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SOUTH PACIFIC SUGAR MILLS LTD.

v.

PENI MUAVESI

B [COURT OF APPEAL, 1968 (Hammett P., Gould J.A., Trainor J.A. 29th, April, 30th May]

Civil Jurisdiction

Interpretation—Ordinance—whether imperative or directory—scope and object of legislation—Agricultural Produce (Authorities by Fijians) Ordinance (Cap. 195—1955; Cap. 205—1967) ss.2, 2(c), 3, 3(3)—Agricultural Produce (Authorities by Natives) (Amendment) Ordinance 1965—Court of Appeal Ordinance (Cap. 8—1967) s.12—Bills of Sale Ordinance (Cap. 202—1967)—Civil Code of Lower Canada, Article 2590—Concessions Ordinance (Laws of the Gold Coast (1951) Cap. 136) s.32(2).

C

Estoppel—principle "no estoppel against a statute"—scope and object of legislation—assignment of proceeds of cane crop by Fijian—approval by authorised person—neglect of mandatory conditions precedent—validity—Agricultural Produce (Authorities by Fijians) Ordinance (Cap. 205—1967) ss.2, 3.

D

Agriculture—agricultural produce—assignment of proceeds by Fijian—validity—Agricultural Produce (Authorities by Fijians) Ordinance (Cap. 205—1967) ss.2, 3.

Fijian—agricultural produce—protected status under Ordinance—Agricultural Produce (Authorities by Fijians) Ordinance (Cap. 205—1967) ss.2, 3.

Section 2 of the Agricultural Produce (Authorities by Fijians) Ordinance renders void any instrument (with some exceptions) whereby a
E Fijian authorises the proceeds of agricultural produce payable to such Fijian to be paid to any non-Fijian. Instruments approved under the Ordinance are not within the scope of this provision and section 3 empowers an authorised person to approve an instrument signed by a Fijian in his presence, where he is satisfied that the Fijian making the instrument understands its meaning and that its making forms part of a genuine transaction which is for the benefit of the Fijian. The authorised
F person is required to signify his approval by writing the word "approved," together with his signature and title, on the instrument.

The facts found were that an instrument signed by the respondent (a Fijian) had been endorsed by an authorised person with the word "approved" and his signature, but that the respondent had not signed the document in the presence of the authorised person, nor had the
G latter satisfied himself that the respondent understood it. The appellant company, to which the instrument was addressed, acted upon it by making payments to a third person in pursuance thereof.

Held: 1. The maxim *omnia praesumuntur rite et solenniter esse acta donec probetur in contrarium* could not avail the appellant company in view of the evidence that the requirements of the Ordinance had not in
H fact been observed.

2. Though the appellant company had acted to its own detriment in reliance upon the approval endorsed on the instrument, the Ordinance was

one which conferred a protected status upon Fijians and the principle "no estoppel against a statute" applied with full force.

3. The findings of fact disclosed neglect of major requirements of section 3 of the Ordinance; requirements which must, in the light of the scope and object of the Ordinance be treated as imperative.

4. The instrument in question was void.

Cases referred to: *Morris v. Kanssen* [1946] A.C. 459; [1946] 1 All E.R. 586: *De Tchihatchef v. The Salerni Coupling Ltd.* [1932] 1 Ch. 330; 146 L.T. 505: *Anctil v. Manufacturers' Life Insurance Co.* [1899] A.C. 604; 81 L.T. 279: *Kok Hoong v. Leong Cheong Kweng Mines Ltd.* [1964] A.C. 993; [1964] 1 All E.R. 300: *Humphries v. Humpries* [1910] 2 K.B. 531; 103 L.T. 14: *Leroux v. Brown* (1852) 12 C.B. 801; 22 L.J.C.P. 1: *Barrow Mutual Ship Insurance Co. Ltd. v. Ashburner* 54 L.J.Q.B. 377; (1885) 54 L.T. 58: *Caldow v. Pixell* (1877) 36 L.T. 469; 2 C.P.D. 562: *Pope v. Clarke* [1953] 2 All E.R. 704; 37 Cr. App. R. 141: *Edward Ramia, Ltd. v. African Woods Ltd.* [1960] 1 All E.R. 627; [1960] 1 W.L.R. 86.

