Judgment 6, 1957

~~PC GM47.G.2~~

No. 30 of 1955.

In the Privy Council.

ON APPEAL

FROM THE FIJI COURT OF APPEAL.

BETWEEN

RATU TAITO NALUKUYA (Plaintiff) . . . . . *Appellant*

AND

THE DIRECTOR OF LANDS (Defendant)

and

THE NATIVE AFFAIRS BOARD (*amicus curiæ*) . . . . *Respondents*

AND

THE NATIVE LAND TRUST BOARD OF FIJI . . . . *Intervener.*

RECORD OF PROCEEDINGS

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Solicitors for the Appellant.

CHARLES RUSSELL & CO.,
37 NORFOLK STREET,
LONDON, W.C.2,
Solicitors for the First Respondent.

HY. S. L. POLAK & CO.,
20/21 TOOK'S COURT, CURSITOR STREET, E.C.4,
Solicitors for the Second Respondent and for the Intervener.

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No. 30 of 1955.

In the Privy Council.

ON APPEAL
FROM THE FIJI COURT OF APPEAL.

BETWEEN

RATU TAITO NALUKUYA (Plaintiff) . . . . *Appellant*

AND

THE NATIVE AFFAIRS BOARD (*amicus curiæ*) . . . *Respondents*
and THE DIRECTOR OF LANDS (Defendant)

AND

THE NATIVE LAND TRUST BOARD OF FIJI . . . *Intervener.*

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

EXHIBITS

DOCUMENTS TRANSMITTED WITH THE RECORD BUT NOT PRINTED

No. 30 of 1955.

In the Privy Council.

ON APPEAL

FROM THE FIJI COURT OF APPEAL.

BETWEEN

RATU TAITO NALUKUYA (Plaintiff) . . . *Appellant*

AND

THE DIRECTOR OF LANDS (Defendant) and
THE NATIVE AFFAIRS BOARD (*amicus curiæ*) . *Respondents*

10

AND

THE NATIVE LAND TRUST BOARD OF FIJI . *Intervener.*

RECORD OF PROCEEDINGS

In the Supreme Court.

No. 1.
Originating Summons, 12th March 1953.

No. 1.

ORIGINATING SUMMONS.

IN THE SUPREME COURT OF FIJI.

No. 15 of 1953.

IN THE MATTER of "The Crown Acquisition of Lands Ordinance" (Cap. 122) (hereinafter called "the Ordinance")

20 Between RATU TAITO NALUKUYA of Saunaka in the District of Nadi Native Fijian . . Plaintiff

and

THE DIRECTOR OF LANDS . . . Defendant.

LET The Director of Lands the above-named Defendant within eight days after service of this summons on him inclusive of the day of such service cause an appearance to be entered for him to this summons which is issued upon the application of the above-named Plaintiff Ratu Taito Nalukuya of Saunaka in the District of Nadi Native Fijian who claims

In the Supreme Court.

No. 1. Originating Summons, 12th March 1953, *continued.*

to be a person holding or claiming an estate or interest in the land named in a certain notice dated the 22nd day of November 1944 issued in pursuance of Section 6 of the Ordinance and inserted in *The Fiji Royal Gazette* Number 68 of 1944 which said land is in such notice described as all that portion of land containing an area of 434 acres 3 roods 26·1 perches more or less being part of the land contained in Lot 94 Native Lands Commission Survey Plan Number H/18–1 owned by the Mataqali Vunaivi Tokatoka Nadrau in the Tikina of Nadi as more particularly delineated on Plans Numbers N.D. 2679 and 3050 deposited in the Office of The Director of Lands for the determination of the amount of compensation due in respect of the said land.

Dated the 12th day of March 1953.

(Sgd.) G. YATES,
Registrar.

This Summons was taken out by RICE & STUART Solicitors for the Plaintiff whose address for service is at the Chambers of the said Solicitors at Ba and also at the Chambers of their Suva agents Messieurs GRAHAME & COMPANY Solicitors Central Chambers Suva.

No. 2. Affidavit of Plaintiff (Appellant), 6th July 1953.

No. 2.

AFFIDAVIT of Plaintiff (Appellant).

I RATU TAITO NALUKUYA of Saunaka in the District of Nadi Native Fijian the above-named Plaintiff make oath and say as follows :—

1. I am the head of the Tokatoka Nadrau to the members of whom the compensation money for the compulsory acquisition of the land described in the originating summons herein is payable equally.

2. The other adult members of the said Tokatoka Nadrau are as follows :—

(A) My sister Salote Vibote the wife of Vaisoni Lumuni of Sabeto in the District of Nadi.

(B) My sister Adi Kiula Vasiti the wife of Semi Ravovo of Saunaka aforesaid.

(C) My cousin Romera Suvewa the wife of Ameniyasi Turuva of Saunaka aforesaid.

3. The only other members of the said Tokatoka Nadrau are my five infant children namely :—

(A) My daughter Romera Suvewa aged about 8 years.

(B) My daughter Makelisi Meli aged about 6 years.

(C) My son Josateki Tuimulamula aged about 4 years.

(D) My son Vonitiesilou aged about 2 years.

(E) My son Jona Rayasi aged about 3 months.

In the Supreme Court.

No. 2. Affidavit of Plaintiff (Appellant), 6th July 1953, *continued.*

4. I am informed by my Solicitor and verily believe that the Crown have offered to compromise this suit by payment of a total sum of £11,378.1.6 by way of compensation for the said land.

5. I am agreeable to accept the said compromise and as father and next friend of the said five infant children am of opinion that acceptance of the same would be for their benefit.

Sworn at Nadi in the Colony of Fiji by the said Ratu Taito Nalukuya this 6th day of July 1953 Before me after I had read over and explained the contents of this affidavit to the said Ratu Taito Nalukuya in the Fijian language through the medium of Jaswant Singh an interpreter who had himself first been sworn :

T. NALUKUYA.

PRABHUBHAI B. PATEL,
A Commissioner for Oaths.

No. 3.

AFFIDAVIT of Plaintiff's (Appellant's) Solicitor.

No. 3. Affidavit of Plaintiff's (Appellant's) Solicitor, 7th July 1953.

