

**RAM PRASAD**

**A**

v.

**BALDEO SINGH**

[COURT OF APPEAL, 1964 (Hammett P., Adams J.A., Marsack J.A.),  
5th, 26th February]

**B**

Civil Jurisdiction

*Practice and procedure—Official Referee's report—may be adopted by court wholly or partially—objections to be heard and decided—Supreme Court of Judicature Act 1873 (Imperial) (36 & 37 Vict., Cap. 66) ss.56-59—Supreme Court Ordinance (Cap. 4) s.36.*

**C**

*Practice and procedure—reference to Official Referee—agreement between counsel not embodied in order of court as sealed—sealed order taken as basis of reference.*

*Counsel—agreement—not embodied in court order.*

The respondent brought an action against the appellant for accounts and judgment for such sum as might be found owing to him. When the parties came before a judge for a consent order to refer the matter to an Official Referee to make enquiries and report as to the accounts, counsel for the appellant said, "His findings as Official Referee will be treated as final and binding on the parties". The formal order of the court, however, which was prepared and submitted to the court for sealing by the respondent, contained no provision that the findings of the Official Referee should be final and binding. The report of the Official Referee having been submitted, counsel for the appellant objected to certain items therein but the judge in the Supreme Court referred to the agreement between counsel abovementioned and gave judgment for the respondent in terms of the Official Referee's report, for the sum of £450-18-10 and costs.

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The appellant appealed.

*Held:* 1. The sealed order must be taken as the basis of the reference to the Official Referee and the rights accruing to the parties must be those which were either expressed in the order or arose by necessary implication.

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2. Sections 56, 57 and 58 of the Supreme Court of Judicature Act, 1873, are deemed to be in force in Fiji under s.36 of the Supreme Court Ordinance and under these provisions a report by an Official Referee may be adopted wholly or partially by the Court.

3. The court was not bound or entitled to enter judgment at once for the respondent, but counsel for the appellant was entitled to be heard as to the objections he wished to raise and have them dealt with in accordance with such procedure as might be appropriate.

**H**

4. The case would be remitted to the Supreme Court to hear an application for judgment and to hear and decide in accordance with law such objections to the report as might be raised.

A Appeal from judgment of the Supreme Court.

*T. R. Sharma* for the appellant.

*A. D. Patel* for the respondent.

B Judgment of the Court: [26th February, 1964]—

This is an appeal against judgment given on the 4th October 1963 in favour of the respondent against appellant for the sum of £450.18.10 and costs.

C The original claim by respondent against appellant was for accounts and for judgment for such sum as might be found owing to him when accounts were taken. By consent an order was made on the 25th July 1963 referring the matter to an Official Referee to make enquiries and to report as to accounts before the end of September 1963. When advising the Judge in the Court below that the parties had agreed to refer the matter to an Official Referee, counsel for appellant said :

“His findings as Official Referee will be treated as final and binding on the parties.”

Counsel for respondent said:

“I agree.”

E The sealed order of Court, however, is in these words :—

“The Plaintiff and the Defendant by their Counsel stating that have agreed to refer the case to Mr. V. N. Singh a special referee to make enquiries and then to report as to accounts;

F This Court doth order that the case be referred to Mr. V. N. Singh an Official Referee to make enquiries and to report as to accounts before the end of September 1963. And it is ordered that the hearing be adjourned to 4th day of October 1963 for mention.”

G The Referee's report was submitted in due time and showed that there was a balance of £450.18.10 in respondent's favour. When the case was called before the Judge on the 4th October, counsel for appellant indicated that objection was being taken to certain items in the Referee's report. The learned Judge referred to the agreement between counsel that the Referee's report was to be accepted as final and binding. Counsel for respondent then applied for judgment to be entered then and there in terms of the Referee's report. The Judge thereupon entered judgment in favour of respondent for £450.18.10 and costs. It is against that judgment that this appeal is brought.

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The first matter for determination is whether this Court is entitled to go behind the sealed order of the 25th July 1963 and give effect to what counsel or Judge had said immediately before the making of the order. It is perhaps worthy of mention that the order was prepared, and submitted to the Court for sealing, by respondent. In our opinion it is the sealed order which must be taken as the basis of the reference to the Official Referee, and the rights accruing to the parties in respect thereof must be those which are either expressed in the order or arise by necessary implication from what is there expressed.

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There is nothing in the order providing for the entry of judgment automatically upon the findings of the Official Referee. Adjournment until the 4th October 1963 was "for mention" only and not for entry of judgment. There is nothing in the order to indicate that the normal rules following the report of an Official Referee should not in this case apply:

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To find the rules applicable to the appointment of an Official Referee it is necessary to go to the Imperial Supreme Court of Judicature Act 1873, Cap. 66, sections 56 to 59 of which are deemed to be in force in the Colony under Section 36 of the Supreme Court Ordinance Cap. 4. The relevant portions of sections 56, 57 and 58 of this Act read as follows :—

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Section 56: ". . . any question arising in any cause . . . before the . . . court . . . may be referred by the court for inquiry and report to any . . . Official Referee, and the report of any such referee may be adopted wholly or partially by the court and may, if so adopted, be enforced as a judgment by the court . . ."

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Section 57: "In any cause . . . before the court in which all parties interested . . . consent thereto the court . . . may at any time on such terms as may be thought proper order any question or issue of fact . . . arising therein to be tried . . . before . . . an Official Referee to be agreed on between the parties . . ."

E

Section 58: "In all cases of any reference to . . . Referees . . . the Referees shall be deemed to be officers of the court . . . and the report of any Referee upon any question of fact on any such trial shall (unless set aside by the court) be equivalent to the verdict of a jury."

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Under these provisions the report may be adopted wholly or partially by the Court or a Judge, and if so adopted is equivalent to and may be enforced as a judgment of the Court. Any party may apply to the Court or a Judge to adopt the report, apparently without the necessity of filing a formal motion.

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Counsel for respondent pointed out that appellant had received a copy of the report on the 13th September and he himself on the 17th September. No notice was given by counsel for appellant either to the Court or to the other side, during the period of three weeks elapsing between receipt by appellant of the report and the

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A appearance of the parties before the Court on the 4th October, that appellant intended to raise any matters of objection to the report or that he would oppose the entry of judgment for the amount that was shown owing.

B In our opinion the Court was not bound, or entitled, bearing in mind the precise terms of the order of the 25th July, to enter judgment at once on the 4th October for the amount found by the Official Referee to be owing by appellant to respondent. Counsel for appellant was entitled to be heard as to the objections he wished to raise and to have them dealt with in accordance with such procedure as might be appropriate.

C In entering judgment the Judge in the Court below no doubt had in mind the prior agreement of counsel that the findings of the Official Referee would be treated as final and binding on the parties. There is however no such provision in the order, as we have already pointed out. Consequently, in our opinion the Judge erred in so entering judgment without hearing the objections raised by counsel for appellant and determining them.

D For these reasons the appeal will be allowed and the judgment appealed from set aside. The case will be remitted to the Supreme Court for the purpose of hearing an application by respondent for judgment and for hearing and deciding in accordance with law upon such objections to the report as may be raised.

Although appellant has succeeded on this appeal we do not think that this is a case in which full costs should be awarded against respondent. Appellant will be allowed the sum of 15 guineas which should be sufficient to cover his disbursements.

*Appeal allowed.*