

IN THE FIJI COURT OF APPEAL
Civil Appeal No. 30 of 1987

Between: PREM SINGH Appellant

- and -

1. MALELILI NAYAGODAMU
 2. SEREMAIA BAIBAI Respondents

Mr. M. A. Khan for the Appellant
 Mr. V. Mishra for the Respondents

Date of Hearing : 24th September, 1987

Delivery of Judgment: 25th September, 1987

JUDGMENT OF THE COURT

Roper, J.A.

This is an appeal against an order following the issue of a summons for possession made pursuant to section 169 of the Land Transfer Act (Cap. 131).

The Respondents established that they were the registered proprietors of the land in question and that the Appellant occupied a shop on part of it. Demands that he vacate the property had been made without result.

Section 172 of the Act provides that a person in the position of the Appellant may show cause why he refuses to give possession, and if he "proves to the satisfaction of a judge" that he has a right to possession the summons will be dismissed. All the appellant did was to file an affidavit which states:-

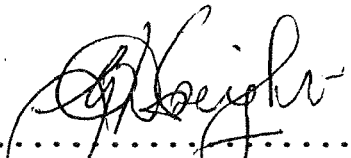
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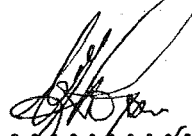
"That I am and have been an annual tenant. I am advised by my counsel and I verily believe that my annual tenancy has not been lawfully terminated."

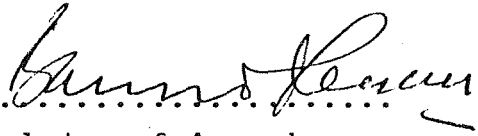
That is the sum total of the Appellant's case. Kearsley J. concluded that the Appellant had not proved to his satisfaction that he had a right to possession and made the order.

All we need say on this appeal is that if a bald unsupported statement such as the Appellant made in his affidavit is held to amount to proof of a right to possession then section 169 is deprived of all practical effect.

The appeal is dismissed as to costs to the Respondents to be fixed by the Registrar if the parties cannot agree.


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Vice-President


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Judge of Appeal


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Judge of Appeal