I PHILIP RICE of Ba in the Colony of Fiji Barrister and Solicitor make oath and say as follows :—

1. I am a member of the Firm of Rice & Stuart the Solicitors acting for the Plaintiff in this suit and I am also retained as Counsel for the Plaintiff therein.

2. By letter to my said firm dated the 9th day of April 1953 the Defendant on behalf of the Crown has offered to compromise this suit by payment of a total sum of £11,378.1.6 as compensation for the compulsory acquisition of the land described in the originating summons herein.

3. My said Firm has not dealt directly with any member of the Tokatoka Nadrau from whom the said land was compulsorily acquired other than the Plaintiff but the Plaintiff's written instructions in that regard were given as the head and on behalf of all members of the said Tokatoka Nadrau.

4. For the foregoing reasons I have throughout this suit regarded myself as acting as Solicitor and Counsel not only for the Plaintiff but for all other members of the Tokatoka Nadrau.

In the Supreme Court.

No. 3.
Affidavit of Plaintiff's (Appellant's) Solicitor, 7th July 1953, *continued.*

5. As such Solicitor and Counsel as aforesaid I am of opinion that the proposed said compromise of this suit would be for the benefit of the infant members of the said Tokatoka Nadrau.

Sworn At Suva in the Colony of Fiji by the said Philip Rice this 7th day of July 1953 Before me } P. RICE.

F. G. FORSTER.
A Commissioner for Oaths.

No. 4.
Summons for Directions, 7th July 1953.

No. 4.

SUMMONS FOR DIRECTIONS.

LET all parties concerned attend His Lordship The Judge in Chambers Supreme Court Government Buildings Suva on Wednesday the 26th day of August 1953 at ten o'clock in the forenoon on the hearing of an application on the part of the Plaintiff for an order that the Plaintiff be at liberty to use on the hearing of this summons the affidavits of the Plaintiff and of his Solicitor Philip Rice sworn and filed in support of this application and on the hearing of a further application on the part of the Plaintiff to show cause why an order for directions should not be made in this action as follows :—

Service : That the originating summons herein be served upon the following persons who in addition to the Plaintiff are the only adult members of the Tokatoka Nadrau that is to say :—

(i) Salote Vibote the wife of Vaisoni Lumuni of Sabeto in the District of Nadi.

(ii) Adi Kiula Vasiti the wife of Semi Rovovo of Saunaka in the said District.

(iii) Romera Suvewa the wife of Ameniyasi Turuva of Saunaka aforesaid.

Approval of Compromise : That on behalf of Romera Suvewa, Makelisi Meli, Josateki Tuinulamula and Vonitiesilou Jona Rayasi infant children of the Plaintiff this Honourable Court approve of the proposed compromise of this action whereby the amount of compensation due in respect of the land described in the said originating summons be fixed by consent at £11,378.1.6 ‡[and that the said originating summons be settled by the Court in terms of s. 9 of the Crown Acquisition of Lands Ordinance, Cap. 122 at £11,378.1.6 and that such amount be paid into Court in terms of s. 18 of the said Ordinance] and that this sum after deduction thereout of the taxed costs and disbursements of the Plaintiff's Solicitors be shared equally by all members of the said Tokatoka Nadrau namely the Plaintiff and his five infant children and the said Salote Vibote the said Adi Kiula Vasiti and the said Romera Suvewa.

‡ Amendment on application of Defendant by leave granted 26th August 1953.

Application of Shares of Infants : That the shares of the said infant children in the said sum be paid to the Plaintiff as their father and next friend to be applied or dealt with by him in such manner for the benefit of the said children as this Honourable Court shall direct.

Application of Shares of Adults : That the shares of the Plaintiff and of the other said adult members of the Tokatoka Nadrau in the said sum be paid to them respectively to be applied by them as they think fit.

Costs : The incidence of the costs of and incidental to this application.

Liberty to either party to apply.

Dated the 7th day of July, 1953.

This Summons was taken out by RICE & STUART of Ba Solicitors for the Plaintiff whose address for service is at the Chambers of the said Solicitors at Ba and also at the Chambers of their Suva Agents Messieurs GRAHAME & COMPANY Solicitors Central Chambers Suva.

To the Defendant and to his Solicitor.

No. 5.

JUDGE'S NOTES OF HEARING.

Before—

HIS LORDSHIP THE CHIEF JUSTICE.

Wednesday, the 26th day of August, 1953.

Mr. Rice for the Plaintiff.

Mr. Bryce, Solicitor-General, for the Defendant.

Mr. Falvey asks leave to appear as *amicus curiæ*, as representing the Fijian Affairs Board.

Mr. Rice : No objection, but would ask right to reply to anything Mr. Falvey may put, and adjournment if necessary.

Court : Permission to Mr. Falvey accordingly.

Court : Is it not necessary as a preliminary to serve on other adults mentioned in para. 2 of Plaintiff's affidavit ?

Counsel agree.

Rice : Ask leave under Order 30, rule 3, to use affidavits of Plaintiff and of myself.

No objection.

In the Supreme Court.

No. 5. Judge's Notes of Hearing, 26th August 1953, *continued.*

Court: Affidavits may be used.

Solicitor-General asks leave to make an alteration in Summons for Directions at p. 2, by adding after " £11378.1.6 " the words, " and that the said originating summons be settled by the Court in terms of s. 9 of the Crown Acquisition of Lands Ordinance, Cap. 122, at £11378.1.6 and that such amount be paid into Court in terms of s. 18 of the said Ordinance."

Rice: I have no objection—it is machinery only.

Court: Leave to amend accordingly.

Persons mentioned in the Summons for Directions to be served. Other matters to stand over until parties served. Matter adjourned to a date to be fixed by the Registrar. 10

RAGNAR HYNE,
C.J.
26/8/53.

No. 6. Judge's Notes of Hearing, 17th February 1954.

No. 6.

JUDGE'S NOTES OF HEARING.

Before—

HIS LORDSHIP THE CHIEF JUSTICE.

Wednesday, the 17th February, 1954.

Mr. Rice for Plaintiff. 20

Mr. W. G. Bryce for the Defendant.

