COMMUNICATIONS

To the Editor:

In the last issue of the *Melanesian Law Journal*, I wrote that I could not find any case in which the *Transactions with Natives Act 1958-1963* had been discussed.[1]

This is no longer true. In the latest volume of the Papua & New Guinea Law Reports the case of *Edric Eupo V A.G.C.(Pacific) Ltd.*[2] decides what is sufficient to satisfy the residence requirement of section 6(1) of the act.[3]

The appellant who lived on a settlement scheme seven miles out of Popondetta was being sued for payments due under a hire-purchase contract. He claimed that the contract was unenforceable under section 6(1) because in the contract his residence was described simply as Popondetta. Was this sufficient to comply with the requirement of the section that his "residence" be contained in the written agreement?

The court (Kelly J.) held that it was, relying on two English cases relating to a similar requirement in the *Bills of Sale Act 1854*.[4] Judge Kelly lays down what he calls a "subjective" test, which requires only that "the residence of the

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1 Seddon, "Reciprocity, Exchange and Contract" (1974) 2 *Melanesian Law Journal* 62.

2 [1971-1972] PNGLR 470.

3 S. 6(1) Subject to this section, a contract is unenforceable as against any party thereto unless the contract is in writing and contains the full names and residences of every party thereto and what is to be done under the contract by each of those persons and in the case of a job contract or a contract to which the Administrator declares by notice in the Gazette, that the provisions of this subsection apply, unless the contract is approved by an authorized officer.

4 *Briggs v. Boss*(1868) 3 QB 268; *Blount v. Harris* (1878) 4 QBD 603.

party be described sufficiently to enable him to be readily found by the use of ordinary care."[5] Thus if he lives in a small town and is well-known, the residence requirement would be the more easily satisfied. It is not necessary, to satisfy section 6(1), that the fullest and most comprehensive description be made of the place where the party concerned ate, slep and had his normal place of abode.

This case is not remarkable for what it decides. It is a sensible interpretation of section 6(1). However Judge Kelly expresses by way of *obiter dictum* a view with which I cannot, with the greatest respect, agree. He says:

> Curiously enough, while s.6(1) in its original form provided that contracts which did not comply with the section should be unlawful and void as against a native, the amendment made in 1963 removed any reference to a native in the subsection so that whilst it admittedly appears in an Ordinance entitled 'Transactions with Natives Ordinance' it is, on the face of it, of general application. No doubt the object of the legislation was to ensure that any contract, including of course one to which a native was a party, in order to be enforceable must be reduced to writing...[6]

But section 4 of the act defines "contract" restrictively, as "any contract to which a native is a party." Since section 6 (1) is subject to section 4, it must be read as. ". . . a contract *to which a native is a party* is unenforceable as against any party thereto . . ." Therefore, on the face of the act, section 6(1) does not apply to every contract but only to those contracts to which "natives" are parties.

Nicholas Seddon

5 [1971-1972] P&NGLR at 474.

6 *Ibid.* at 473.