Appeal from a judgment of the Supreme Court sitting in appellate jurisdiction.

R. G. Q. Kermode for the appellant company.

S. M. Koya for the respondent.

The facts sufficiently appear from the judgment of Gould J.A.

The following judgments were read:-

GOULD J.A.: [30th May, 1968]—

This is an appeal from a judgment of the Supreme Court dated the 15th March, 1967, allowing an appeal from the judgment of the Magistrate's Court of the First Class, Lautoka, dated the 20th October, 1966. To this Court, under s.12 of the Court of Appeal Ordinance (Cap. 8 — Laws of Fiji, 1967) the appeal lies only upon a question of law.

The facts relevant to the appeal which are either not in dispute or found by the learned Magistrate are as follows. The respondent is a Fijian cane farmer, who, during the years 1964 and 1965 supplied sugar cane to the appellant company, under a cane contract. On the 9th July, 1964, the respondent executed a document in the following terms:-

Stamped
10/-
9.7.64.
3527

TO
SOUTH PACIFIC SUGAR MILLS LTD.
RARAWAI,
BA.

IN CONSIDERATION of the sum of *TWO HUNDRED POUNDS* (£200.0.0) I, the undersigned *PENI MUAVESI*, of Tavualevu, in the Province of Ba in the Colony of Fiji, Cultivator (hereinafter called the "Assignor") DO HEREBY ASSIGN TRANSFER AND SET OVER unto *N. G. FOON*

a registered business firm of Tavua in the Colony of Fiji (hereinafter called "The Assignee") all my rights title estate and interest in the sugar cane now growing and to be hereafter grown upon the land hereunder described and all improvements brought upon or erected upon the said land and in all moneys whatsoever and/or to become payable to me in respect of such sugar cane and/or such improvements or otherwise howsoever derived from the said land. This will be subject to prior assignment to South Pacific Sugar Mills Ltd.

DESCRIPTION OF LAND

All that piece or parcel of land containing 6 acres situate at Tavua known as N.L. NASOSO & NADULA, described as farm No. 3527 in the books of the South Pacific Sugar Mills Ltd.

DATED at Tavua this 9th day of July, 1964.

SIGNED by the PENI MUAVESI in my presence and I hereby certify that I read over and carefully explained the contents hereof to him in the Fijian language and he appeared fully to understand the meaning and effect of the same.

PENI MUAVESI

Signature of Peni Muavesi
Stamped
7/6d.
8.10.65.

Signed : Illegible

Justice of the Peace, Western, Tavua.

Signed : DENIS H. WILLIAMS
District Officer, Tavua
9.7.64.

This document was lodged with the appellant company, which out of the proceeds of the respondent's cane for the years abovementioned, paid to N. G. Foon (or after his death to his estate) the sum of £335.19.4 retaining a balance of £23.14.0 in its own hands. A dispute having arisen between the respondent and the representative of N. G. Foon the respondent commenced proceedings in the Magistrate's Court for a declaration that the instrument above set out was void under s.2 of the Agricultural Produce (Authorities by Fijians) Ordinance (Cap. 195 — Laws of Fiji 1955) as amended by the Agricultural Produce (Authorities by Natives) (Amendment) Ordinance, 1965 which was later reenacted in the 1967 Revised Edition of the Laws of Fiji as Chapter 205. The respondent claimed to recover the whole of the payments made by the appellant company to N. G. Foon or his estate and the balance of £23.14.0 still held.

In the Magistrate's Court a number of matters were argued, including one related to the stamping of the instrument abovementioned, to which I shall refer hereafter as Exhibit 1. Only one substantial question has, however, survived to the appeal to this Court, and that is whether, by reason of non-compliance with certain formalities prescribed by the Agricultural Produce (Authorities by Fijians) Ordinance, Exhibit 1 was void and moneys paid under it recoverable by the respondent. In the Magistrate's Court judgment was given in favour of the appellant company, but this finding was reversed on Appeal to the Supreme Court,

which made the declaration asked for and gave judgment for the respondent for the amount claimed. It is against that decision that the present appeal is brought.