Mr. Crompton as *amicus curiæ.*

Rice: Order 33, rule 1, gives Court power to prepare issues. We have all agreed on issues, viz. :—

(1) Should the capital or any part thereof of the fund in Court be paid to the present members of the Tokatoka Nadrau, and

(2) If not, to whom should the same be paid.

Certain correspondence has passed. Correspondence put in by consent—Exhibit " A " to " A.15." 30

Crompton calls—

RATU SIR LALA SUKUNA. Sworn. States in English (evidence interpreted into Fijian for benefit of Plaintiff)—

I am Chairman of Native Lands Commission. I have been Chairman over 20 years. The Commission is still in being. Its functions are to ascertain ownership of native lands, boundaries of lands, and also to ascertain how ownership came into being. It is set out in section 6, *et seq.*, Cap. 85.

I carried out these functions. So far as word " tenure " can be used, it was my duty to ascertain what tenure is not tenure from Queen.

I am also a Barrister of the Middle Temple.

Native land is vested absolutely in native owners. The owning unit, decided by the Council of Chiefs at conferences beginning in 1874 or 1875, and ending in 1881, when the Council advised the Governor that the unit of ownership is a unit known as the Mataqali. That advice was accepted by the Governor and became law. When the Commission of which I am now Chairman started operations in 1911, they came to the view that the proper unit of ownership was the Tokatoka, which is a subdivision of the Mataqali. During the time the tokatoka was accepted as the owning unit, the investigations as to ownership were taking place in the Western District. That is how it comes about that the block of land the subject of this case is recorded as Tokatoka Nadrau of the Mataqali Vunaivi.

Rice : Cannot go beyond proclamation.

(*Continues*) : Tokatoka Nadrau are the registered owners. There is no individual ownership. It is based in the unit. Individual members have some interest. It resembles entailed land, i.e., a life interest.

Native owners are described in Ordinance—the description is the correct description of the rights of owners.

Bryce : I am really here to ascertain to whom money should be paid, I should like to follow Mr. Rice.

Agreed.

Xxd. by Rice : Any question of process of sale is not outside native customary law.

At the time of the Deed of Cession—before it—sale of land for money was unknown.

Sale of land was not in the conception of the natives at the time. Since passing of Crown Acquisition of Lands Ordinance proceeds of sale of land have become an issue.

I cannot say how often land has been acquired—more than once.

The land now in question was taken for part of Nadi Airport. I don't know if there were two proclamations. I do not remember if 5 acres were taken for a cemetery. I know nothing about this case. I had no official connection with it. I am not for the Crown in one capacity and for the Natives on the other side. I am disinterested. Acquisition of land is done by Director of Lands. £2,000 was not paid to me by him. My deputy may have dealt with it.

I see letter of 15th January, 1953, and reply of 26th January, 1953— also letter of 31.1.53, and reply of 6.2.53.

In 1943 I was in the Army and don't think I was S.F.A. then. I would have to answer for my predecessor.

In the Supreme Court.

No. 6. Judge's Notes of Hearing, 17th February 1954, *continued.*

(*Rice calls attention to end of para. 2 of letter of* 21.1.53.)

Payment of money for land not in contemplation before cession.

The then S.F.A. in 1943 agreed to pay money to natives.

I was S.F.A. in December 1944. I was only nominally S.F.A. I was still in the Army—position really same as in 1943.

I was not aware S.F.A. was consulted.

We have since gone back to custom. I can't account for action of people actually in office.

I would have invested the £25 for the owners. It was done again recently.

I would say the people who paid £25 had no right of action against the S.F.A. It was paid to a war charity with the consent of the Tokatoka.

I am here to give evidence—not to say how money should be paid—I am not an expert as to how money should be paid—I submit this is for Court.

(*Letter from Director of Lands shows capital and interest—put in by consent—Exhibit "B."*)

I say that even if Tokatoka should have income only they are entitled to the interest set out in the letter in any event.

In this Tokatoka there are people under 21. Under English law their shares would have to be invested until they are 21. It would be reasonable for father to be trustee until they are 21.

I know the translation of Deed of Cession in Vol. 6.

I would not call it a local Magna Carta.

"Acquired property"—natives were given guns, clothing, etc., for land.

The acquisition of lands was determined by a Commission which came after Deed of Cession—1,000,000 acres claimed, only 500,000 confirmed.

Land was acquired by this means.

Rice: Deed refers to land alienated and absolute ownership.

Sir Lala: Custom was broken in giving land.

They got good titles. Land recognized as European land became the subject of Crown grants. The native title disappeared.

Xxd. by Bryce: Prior to 1875 there was a transfer of land in Fijian society. Among some Fijians land was personally owned as distinct from communally owned.

This was either by conquest or first settlement. Land taken in war was distributed amongst the owning units of the conquering tribe. The distribution would be done by the ruling chiefs and a Council of Elders. More frequently than not conquered people became serfs, but still held the land.

In Fiji there are states. In each there would be a leading tribe and other tribes. The lesser tribes owe allegiance to the leading tribe.

Usually these gifts of individual small parcels of land would be gifts from the leading elders in the owning unit in the tribe—usually a house site—these were out and out gifts for services rendered.

There was no authority for the pre-cession grants—consideration often ridiculous. Mr. Williamson was Commissioner immediately after cession. His purpose was to regularize.

There can be no alienation of native land now.

I was not S.F.A. in 1943. All I know of these acquisitions is through letters I have been shown.

I went away on 25.3.53. The S.F.A. referred to in letter of 6.2.53 does not refer to me.

In 1944 the Governor was Chairman of the Native Land Trust Board. S.F.A. was a member of Executive Council.

No Re-Xn.

By Court: Land is communally owned. It was communally owned before Cession. I say so because Council of Chiefs considered position, and the Ordinance resulted. A mataqali consists of several tokatokas.

There are few disputes as to boundaries in mataqalis. There are as to tribes, which consist of four to six mataqalis.

Tokatoka consists of one or more families—there is a head and decisions as to property are taken by head, elders, and one or two others.

A tokatoka cannot alienate land. If a tokatoka becomes extinct, it goes to mataqali to which it belongs.

