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No.1
Originating
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16th January
1979

(continued)

- Registration of Business Name Act Cap.218
under Registration No. 91907 at the office
of the Administrator General, that at all
material time he was the sole proprietor of
the said Firm and that he is entitled to all
the income and profits of the said Firm from
its inception to the date hereof.
- (b) For a Declaration that at all material times
there existed a confidential relationship
between the Plaintiff and the Defendant 10
whereby the Defendant became the Plaintiff's
Trustee in all matters concerning the
Plaintiff's business, the Defendant acted
as the Plaintiff's sole business adviser, as
his Accountant and financier and that because
of such relationship the Defendant had access
to and acquired Plaintiff's secrets in relation
to his business and a position of influence
over the Plaintiff. Further by reason of such
relationship the Defendant influenced the 20
Plaintiff and induced him to accept the
Defendant as a partner of the said Firm enter
a change of particulars as to composition
caused the same to be registered at the office
of Administrator General under Registration
No.9979 whereby the Defendant was shown as a
partner in the said Firm with the effect from
17th February, 1971.
- (c) For a Declaration that the Defendant exercised
undue influence over the Plaintiff to bring 30
about a change in the composition of the
said Firm and the Defendant obtained for him-
self one half share in the said Firm without
contributing any moneys to the Firm or without
paying any premium to the Plaintiff to become
a partner therein.
- (d) For an Order that the change in the composition
of the said Firm aforesaid be set aside.
- (e) For an Order that the Defendant do account to
the Plaintiff for all moneys received by the 40
Defendant and expended by him for and on them
on behalf of the said Firm from the 2nd
February, 1971 to the 30th September, 1978.
- (f) In the alternative for a Declaration that the
said Firm was dissolved on the 30th September,
1978 and that therefore accounts between the
Plaintiff and the Defendants as partners be
settled in accordance with the requirements
of Section 45 of the Partnership Act, Cap.217.
- (g) For a Declaration that in settling the 50

O N A P P E A L

FROM THE FIJI COURT OF APPEAL

B E T W E E N :

KHURBUR RAM LATCHAN (Plaintiff) Appellant

- and -

LESLIE REDVERS MARTIN (Defendant) Respondent

RECORD OF PROCEEDINGS

No.1

In the
Supreme
Court

10

ORIGINATING SUMMONS

IN THE SUPREME COURT OF FIJI

Civil Action No.12 of 1979

No.1
Originating
Summons
16th January
1979

BETWEEN:

RAM LATCHAN also known
as K.R. LATCHAN Plaintiff

A N D : LESLIE REDVERS MARTIN Defendant

TO : LESLIE REDVERS MARTIN of 28 Beach
Road, Suva Point, Accountant.

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L E T the Defendant within eight (8) days after the service of this Summons on him, inclusive, of the day of service, cause an appearance to be entered on this Summons, which is issued on the application of the Plaintiff RAM LATCHAN also known as K.R.LATCHAN father's name Khurbur Sirdar of Wainibokasi, Nausori, Businessman.

BY THIS SUMMONS the Plaintiff Claims against the Defendant :-

- (a) For a Declaration that the Plaintiff formed a Firm known as "BRUNSWICK MOTORS" on the 2nd February, 1971 and registered the same under the

Exhibit Mark	Description of Document	Date
18	Balanced Accounts of K.R. Latchan Bus Service and Bavleva Bus Service	
22	53 Receipts to H.P. Govind from L.R.Martin	
23	Mortgage, Ram Kuar to L.R.Martin	19th November 1962
31	B.N.Z. Statement of L.R.Martin (Yellow Cards)	
33	Bundle of Invoices re. Chassis	
34	Certificate of Insurance (sic)	13th September 1971
39	Bill of Sale, Ram Kuar to L.R.Martin	29th October 1953
45A	Graphs, Ram Kuar & Sons, monthly balances with L.R.Martin	1964 - 1966
45B	Graphs, Ram Kuar & Sons, monthly balances with L.R.Martin	1967 - 1969
45C	Graphs, Ram Kuar & Sons and Brunswick Motors, monthly balances with L.R.Martin	November 1970-1972
45D	Graphs, Ram Kuar & Sons Brunswick Motors and K.R.Latchan, monthly balances with L.R.Martin	1973 - 1978

DOCUMENTS TRANSMITTED TO THE PRIVY COUNCIL
BUT NOT REPRODUCED

IN THE COURT OF APPEAL

Order granting Conditional
Leave to Appeal

8th April 1983

E X H I B I T S

Exhibit Mark	Description of Document	Date
2	Re-constructed Accounts of :- (a) Brunswick Motors (b) K.R.Latchan Bus Services (c) Bavlevu Bus Services	
3	Cash Book of L.R.Martin	November 1968- December 1972
4	Cash Book of L.R.Martin	1973 - 1974
5	Cash Book of L.R.Martin	January 1974 - December 1976
6	Cash Book of L.R.Martin	1977 - April 1982
7	Ledger Sheets of Brunswick Motors	2nd November 1971 - 26th May 1977
8	Ledger Sheets of Ram Kuar	31st October 1969 - 15th July 1978
9	Ledger Sheets of K.R. Latchan	13th August 1974 - 24th January 1978
10	Journal of K.R.Latchan	1948 - 1970
11	Journal of L.R.Martin	1971 - August 1976
12	Journal of L.R.Martin	1976 - 1979
17	Balanced Accounts of Brunswick Motors	

Exhibit Mark	Description of Document	Date	Page No.
28	Letter, Seddon Motors Ltd. to K.R.Latchan Bus Service	16th June 1971	298
29A	Letter, Seddon Motors Ltd. to K.R.Latchan Bus Service	6th March 1973	301
29B	Letter, Seddon Motors Ltd. to K.R.Latchan Bus Service	6th March 1973	303
30	Report of Peat Marwick Mitchell & Co.	20th May 1982	306
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O N A P P E A L
FROM THE FIJI COURT OF APPEAL

B E T W E E N :

KHURBUR RAM LATCHAN (Plaintiff) Appellant

- and -

LESLIE REDVERS MARTIN (Defendant) Respondent

RECORD OF PROCEEDINGS

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IN THE PRIVY COUNCIL

No.26 of 1983

O N A P P E A L
FROM THE FIJI COURT OF APPEAL

B E T W E E N :

KHURBUR RAM LATCHAN (Plaintiff) Appellant

- and -

LESLIE REDVERS MARTIN (Defendant) Respondent

RECORD OF PROCEEDINGS

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