It will be convenient to set out the relevant legislation from the 1967 edition of the Laws of Fiji in which the Ordinance is Cap. 205; Sections 2 and 3 read :-

"2. Any instrument, not being —

(a) a crop lien; or

(b) an authority to pay any proceeds of agricultural produce —

(i) to any bank or to the Agricultural and Industrial Loans Board; or

(ii) into a Fijian's account with any bank or with the Agricultural and Industrial Loans Board; or

(c) an instrument approved under the provisicns of this Ordinance,

whereby a Fijian authorises the payment to any non-Fijian of the whole or any part of the proceeds of any agricultural produce payable to such Fijian shall be void and any payment made in pursuance of any such instrument shall be recoverable by the Fijian from the person making such payment.

3. (1) Any Fijian wishing to obtain approval of an instrument authorising the payment to a non-Fijian of the whole or any part of the proceeds of any agricultural produce payable or to become payable to such Fijian may submit such instrument together with a copy thereof to an authorised person.

(2) An authorised person shall, upon payment of a fee of one shilling by the Fijian and upon signature by the Fijian in his presence of the instrument and the copy and after consulting such persons as he may consider expedient approve an instrument submitted to him under the preceding subsection where he is satisfied —

(a) that the Fijian making such instrument understands its meaning; and

(b) that the making of the instrument forms part of a genuine transaction which is for the benefit of the Fijian making such instrument.

(3) The authorised person shall signify his approval by writing the word "approved" together with his signature and title on the instrument and shall deliver it to the Fijian.

(4) The authorised person shall also write the word "approved" together with his signature and title on the copy of the instrument and shall file it in a book to be kept by him for that purpose."

I proceed now to the facts surrounding the execution of Exhibit 1. It was prepared at the request of the respondent by a "clerical agent" in Tavua. The respondent then executed it in the presence of a Justice of the Peace at Tavua who signed the certificate embodied in the attestation clause. The respondent then took the document to the District Officer for Ba/Tavua at Ba; it is common ground that this officer was

an "authorised person" within the meaning of the Agricultural Produce (Authorities by Fijians) Ordinance. Apparently the respondent was not taken into the presence of the District Officer as the learned magistrate found that he only saw the District Officer at a distance. The magistrate also found that the District Officer did not satisfy himself that the respondent understood the meaning of Exhibit 1, nor did the respondent sign the document in his presence. Nevertheless the District Officer wrote on the document the word "approved" and signed the endorsement, adding his title, as required by section 3(3) of the Ordinance.

On these facts the basis of the finding of the learned magistrate was that there was nothing on the face of Exhibit 1 to put the appellant company on inquiry whether the approval was genuine and proper, and he found that the appellant company acted reasonably in accepting Exhibit 1 as an approved instrument. In the Supreme Court, however, the learned judge considered it beyond dispute that Exhibit 1 was not "an instrument approved under the provisions of this Ordinance" within the meaning of section 2(c). He continued —

"Section 3 of the Ordinance stipulates that an authorised person (in this case the then District Officer, Ba) shall "upon signature by the Fijian in his presence of the instrument" approve it where he is satisfied —

(a) That the Fijian making such instrument understands its meaning: and

(b) That the making of the instrument forms part of a genuine transaction which is for the benefit of the Fijian making such instrument.

It is clear upon the face of the instrument itself that this was not done. On the contrary, it is recorded that the instrument was signed by the Appellant in the presence of a Justice of the Peace. A Justice of the Peace is not an authorised person under the Ordinance. The learned trial Magistrate rightly found as a fact that the instrument was not signed in the presence of the District Officer. In such circumstances the provisions of Section 2 of the Ordinance are quite unequivocal. The instrument Exhibit 1 is void and any payment made in pursuance thereof is recoverable by the Appellant from the Respondent Company."

In this Court counsel for the appellant company first relied upon estoppel, and upon the maxim *Omnia praesumuntur rite et solenniter esse acta.* He argued that Exhibit 1 did bear the approval of an authorised person signified in the manner directed by the Ordinance. Contrary to the view of the learned judge, he contended there was nothing on the face of Exhibit 1 which should have drawn the attention of the appellant company to the procedural irregularities preceding the signing of the approval.