Crompton does not wish to address.

Rice: I contend my clients—the tokatoka—are entitled to whole money. No submission made by Crompton, so have nothing to reply to.

Crompton: Thought Falvey made submissions.

Court: No.

Crompton: Would then wish to make some submissions.

Crompton: Draw attention to extent of interest of members of a tokatoka—described in Caps. 86 and 85.

Common ground native land cannot be alienated except to Native Land Trust Board and to Crown. Refer to section 15 of Cap. 86, s. 15 (2) as amended in 1945.

To be distributed in manner prescribed. Regulations are made under Ordinance prescribing Vol. IV p. 426—Reg. 3 (2) of N.L.T. Regs.

This is a guide as to how division of proceeds should be effected.

In the Supreme Court.

No. 6. Judge's Notes of Hearing, 17th February 1954, *continued.*

Has been suggested this is not a sale, but a compulsory acquisition—distinction without a difference.

It is an exchange of property for money. So in effect, a sale has taken place.

There is the question as to extent to which present members of Tokatoka are to be compensated out of this money. It can only be to the extent of their own present interest, i.e. for the loss of their present right, the use and occupation of land for life.

Suggested that balance if any should be paid to N.L.T.B. for administration.

Rice: In so far as Crompton suggests, that money should go to N.L.T.B. refer to letter of 5th May, 1953, Secretary put some proposition to Director of Lands.

Letter of 6.5.53 to Rice & Stuart. Letter sent to Secretary N.L.T.B. on 8.5.53. We repudiated suggestion—refer to para. 2. N.L.T.B. invited to intervene—took no action.

A compulsory acquisition is not a sale—Stroud, 3rd Ed., Vol. I. p. 41.

Question has cropped up also in England recently—*John Hudson* v. *Kirkness* [1953] 2 All E.R., p. 64. This on all fours with compulsory acquisition under our Ordinance.

There would be the gravest difficulties in assuming a series of life estates in a sum of money.

Ratu Sir Lala told us Fijian customary law did not relate to sale, because sales unknown. Submit this quite sufficient to conclude this matter in my favour.

He said custom deals with land and not with money.

Refer to Fijians as regards statutory trustees. The Fijian Affairs Board is not a statutory Board. Only powers of Board are in s. 8 of Cap. 83. Has power to make regulations. These are its only powers. Regulations have been made—in 1948. Volume commencing at p. 129.

What I stress is, there is nothing in them which could be applied to present circumstances. Crompton has rested his case on N.L.T. Ordinance.

Interesting to note even N.L.T. Ordinance contains internal evidence to show compulsory acquisition does not come within its ambit—s. 8 of Cap. 86.

" Otherwise disposed of " must be read *ejusdem generus.*

Next point is that while must give great regard to evidence of Sir Lala, there were factors unexplained. He gave no satisfactory explanation as to giving away the £25 capital.

If friend's argument good then this bad. Did not explain para. 4 of Deed of Cession—he said they were good titles.

If land inalienable, then they could not have good title. Section 6 of N.L.T. Ordinance is also against such a contention.

Two observations: if land inalienable Crown cannot get good title, any more than a subject. Can only be transferred by consent. All those things are at variance with contention native land can only be a series of life estates.

Section 3 of Cap. 85. I suggest situation is that he who asserts must prove.

What is to happen to capital? If capital tied up, would violate rule against perpetuities, and bearing in mind that customary law has nothing to do with money, only land, Court cannot tie up money so it becomes a perpetuity—*Cooper* v. *Stuart* 58 L.J. Privy Council, p. 97 (1889) 14 A.C. 286, shows rule applies to colony.

The situation would be, money would be tied up and no one could become beneficially entitled—a perpetuity of worst type. To attempt to tie up this fund would violate provisions of Crown Acquisition of Lands Ordinance, Cap. 122—s. 3.

In this case land acquired in fee simple. If this money tied up for ever, we would be in the position of having Government acquiring a title in fee simple and never paying for it.

Section 6 is important. Notice was given to Tokatoka Nadrau (registered proprietors)—impossible to say they were only life tenants.

Under s. 9 submit Court has no right to go beyond title of registered proprietors.

The fee simple has been taken. The proclamation which took land proclaims Tokatoka as fee simple owner.

The only question for determination would be if there were conflicting claims to land.

There is nothing in section 9 to measure up to present case—i.e., that former owners can never get capital money.

Sir Lala says my clients would get interest—section 15 applies.

All others parties to claim have left everything to Plaintiff who is head of Tokatoka.

As to approval of compromise—there are five children.

Part IV, Div. 2 of White Book. Persons under Disability—Infants. Ask that shares be given to father. Sir Lala said reasonable father should be the Trustee.

Practice in C.D.: Affidavits have been filed.

As to shares of adults, should be paid to them.

Bryce: There are two points which are basis of Crown's difficulty.

First point is, is this a sale. If it is not a sale, Fijian Affairs Board has no standing, nor would N.L.T.B., unless it is a sale or disposition.

In the Supreme Court.

No. 6. Judge's Notes of Hearing, 17th February 1954, *continued.*

Hudson v. *Kirkness*. Upjohn, J., dealt extensively with question, and would refer Court to s. 13 of Cap. 122—refers to compensation. Under s. 3 term used is consideration or compensation.

" Sale " is only abbreviation of bargain and sale.

There is a further difficulty as to sale as Crown sees it. I submit it is clear from Sir Lala's evidence that Fijian owners cannot transfer freehold title, but neither can Board—it has no ownership—s. 5 of N.L.T. Ordinance.

If Court accepts evidence of Sir Lala, difficult to see how s. 15 can have any application at all.

Crown interested only in receiving directions as to how moneys are to be disposed of.

Judgment reserved.

RAGNAR HYNE, C.J.,
17.2.54.

No. 7. Judgment, 19th March 1954.

No. 7.

JUDGMENT.

