We follow this rule in the present case.

Ordered, adjudged and decreed:—

That plaintiff have judgment against the defendants, and each of them, in the sum of $1,100.00. Each defendant is jointly and severally liable to the plaintiff for the full amount of this judgment, but plaintiff may only collect the amount once regardless of whether it is obtained all from one defendant or partly from each defendant.

IYAR NGIRATULEMAU, Appellant

v.

NGIRATKAKL MEREI and KUKUMAI RUDIMCH, Appellees

Civil Action No. 495

Trial Division of the High Court

Palau District

June 18, 1973

Appeal from judgment a certain valuable piece of Palauan money was under the supervision of the father of defendant, who obtained it from his father and used it as security for a loan. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, remanded where there was a major unresolved conflict in the evidence.

Appeal and Error—Scope of Review—Facts

Though court was authorized by statute to review facts, it could not do so where they related to unresolved major conflicts in the evidence; and case would be remanded for resolution of the conflict.

Assessor:	PABLO RINGANG, *Presiding Judge, District Court*
Interpreter:	AMADOR D. NGIRKELAU
Reporter:	ELSIE T. CERISIER
Counsel for Appellant:	OBODEI IYAR
Counsel for Appellees:	NGIRATKAKL MEREI

TURNER, *Associate Justice*

This was an appeal from a District Court trial judgment to the effect that a certain valuable piece of Palauan money, called *Eterenged*, was "under the supervision of Merei Ngiraurak," who is the father of the defendant, Ngiratkakl. The judgment is somewhat ambiguous because the admitted fact is that the defendant Ngiratkakl obtained the money from his father and gave it to the defendant Kukumai Rudimch as security for a $600.00 (U.S.) loan. Presumably Kukumai will return the money when she is repaid the loan, although there is nothing in the record from her to assure this. Kukumai was present during the appeal hearing but did not take the stand nor make any statements to the Court.

Ground for appeal is that the judgment is not supported by the evidence and is contrary to the evidence. This is frequently a reason for appeal and, when the proceeding comes up from the District Court, the statute, 6 TTC § 355(2), governs the appeal authorizing the review of both the facts and the law.

The Court is confronted with a difficult situation in this appeal because there is neither transcript of testimony nor a draft report, or any other record of the facts, as provided in Rule 31(e), Rules of Criminal Procedure, made applicable to Civil Procedure by Rule 23. The transcript was either lost or destroyed and, because of the great lapse in time between the filing of the complaint and answer (1969), the trial (1970) and the appeal hearing (1973), the trial judge was unable to approve a draft report over which the parties were in agreement.

This Court has several times stated a rule on appeal when the record is incomplete. In *Perman v. Varner*, 4 T.T.R. 171, it was said:—

"No transcript of evidence or draft report accompanied the appeal, so there can be no review of the sufficiency of the evidence. The District Court's comprehensive findings of fact, therefore, must stand."

This is a good rule when applicable, but when there is no record of the evidence and no "comprehensive findings of fact", it amounts to a substantial denial of justice when the court is compelled to decide the appeal "on the law" rather than both facts and law, as the statute authorizes. It is the responsibility of the appellant to furnish a record, "affirmed by the trial judge." *Tasio v. Trust Territory*, 3 T.T.R. 262, 265.

That rule also cannot be applied when the trial judge is unwilling to affirm any draft report because of the irreconcilable conflicts between the parties as to the evidence and when the transcript is missing.

In *Henos v. Kaiko*, 5 T.T.R. 352, the Appellate Division remanded a case for further trial when it appeared, among other reasons for remand, that "the trial court judgment left unresolved several important questions raised by the appellant." Another case remanding a judgment which was patently inadequate on the record was *Loton v. Langrin*, 5 T.T.R. 358. The appellate court said at 5 T.T.R. 363:—

"In view of the record it is impossible, and would be improper in any event, for this court to attempt to make findings of fact to supply the omission of the trial court. At best we may only assume there were facts supporting the judgment, ... An opinion such as this without more than an unsupported conclusion is unfair to the parties and worthless to the appellate court."

The court went on to explain the necessity of making adequate findings which resolve serious conflicts, and concluded by saying at 5 T.T.R. 365:—

". . . it is not permissible for an appellate court to resolve conflicting evidence. That is the obligation of the trial court."

Even though the statute authorizes a review of facts as well as law, the appellate court cannot do so when there are unresolved major conflicts in the evidence. *Yamashiro v. Trust Territory*, 2 T.T.R. 638. *Fattun v. Trust Territory*, 3 T.T.R. 571.

At the hearing on appeal a crucial conflict was demonstrated that might have been decisive if the trial court had resolved it. The appellant claimed that after the appellee, Ngiratkakl Merei, had obtained the Palauan money from his father and used it to secure the loan, he and his father were twice called before the *rubaks* of Airai Municipality, at the request of appellant, to attempt to obtain an accounting as to the *Eterenged*. Both times, according to appellant, appellee promised to redeem the money and return it as soon as he obtained $600.00 in payment for houses he was building.

Appellee denied there had ever been such meetings, and denied his two promises to redeem the loan security. It seems only reasonable to conclude that if the meetings were held and the promises made, the appellee and his father acknowledged they were not the owners of the money. On remand, we specifically ask the trial court to hear and resolve this conflicting evidence.

This case, and others similar in nature, has demonstrated the extreme complexity from a factual standpoint of transactions relating to Palauan money. Perhaps one of the faults of counsel for both parties was to go into minute and ancient detail of the "story" of the *Eterenged*. At least it was a weakness in the presentation of the conflicting sides on appeal. Such detailed ancient history is scarcely necessary, even though a determination of the effect under the custom of the relinquishment of control by the appellant and the acquisition of control by appellee's father does appear to be essential.

We conclude the desired end of the appellate process—achieving the maximum justice—will best be served by remanding this case for further hearing and preparation of an adequate record, even though this Court has said, in effect, many times the parties appeal "on the record at their peril." An inadequate record cannot produce a just and fair decision for either side. If it is necessary to bring the case back to the trial division, let it be on the basis of a complete record in which the trial judge has ruled on the conflicts in the testimony. It is

Ordered, that this appeal be remanded for further proceedings in accordance with this opinion.

ROGER L. ST. PIERRE, Plaintiff

v.

THE "MICRONITOR", et al., Defendants

Civil Action No. 7-73

Trial Division of the High Court

Mariana Islands District

June 19, 1973

Libel action by Mariana Islands resident against newspaper published in the Marshall Islands and distributed throughout the Trust Territory. The Trial Division of the High Court, Harold W. Burnett, Chief Justice, held that venue was properly laid in the Mariana Islands.

Torts—Venue—Defamation

In libel action by Chief Public Defender for the Trust Territory, a resident of Saipan, against newspaper published in the Marshall Islands and distributed throughout the Trust Territory, venue in the Mariana Islands district was, under both statute and the better common law view, properly laid, and motion for change of venue to the Marshall Islands District, made on ground it would be inequitable to require the action to be defended in Saipan, would be denied. (6 TTC §§ 101, 103, 104)