I would be inclined to agree that the mere witnessing and certification of Exhibit 1 by the Justice of the Peace did not necessarily indicate that the authorised person had not fulfilled the requirements of the Ordinance before endorsing his approval. Under section 3 he is required to be satisfied that the Fijian understands the meaning of the instrument, and that it forms part of a genuine transaction which is for the benefit of the Fijian. He may consult such persons as he considers expedient. A fee of one shilling is payable and the Fijian must sign in his presence.

The authorised person is not enjoined however, to sign as a witness, but only to write the word "approved" and add his signature. A third person acting on the document might well assume that the certifying Justice of the Peace was one of the persons consulted by the authorised person.

On this basis counsel for the appellant company contended that the appellant was not put upon inquiry so as to be precluded from relying upon the maxim above quoted — on this point the judgment of Lord Simonds in *Morris v. Kanssen* [1946] 1 All E.R. 586 at 592 is relevant. Nevertheless, the question whether the maxim can be of any assistance to the appellant really hinges upon his plea that the respondent is estopped from giving evidence tending to invalidate the approval of the authorised person. The maxim, as applied to acts of an official nature, is quoted in full in *Broom's Legal Maxims* (10th Ed.) at p.642 as — *omnia praesumuntur rite et solennitur esse acta donec probetur in contrarium;* which emphasizes that the presumption subsists only *until the contrary is shown.* In the present case there was evidence to the contrary, and I therefore turn to Counsel's submission that the respondent was precluded from giving such evidence by the doctrine of estoppel.

The aspect of the facts relied upon is this. Section 3 of the Ordinance requires the Fijian wishing to obtain approval of an instrument, to submit it to an authorised person. In the present case the respondent did this, and ignorance of law being no excuse must be presumed to be aware of and perhaps even a party to the procedural irregularities: in full knowledge therefore, that the approval given to Exhibit 1 was invalid (accepting that premise for the purpose of this argument) the respondent tendered it, or was a party to its being tendered, as a valid document to the appellant company, intending that it should be acted upon. The appellant company duly acted upon the document to its own detriment.

The authority relied upon by counsel for the appellant company is *De Tchihatchef v. Salerni Coupling Limited* [1932] 1 Ch 330, where at p.342 Luxmoore J. said —

> "Bearing in mind that injunction, and without attempting to formulate any precise rules, it seems to me that it is sufficient, so far as this case is concerned, to say that if a person authorizes or permits another to make a representation for the purpose of it being acted upon and it is acted upon, that person cannot afterwards be heard to say that the representation is not true. This applies even if the representation is as to the legal effect of the document, if there is no qualication in the representation suggesting that the document and not its effect as represented is to govern the relationship of the parties."

That case, however, which related to a prospectus, was not concerned with any limitations to the doctrine of estoppel which may arise from statutory provisions on the subject in question. Where such provisions are relevant, the rule, as stated in *Halsbury's Laws of England* (3rd Edn.) Vol. 15 para 345, is — "The doctrine of estoppel cannot be evoked to render valid a transaction which the legislature has, on grounds of general public policy, enacted shall be invalid." Among the authorities quoted in support of this proposition is the decision of the Privy Council in *Anctil v. Manufacturers' Life Insurance Company* [1899] A.C. 604 where

it was held that a condition in an insurance policy which was contrary to article 2590 of the Civil Code of Lower Canada could not prevail against the article. At p.609 their Lordships said —

> "The rule of the Code appears to them to be one which rests upon general principles of public policy or expediency, and which cannot be defeated by private convention of the parties. Any other view would lead to the sanction of wager policies."

In a more recent decision, the Privy Council dealt with the question in more detail. In *Kok Hoong v. Leong Cheong Kweng Mines Ltd.* [1964]1 All E.R. 300, their Lordships referred to two classes of statutes, each of which declares transactions unenforceable or void, and one of which was, and one was not, essentially prohibitory in character; at p.308 —