Proceedings in this matter were commenced by an Originating Summons directed to the Director of Lands, the purpose of the Summons being to determine the compensation payable in respect of certain land at Nadi containing an area of 434 acres 3 roods 26·1 perches being part of the land contained in Lot 94, Native Lands Commission Survey Plan H/18–1 owned by the Mataqali Vunaivi Tokatoka Nadrau in the Tikina of Nadi. Subsequent to the issue of the Summons the Director of Lands agreed with the Plaintiff on the compensation to be paid. This is set out in a letter, Exhibit " B," in which the Government agreed to pay by way of compensation the Plaintiff's claim of £7,985.0.0 together with interest on this amount at 5% per annum from the 22nd November, 1944, the total interest payable being £3,393.1.6.

On the 7th day of July, 1953, the Plaintiff filed in this Court a Summons for Directions in which he asked that the Originating Summons might be served on the following persons, adult members of the Tokatoka Nadrau, namely :—

" (i) Salote Vibote the wife of Vaisoni Lumuni of Sabeto in the District of Nadi.

(ii) Adi Kiula Vasiti the wife of Semi Ravovo of Saunaka.

(iii) Romera Suvewa the wife of Ameniyasi Turuva of Saunaka aforesaid."

The Plaintiff also asked that on behalf of certain infant children of the Plaintiff the Court approve of a compromise of the action whereby the amount of compensation due be fixed by consent at £11,378.1.6 and that this sum, after deduction of the taxed costs and disbursements of the

Plaintiff's solicitors be shared equally by all the members of the Tokatoka Nadrau, the Plaintiff, his five infant children and the adults mentioned above. It was further asked that the shares of the infant children might be paid to the Plaintiff as their father and next friend, to be dealt with by him for the benefit of the children in such manner as the Court might direct; and lastly that the shares of the Plaintiff and the other adult members of the Tokatoka Nadrau be paid to them respectively, to be applied by them as they thought fit.

The Originating Summons came on for hearing on the 26th August, 1953, and by consent the Summons for Directions was altered by adding after the figures £11,378.1.6 the words " and that the said Originating Summons be settled by the Court in terms of section 9 of the Crown Acquisition of Lands Ordinance, Cap. 122, at £11,378.1.6 and that such amount be paid into Court in terms of section 18 of the said Ordinance." The matter was then adjourned after the Court had directed service on the other persons mentioned in the Summons for Directions. The Court also, with the consent of parties, agreed to the use of certain affidavits filed by the Plaintiff and his solicitor, and to the payment into Court of the money awarded as compensation.

The matter came on for hearing in open Court on the 17th February, 1954. Issues were prepared under Order 33, rule 1, and agreed as follows:—

(1) Should the capital or any part thereof of the fund in Court be paid to the present members of the Tokatoka Nadrau? and

(2) If not, to whom should the same be paid?

At the hearing in Chambers on the 26th August, Mr. Falvey asked for leave to appear as *amicus curiæ* as representing the Fijian Affairs Board. No objection being urged against his application, the Court granted leave accordingly. At the hearing in Court on the 17th February Mr. Crompton took the place of Mr. Falvey and he called Ratu Sir Lala Sukuna to give evidence as to native custom.

In the course of his evidence Ratu Sir Lala said that native land is vested solely in native owners. The owning unit was decided by the Council of Chiefs at conference beginning in 1874 or 1875 and ending in 1881, when the Council advised the Governor that the unit of ownership was a unit known as the " mataqali." Subsequently, however, it was decided that the proper unit of ownership was the " tokatoka " which is sub-division of a mataqali.

Ratu Sir Lala went on to say that there is no individual ownership of native land. Ownership is based exclusively in the unit. In other words, the members of the tokatoka only have a life interest in the land belonging to the tokatoka.

He said further that there can be no alienation of native land save with the consent of the Native Land Trust Board, but if land were alienated by such authority or if land were acquired by the Crown under the Crown Acquisition of Lands Ordinance, then the money obtained therefrom must be invested and the income only paid to the members of the tokatoka, for the reason that land was communally owned. It was

In the Supreme Court.

No. 7. Judgment, 19th March 1954, *continued.*

communally owned before cession and while before cession a great deal of land was alienated by native owners, such alienation was contrary to native custom and in fact custom was broken by such alienation. At the time of cession a million acres had been so alienated, and afterwards a commission was appointed to ascertain the rights of the holders of the land obtained from natives. In the result only 500,000 acres were recognized as being the property of persons to whom land had been given in pre-cession days, and these lands became subsequently the subject of Crown grants. There was no sale for money, and according to Ratu Sir Lala the alienation was quite contrary to custom. In Fiji, as in many other places in the Pacific, land was alienated for trivial return such as muskets, powder, cloth and other commodities.

Ratu Sir Lala was emphatic in saying that custom was broken in giving land in this manner. Under present conditions land may only be alienated to the Crown. This is clearly set out in section 6 of the Native Land Trust Ordinance, Cap. 86, where the following appears :—

> " Native land shall not be alienated by native owners whether by sale, grant, transfer or exchange except to the Crown, and shall not be charged or encumbered by native owners, and any native Fijian to whom any land has been transferred heretofore by virtue of a native grant shall not transfer such land or any estate or interest therein or charge or encumber the same without the consent of the Board."

In section 8 of the same Ordinance it is provided that land shall not be alienated except in accordance with the Ordinance, but subject to the provisions, amongst other things, of the Crown Acquisition of Lands Ordinance, Cap. 122.

Mr. Crompton, as *amicus curiæ*, agreed that native land could not be alienated except to the Native Land Trust Board, and he referred to section 15 of the Native Land Trust Ordinance and to the Native Land Trust Regulations, which at page 426 of Volume IV, deal with the manner in which monies for rents, premiums and proceeds of sale of native land are to be dealt with. He suggested that this is a guide to the manner in which the division of proceeds should be effected. He further submitted, on the question as to the extent to which present members of the Tokatoka are to be compensated out of this money, that this can only be to the extent of their own present interest, that is for the loss of their present right, the use and occupation of the land for life. He suggested, therefore, that the balance, if any, should be paid to the Native Land Trust Board for administration.

Mr. Rice, on the other hand, strongly objected to any payment to the Native Land Trust Board, and referred to correspondence put in evidence which had passed between him and the Board, in which he had already taken up this attitude. He contended that the present members of the Tokatoka are entitled now to all the compensation paid by Government. He argued that if the capital were tied up it would violate the rule against perpetuities, and suggested that as customary law has nothing to do with money, but only land, the Court cannot tie up money so that it becomes a perpetuity.

