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Between:

THE DIRECTOR OF PUBLIC PROSECUTIONS

and

THE SECRETARY OF NAVUA CLUB
(BISSUN DEO s/o RAM DATT)

Mr. A. Gates for the Appellant

Mr. H. Nagin with Mr. R. Patel for the Respondent

JUDGMENT

This is an appeal against a ruling in the Navua Magistrate's Court terminating the proceedings on a summons to show cause issued under section // of the Registration of Clubs Act.

The main particulars relating to this matter which are set out in the petition of appeal show that on 23rd October 1979 a complaint was filed with the Chief Magistrate pursuant to section 7(1) of the Act. As a result of the complaint the summons was issued by the Court and directed to and served on the Secretary of the Navua Club (Bissun Deo s/o Ram Datt) to show cause why the Navua Club should not be struck off from the Register maintained by the Commissioner, Central Division.

When the case was called on 21st November 1979 the Secretary of the Navua Club, Bissun Deo s/o Ram Datt appeared and pleaded not guilty to the allegations in the summons to show cause. The Secretary was represented by Counsel. Thereafter the case dragged on in fits and starts during which the bulk of the evidence for the complainant was adduced and a lot of technical arguments entered into culminating in the first ruling by the Court on 1st May 1980 to the effect that the summons to show cause was defective in that it was wrongly

addressed and the person to whom the summons was in fact addressed, namely Bissun Deo s/o Ram Datt was under no duty to show cause. It was further ruled that the summons should have been addressed to the Navua Club.

After that ruling was delivered the matter was adjourned several times for one reason or another but finally on 7th October 1980 the Court made another ruling whereunder it was held that Bissun Deo s/o Ram Datt, Secretary of the Navua Club should not have been summoned to show cause on the complaint and was ordered to be released from further participation in the proceedings. The result was the proceedings on the complaint were terminated.

The appellant has appealed against this ruling on the grounds:-

- (1) that such an order was premature, the Crown having yet to complete its evidence on that summons;
- (2) that there was no jurisdiction to make such an order;
- (3) that it being the Court's decision to issue the summons on the complaint it was for the Court to decide who was to be summoned following section 7(3) of the Ordinance, and that the Secretary was correctly summoned;
- (4) that there was no injustice in the Secretary having been served with the summons it being clear he was not served in his personal capacity but only on behalf of the Club.

The complaint filed in this matter was in the following form and terms:-

"FIJI TO }
WIT }

In the Magistrate's Court, NAVUA

COMPLAINTSection 7(1) Cap. 169

In pursuance of section 7(1) of the Registration of Clubs Ordinance, Cap. 169 I, the undermentioned make complaint to the undermentioned Magistrate in relation to Navua Club situated in Navua town to make an order to strike off from the Register Navua Club on the following grounds:-

- (a) that there is frequent drunkenness on the club premises;
- (b) that persons who are not members are habitually admitted to the club merely for the purpose of obtaining liquor; and
- (c) that the club has been frequently conducted to the annoyance and disturbance of persons in premises near such club.

TAKEN before me

(Sgd.) Rishi Nair (Sgt.638)
for Prosecuting Officer,
Navua.

(Sgd.) T. Madhoji
MAGISTRATE

Date 23.10.79 "

The summons to show cause pursuant to the above-mentioned complaint was issued in the following form and terms:-

" . CRIMINAL PROCEDURE CODE

Form 7
(Section 82)SUMMONS TO SHOW CAUSEFIJI TO)
WIT) In the Magistrate's Court at NAVUA

Case No. 275/79

To: (a) The Secretary of Navua Club of (b) Tokotoko, Navua
(Bissun Deo s/o Ram Datt)

Whereas in pursuance of section 7 of the Registration of Clubs Ordinance, Cap. 169 complaint has been made against the Navua Club which is registered under the above Ordinance for the following reasons:-

- (a) that there is frequent drunkenness on the club premises;
- (b) that persons who are not members are habitually admitted to the club merely for the purpose of obtaining liquor; and
- (c) that the club has been frequently conducted to the annoyance and disturbance of persons in premises near such club.

NOW THEREFORE you the said Bissun Deo s/o Ram Datt, the Secretary of Navua Club are hereby commanded to appear before the Magistrate's Court at NAVUA on the 21st day of November 1979 at 9.00 o'clock in the forenoon to show cause why Navua Club should not be struck off the Register.

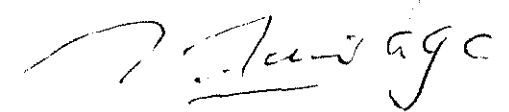
DATED at Suva this 23rd day of October, 1979.

- (a) Name and father's name if Indian
- (b) Full address and occupation

(sgd) T. Madhoji
MAGISTRATE "

A social club such as the Navua Club is not a legal entity and therefore it cannot be sued or proceeded against except through its officials. Such a club is not recognised as having any legal existence apart from the members of which it is composed; see Steele v. Gurley and Davies (1886) 3 T.L.R. 118 at 119, per Day J. It follows that for the purpose of section 7 of the Registration of Clubs Act it would be wrong and pointless to direct a summons under Section 7 to the Navua Club which has no cognisable existence. The summons must be addressed to a duly authorised member or members of the Club. There is no dispute that the Secretary of the Club at all material times was Bissun Deo s/o Ram Datt and he was the person to whom the summons was in fact served. From the summons itself and from the evidence which has been adduced in this case it should have been abundantly clear that Bissun Deo was being summoned to show cause not in his personal capacity but in his capacity as the Secretary of the Navua Club. No prejudice or injustice could possibly accrue to him by the manner in which he was in fact summoned. The fact that Bissun Deo had taken upon himself to engage a counsel to represent him in these proceedings cannot alter the true character of the proceedings taken in this case under section 7 of the Act.

For the reasons I have given this appeal is allowed and it is ordered that the case be remitted to the Court below for continuation of the hearing according to law.



(T.U. Tuivaga)
Chief Justice

Suva,
 16th April 1981.