> "It does not appear to their Lordships that the principle invoked is confined to transactions that have been made the subject of legislation or that, where legislation is in question, the bare prescription that a transaction is to be void or unenforceable is sufficient by itself to justify the principle's application. Thus, on the one hand, the common law may itself prohibit the enforcement of certain contracts such as those of an infant not for necessaries, and it cannot be supposed that it would any the less refuse to base a judgment on an estoppel against an infant who had so contracted. An infant who has obtained goods from a tradesman by representing himself to be of full age cannot be estopped from setting up his infancy, if sued for the price of the goods. On the other hand, there are statutes which, though declaring transactions to be unenforceable or void, are nevertheless not essentially prohibitory and so do not preclude estoppels. One example of these is the Statute of Frauds (see *Humphries v. Humphries* [1908-10] All E.R. Rep. 733; [1910] 2 K.B. 531, in which it was no doubt considered that, following *Leroux v. Brown* (1852) 12 C.B. 801, the statute ought to be treated as regulating procedure, not as striking at essential validity): another is the Stamp Act or Acts in their application to oral contracts of marine insurance, which, according to the decision in *Barrow Mutual Ship Insurance Co. Ltd. v. Ashburner* (1885) 54 L.J.Q.B. 377, are not prohibited so much as penalised."

The Privy Council went on to say that the words "on grounds of general public policy," might prove an elusive guide, for there is no public general statute for which this claim might not be made. They then said (p.308) —

> "In their lordships' opinion a more direct test to apply in any case such as the present, where the laws of money lending or monetary security are involved, is to ask whether the law that confronts the estoppel can be seen to represent a social policy to which the court must give effect in the interests of the public generally or some section of the public, despite any rules of evidence as between themselves that the parties may have created by their conduct or otherwise."

I venture to think that the type of instrument envisaged by section 2 of the Agricultural Produce (Authorities by Fijians) Ordinance is not far removed from the subject of money lending or monetary security. There is another relevant passage in the judgment of their Lordships at pp.308-9 which reads —

> "General social policy does from time to time require the denial of legal validity to certain transactions by certain persons. This may be for their own protection, as in the case of the infant or other category of person enjoying what is to some extent a protected status, or for the protection of others who may come to be engaged in dealings with them as, for instance, the creditors of a bankrupt. In all such cases there is no room for the application of another general and familiar principle of the law that a man may, if he wishes, disclaim a statutory provision enacted for his benefit, for what is for a man's benefit and what is for his protection are not synonymous terms. Nor is it open to the court to give its sanction to departures from any law that reflects such a policy, even though the party concerned has himself behaved in such a way as would otherwise tie his hands."

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I think it is abundantly apparent that the Agricultural Produce (Authorities by Fijians) Ordinance falls within the categories referred to in the two passages last above quoted. The Ordinance is entitled "An Ordinance to control the giving by Fijians of authorities for the payment to non-Fijians of the proceeds of agricultural produce." The method of control is to require responsible public officers to satisfy themselves on two important matters both clearly designed to protect the Fijian against himself and against exploitation by others. His status under the Ordinance is a protected one. In my judgment there is no doubt that the legisaltion is of the nature to which the principle "no estoppel against a statute" applies with full force. If it were not so, the object of the legislation would be defeated, for reasoning which would permit the application of an estoppel, would equally, I think, permit the Fijian to contract himself out of the Ordinance altogether. This cannot have been intended.

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The next ground urged by counsel for the appellant company is also one which must be resolved by consideration of the scope and object of the Ordinance. The position is that approval was actually endorsed upon Exhibit 1 in the required form. Where the steps to be taken by the authorised person prior to approval imperative conditions precedent, so that disregard of them invalidated the approval, or were they directory only? Counsel for the appellant company made reference to the necessity of the payment of a fee of 1/- and queried whether an approval should stand or fall on such a matter. I think it may well be that a provision of that nature is severable, or that the *de minimis* rule may apply, but feel that the present problem must be approached upon the basis of the evidential findings in the courts below that there was neglect of the major requirements of the relevant section; in other words, that the District Officer failed to satisfy himself that the respondent understood the document or that it formed part of a genuine transaction for the respondent's benefit. Furthermore, Exhibit 1 was not signed in the presence of the District Officer. In the face of the evidence I am unable to agree with the submission of counsel for the appellant company that, as the District Officer was not required by the Ordinance to sign as a witness, his satisfaction on the points mentioned should be assumed, or that the fact that the signed document was tendered by the respondent absolved the District Officer from the performance of his duty to see that it was signed in his presence.