Having regard to the evidence of Ratu Sir Lala Sukuna, I can come to one conclusion only, and that is that land belonging to a tokatoka is land in which the existing members of the tokatoka have only a life interest. It is land granted to them for their occupation and use and it cannot be alienated except with the permission of the Native Land Trust Board. It is a well-known fact that the only form of alienation, if alienation it can be termed, which at present exists in relation to native land is alienation by way of lease, the ownership of the land remaining in the owning unit. Again having regard to the evidence of Ratu Sir Lala Sukuna, if a tokatoka becomes extinct then the land goes to the mataqali of which the tokatoka formed a part.

Under section 20 of the Native Land Trust Ordinance, " if a mataqali shall cease to exist by the extinction of all its members the land shall fall to the Crown as *ultimus hæres* to be allotted to the qali of which it was a part or other division of the people which may apply for the same or to be retained by the Crown or dealt with otherwise upon such terms as the Board may deem expedient."

From the evidence of Ratu Sukuna, and in view of the section to which I have just referred, it seems to me to be abundantly clear that the members of a land-owning unit have only a life interest in the land and that the land is held in perpetuity by successive members of the Tokatoka. A tokatoka cannot therefore be said to be holders of the land in fee, nor indeed are they described in the proclamation as such. They are merely referred to as " recorded owners " and " owners."

This matter relates to native land, and it is laid down in the Native Lands Ordinance, Cap. 85, section 3, that " native lands shall be held by native Fijians according to native customs as evidenced by usage and tradition. Subject to the provisions hereinafter contained such lands may be cultivated, allotted and dealt with by native Fijians as amongst themselves according to their native customs and subject to any Regulations made by the Fijian Affairs Board and approved by the Legislative Council, and in the event of any dispute arising for legal decision in which the question of the tenure of land amongst native Fijians is relevant all courts of law shall decide such disputes according to such Regulations or native customs and usage which shall be ascertained as a matter of fact by the examination of witnesses capable of throwing light thereupon."

As far as I can see, the Fijian Affairs Board have made no regulations on this subject, and it seems to me that there is nothing but native custom to guide the Court in determining who is entitled to the money paid by way of compensation for land, the property of a tokatoka, acquired by the Crown under powers of compulsory acquisition. The position is that the Tokatoka Nadrau, whose members in succession are entitled to the use and occupation of the land, have lost that land, and in lieu of the land there is available to the Tokatoka a considerable sum of money. This money does not, in my view, belong absolutely to the present members of the Tokatoka. Can it be argued that because the property of the owning unit has changed its character from land to money the rights of succeeding members of the owning unit are absolutely extinguished ? I do not think so. Succeeding generations in the Tokatoka must have an interest in this money as they would have had in the land if it had not been acquired by the Crown,

In the Supreme Court.

No. 7. Judgment, 19th March 1954, *continued.*

and I cannot agree therefore that members to come of this Tokatoka can be deprived of their interest in the compensation granted; and the only way in which an interest can be reserved to them is by the investment of the capital sum of £7,985, less the costs and expenses incurred by the Plaintiff's solicitors, a deduction which, in my view, is only reasonable and fair.

So far as the interest, namely the sum of £3,393.1.6, is concerned, this is immediately payable to the existing members of the Tokatoka. It is, in effect, the income derived from the capital for the last eight and a half years, and takes the place of the use and occupation of the land to which the members of the Tokatoka would have been entitled but for its acquisition by Government.

There has been considerable argument as to whether this was a sale or an acquisition. There can be no doubt, I think, that it was a compulsory acquisition as the land was acquired under the provisions of the Crown Acquisition of Lands Ordinance, Cap. 122. Sale can only be effected under the Native Land Trust Ordinance, and the provisions of this Ordinance were not invoked. If there had been a sale under this Ordinance —and native land can now only be sold to the Crown—then the Native Land Trust Board would receive the purchase money. There was no such sale, and the Native Land Trust Board has no right claim or interest in the money. The compensation money cannot therefore be paid to the Native Land Trust Board.

I have said that the present members of the Tokatoka are entitled to the immediate payment of the interest, £3,393.1.6, and that the capital sum, £7,985 less solicitors' costs, shall be invested so that the resulting income can be paid to Tokatoka members. The question arises as to what share of such interest and later of such income is payable to individual members of the Tokatoka.

The question presents little difficulty. Ratu Sir Lala Sukuna has provided the answer, and the question is also answered by the proviso to Regulation 3 (1) of the Native Land (Leases and Licences) Regulations (p. 426 of Volume IV of the Laws), namely that the members of a tokatoka share equally.

Mr. Rice argued that non-payment of capital to the present members of the Tokatoka would offend against the rule against perpetuities. " Perpetuity," as is well known, is the tying-up or disposing of property so that it never becomes at the absolute disposal of any person or number of persons, or only after a long period. This the policy of English law will not allow. Hence the rule against perpetuities which forbids any executory interest to come into being later than a life or lives in being and twenty-one years after, allowing for gestation where it exists.

Mr. Rice has referred me to the case of *Cooper* v. *Stuart* (1889) 14 A.C. 286. This relates to a case which went to the Privy Council from the Supreme Court of New South Wales, and was cited by Mr. Rice in support of his contention that the rule against perpetuities applies in a colony. Speaking of the extent to which English law applies in colonies, their Lordships said, at page 291: " The extent to which English law is introduced into a British Colony and the manner of its introduction must

necessarily vary according to circumstances. There is great deal of difference between the case of a colony acquired by conquest or cession in which there is an established system of law, and that of a colony which consists of a tract of territory practically unoccupied, without settled inhabitants or settled law at the time when it was peacefully annexed to the British dominions. The Colony of New South Wales belongs to the latter class. In the case of such a colony the Crown may by ordinance, and the Imperial Parliament, or its own legislature when it comes to possess one, may by statute declare what parts of the common and statute law of England shall have effect within its limits, but when that is not done the law of England must, subject to well-established exceptions, become from the outset the law of the colony and be administered by its tribunals. In so far as it is reasonably applicable to the circumstances of the colony, the law of England must prevail until it is abrogated or modified either by ordinance or statute." Later, at page 292, the learned Lords reiterated this principle in the following words: " As soon as colonial land became the subject of settlement and commerce all transactions in relation to it were governed by English law in so far as that law could be justly and conveniently applied to them."