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I make no apology for quoting, as setting out the law on this subject, two passages from *Maxwell on Interpretation of Statutes* (11th Edition) as the equivalent passages from earlier editions have often been quoted with approval in the English Courts. I instance *Caldow v. Pixell* (1877) 36 L.T. 469 and *Pope v. Clarke* [1953] 2 All E.R. 704. The first quotation from the text book is from pp.362-3 —

> "When a statute requires that something shall be done, or done in a particular manner or form, without expressly declaring what shall be the consequence of non-compliance, the question often arises: What intention is to be attributed by inference to the legislature? Where, indeed, the whole aim and object of the legislature would be plainly defeated if the command to do the thing in a particular manner did not imply a prohibition to do it in any other, no doubt can be entertained as to the intention."

Secondly at p.364 —

> "It has been said that no rule can be laid down for determining whether the command is to be considered as a mere direction or instruction involving no invalidating consequence in its disregard, or as imperative, with an implied nullification for disobedience, beyond the fundamental one that it depends on the scope and object of the enactment. It may, perhaps, be found generally correct to say the nullication is the natural and usual consequence of disobedience, but the question is in the main governed by considerations of convenience and justice, and, when that result would involve general inconvenience or injustice to innocent persons, or advantage to those guilty of the neglect, without promoting the real aim and object of the enactment, such an intention is not to be attributed to the legislature. The whole scope and purpose of the statute under consideration must be regarded. The general rule is, that an absolute enactment must be obeyed or fulfilled exactly, but it is sufficient if a directory enactment be obeyed or fulfilled substantially."

Certainly the present case is one in which inconvenience or injustice results to the appellant company if the requirements of section 3 are held to be imperative. Whether or not it could recoup its loss might well involve material questions of fact and law. Nevertheless, I am satisfied, in the light of the scope and object of the legislature, that the substantial requirements of section 3 are intended to be and must be treated as imperative. I have indicated, earlier in this judgment the view that the object of the Ordinance is to protect the Fijian from himself and from those who might wish to exploit him. This object cannot be achieved unless those to whom the duty is entrusted faithfully make the investigation which the Ordinance prescribes. If the legislature, in the interests of innocent third parties, had wished to provide that an approval once given in the manner prescribed by the Ordinance should not be challenged, it could have done so. An example of such a provision is contained in s.32 (2) of the Gold Coast Concessions Ordinance (Laws of the Gold Coast (1951) c.136) which I quote from the judgment of the Privy Council in *Edward Ramia, Ltd. v. African Woods Ltd.* [1960] 1 All E.R. 627, 629 —

"(2) A certificate of validity . . . shall be conclusive evidence that all the requirements of the Ordinance . . . and all matters precedent and incidental thereto have been complied with . . . "

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In the absence of such a provision I am of opinion that, while Exhibit I purports to be "approved," it is not an approval "under the provisions of the Ordinance," as provided in section 2(c) and Exhibit 1 is therefore rendered void by the operation of that section.

Counsel for the appellant company sought to suggest, as a final submission, that Exhibit 1 was not an instrument within the terms of section 2 at all, as it was an absolute assignment of crops, and the inclusion in the document of moneys payable in respect of sugar cane was incidental and superfluous. As at present advised I see no merit in the submission as it seems to me that Exhibit 1 manifests precisely the type of transaction at which the Ordinance is aimed. In my view, however, it is not open to counsel to raise this entirely new point of law for the first time upon a second appeal. It is not a point which, if counsel succeeded upon it, would dispose of the case once and for all. Alternative questions under the Bills of Sale Ordinance (Cap. 202 — Laws of Fiji 1967) would arise, and counsel were agreed that amendment of pleadings by both parties would be involved. The whole case would have to be re-argued upon quite a different basis. It cannot be quite certain that on the new pleadings further questions of fact could not arise. I would not, therefore, be prepared to admit the new ground at this late stage.

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For the reasons I have given I would dismiss this appeal with costs.

HAMMETT P.:

I concur. The appeal is dismissed with costs.

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TRAINOR J.A.:

I have had the opportunity of reading the judgment of Gould J.A. and I have nothing to add to the findings made by him.

I agree this appeal should be dismissed with costs.

Appeal dismissed.