In Fiji it is clearly laid down that matters relating to native land are governed by local custom, and to use the language of their Lordships in *Cooper* v. *Stuart*, transactions in relation to land would only be governed by English law in so far as that law could be justly and conveniently applied to them or is reasonably applicable. Therefore, to apply the rule against perpetuities to transactions in relation to native land would, as I see it, completely negative the opinion of their Lordships in the case cited. I am therefore satisfied that the law against perpetuities cannot apply in this matter.

Much has been said about the acquisition of land before the deed of cession, but as I have said previously the history of Fiji is by no means unique in so far as it relates to the acquisition in pre-government days of land by non-natives. At the time of cession the proprietorship of all lands was vested in the Crown, except those shown to have become the property of foreigners, those actually for use and occupation of Fijians, and those required for the future maintenance of Fijians. So far as the property of foreigners was concerned, the title of foreigners was carefully investigated, and, as Ratu Sir Lala Sukuna said, only about half of that which had been alienated was allowed to remain in the possession of non-natives. He stressed, and he could not stress too fully, that in giving away land in this manner the grantors were departing from native custom, and this being so the non-native owners of land would have had no title but for the fact that by subsequent investigation they were confirmed in their titles as to a part of their lands, at any rate, by the issue of Crown Grants.

Mr. Rice has referred to the sum of £25 paid as compensation for another small area of land acquired. This sum was in fact finally disposed of by paying it, with the consent of the Tokatoka, to a war charity. He has contended that as this was not held for investment for succeeding members of the Tokatoka neither should the present compensation be so held. Ratu Sir Lala Sukuna said that to pay the £25 as was done was wrong. The amount being so small, may it not have been a case of

In the Supreme Court.

No. 7. Judgment, 19th March 1954, *continued.*

de minimus non curat lex? I agree the payment was wrongly made and cannot be taken as authority or precedent for payment outright to the present Tokatoka members of the larger amount of compensation.

In the result, therefore, there shall be paid outright to the present members of the Tokatoka the amount of interest earned during the last eight and a half years, amounting to £3,393.1.6. As to the balance, this must be held in trust and invested for the benefit of present Tokatoka members and for the benefit of those who may come after them. In other words, the capital sum after deduction of costs must be invested and only the income therefrom be paid to the members of the Tokatoka from time to time.

In accordance with section 9 of the Crown Acquisition of Lands Ordinance, I settle the amount of compensation for the land at £7,985.0.0 together with interest amounting to £3,393.1.6 making a total of £11,378.1.6.

I direct the immediate payment of the interest, i.e., £3,393.1.6 in equal shares to the nine present members of the Tokatoka, including the five infant children of the Plaintiff.

I also direct that the share of each infant child in the said sum of £3,393.1.6 be paid to the Plaintiff as father and next friend, to be held in trust for each such child until he or she shall reach the age of twenty-one, when each child's share shall be paid over to him or her. The money so paid to the Plaintiff shall be invested by him in any investment authorized by the Trustees Ordinance; the income resulting therefrom to be utilized for the education and maintenance of each child until he or she reaches the age of twenty-one.

As to the adult members of the Tokatoka, the amount of the said sum of £3,393.1.6 to which each is entitled shall be paid to him or her, to be applied as he or she shall think fit.

The capital sum cannot, for reasons I have given, be paid to the Native Land Trust Board. The Public Trustee can and does act as Trustee in matters like this. I therefore direct that the capital sum of £7,985, after payment of taxed costs and disbursements of Plaintiff's solicitors, be paid to the Public Trustee, to be held in trust by him for the Tokatoka and invested by him in one or more of the modes authorized by the Public Trustee Rules, the income resulting therefrom to be paid by the Public Trustee at half-yearly intervals in equal shares to those members of the Tokatoka living at the time when such payment falls due, the share or shares of a minor or minors being paid during minority to the parent or other person standing *in loco parentis*, for the education and maintenance of such minor or minors.

(Sgd.) RAGNAR HYNE,
Chief Justice.

Suva, Fiji.

19th March, 1954.

In the Supreme Court.

No. 8.
Judge's Notes of Hearing, 19th March 1954.

No. 8.

JUDGE'S NOTES OF HEARING.

Before—

HIS LORDSHIP THE CHIEF JUSTICE.

Friday, the 19th day of March, 1954.

Mr. P. Rice for the Plaintiff.

Mr. W. G. Bryce, Solicitor-General, for the Defendant.

Judgment delivered.

Mr. Bryce: Will Court make order for payment.

Order accordingly.

Mr. Rice: This is an important matter and I would ask that order be suspended for thirty days. I have no instructions, but I would like suspension to consider possibility of appeal.

Mr. Bryce: No objection.

Order suspended for thirty days.

RAGNAR HYNE,
C.J.

19.3.1954.

No. 9.
Order, 19th March 1954.

No. 9.

ORDER.

Dated and entered the 19th day of March, 1954.

UPON READING the originating summons in this cause the summons for directions issued thereunder on the 7th day of July 1953 and the affidavits of the Plaintiff and of the Plaintiff's Solicitor and Counsel and it appearing that Salote Vibote Adi Kiula Vasiti and Romera Suvewa have been duly served with the said originating summons pursuant to the order of this Honourable Court in that behalf dated the 26th day of August 1953 and that they have not nor has any one of them entered any appearance to the said originating summons and further that the Defendant has paid into this Honourable Court the sum of £7,985.0.0 by way of compensation for the land described in the said originating summons together with the sum of £3,393.1.6 in pursuance of the provisions of Section 15 of the Ordinance making in all the sum of £11,378.1.6. AND upon consideration of the written and oral evidence adduced by the parties AND UPON HEARING Mr. P. Rice of Counsel for the Plaintiff and Mr. W. G. Bryce

In the Supreme Court.

No. 9. Order, 19th March 1954, *continued.*

Solicitor-General of Counsel for the Defendant and Mr. R. A. Crompton of Counsel for the Fijian Affairs Board as *amicus curiæ* IT IS ORDERED AND ADJUDGED as follows :—

1. In accordance with Section 9 of the Ordinance the amount of compensation for the said land is settled at the said sum of £7,985.0.0 together with the said sum of £3,393.1.6 paid in pursuance of the provisions of the said Section 15 making a total of £11,378.1.6.

2. The said sum of £3,393.1.6 is to be paid immediately in equal shares to the nine present members of the Tokatoka Nadrau namely the Plaintiff the said Salote Vibote the said Adi Kuila Vasiti the said Romera Suvewa the Plaintiff's cousin and the five infant children of the Plaintiff to wit his daughters Romera Suvewa and Makelisi Meli and his sons Josateki Tuimulamula Vonitiesilou and Jona Rayasi.

3. The share of each said infant child in the said sum of £3,393.1.6 is to be paid to the Plaintiff as father and next friend of each said infant child until he or she shall reach the age of twenty-one when each said child's share is to be paid over to him or her and in the meantime each such share is to be invested by the Plaintiff in any investment authorized by " The Trustee Ordinance " (Cap. 32) and the income resulting therefrom is to be utilized for the education and maintenance of each said child until he or she reaches the age of twenty-one.

4. The share of each of them the Plaintiff the said Salote Vibote the said Adi Kiula Vasiti and the said Romera Suvewa the Plaintiff's said cousin in the said sum of £3,393.1.6 is to be paid to him or her respectively to be applied as he or she shall think fit.

5. The said sum of £7,985 after deduction thereout of the taxed costs and disbursements of the Plaintiff's Solicitors is to be paid to The Public Trustee to be held in trust by him for the Tokatoka Nadrau and invested by him in one or more of the modes authorized by The Public Trustee Rules and the income resulting therefrom is to be paid by The Public Trustee at half-yearly intervals in equal shares to those members of the Tokatoka Nadrau living at the time when such payment falls due the share or shares of a minor or minors being paid during minority to the parent or other person standing in *loco parentis* for the education and maintenance of such minor or minors.

(Sgd.) G. YATES,
Registrar.

In the Court of Appeal.

No. 10. Notice of Appeal, 31st March 1954.

No. 10.

NOTICE OF APPEAL.

Civil Appeal No. 1 of 1954.

IN THE FIJI COURT OF APPEAL.

On Appeal from the Supreme Court of Fiji.

IN THE MATTER of " The Crown Acquisition of Lands Ordinance " Cap. 122.

Between RATU TAITO NALUKUYA of Saunaka in the District of Nadi, Native Fijian . . . Appellant

and

THE DIRECTOR OF LANDS (Defendant in the Court below) and THE NATIVE AFFAIRS BOARD (*amicus curiæ* by leave in the Court below) . . . . . Respondents.

TAKE NOTICE that the Court will be moved on such date at the expiration of fourteen days from the date of service upon you of this notice and at such time and place as The Registrar of this Honourable Court shall in pursuance of Rule 25 of " The Court of Appeal Rules 1949 " notify by Counsel for the above-named Appellant Ratu Taito Nalukuya that the judgment order or decision of The Supreme Court of Fiji delivered made or given on the 19th day of March 1954 in a cause numbered as " Action Number 15 of 1953 " wherein the said Appellant is Plaintiff and the above-named Respondent The Director of Lands is Defendant be set aside varied or modified but only as to that part of the same which directs payment of the sum of £7,985 therein mentioned after deduction thereout of the taxed costs and disbursements of the said Appellant's Solicitors to The Public Trustee and that this Honourable Court make such order as to the costs of the Appellant both in this Honourable Court and in The Supreme Court of Fiji as may be just upon the grounds :

1. The said judgment of the learned Chief Justice in the said cause was wrong in law in holding that the rule against perpetuities could not apply.

2. The said judgment was wrong in law in holding that on the proved facts a transaction in relation to native land was involved.

3. The said judgment was wrong in law in holding that the existing members of the Tokatoka Nadrau had only a life interest in the land therein referred to and that such land was held in perpetuity by successive members of the said Tokatoka Nadrau.

4. Assuming that the said judgment was correct in law in holding that the existing members of the said Tokatoka Nadrau had only a life interest in the said land (which the Appellant does not admit) then such

In the Court of Appeal.

No. 10. Notice of Appeal, 31st March 1954, *continued.*

judgment was wrong in law in holding that the sum of £7,985 therein referred to did not vest absolutely in the existing members of the said Tokatoka Nadrau.

5. The said judgment was wrong in law in holding that the application of the sum of £25 therein referred to did not afford a precedent for application of the said sum of £7,985.

‡ [6. The said judgment was wrong both in fact and law in holding that the Public Trustee can and does act as Trustee in matters of the nature specified in the last paragraph of such judgment inasmuch as the Public Trustee has no jurisdiction so to do.]

Dated this 31st day of March 1954.

(Sgd.) RICE & STUART,
Solicitors for the Appellant.

To the above-named Respondents,
The Director of Lands and
The Native Affairs Board,

And to The Registrar.

This Notice of Motion is taken out by RICE & STUART Solicitors for the Appellant whose address for service is at the Chambers of the said Solicitors at Ba and also at the Chambers of their Suva agents Messieurs GRAHAME & COMPANY Solicitors Central Chambers Suva.

‡ Amendment on application of Plaintiff by leave granted 12th November 1954.

No. 11. President's Notes of Hearing, 12th November 1954.

No. 11.

PRESIDENT'S NOTES OF HEARING.

Friday, the 12th day of November, 1954.

Before :—
MR. JUSTICE CAREW (President).
MR. JUSTICE MACASKIE.
MR. JUSTICE HIGGINSON.

Mr. P. Rice for the Appellant.

Mr. B. A. Doyle, Q.C., for the Respondent.

Rice : Apply to amend grounds of Appeal. R. 23 Court of Appeal Rules.

Doyle : No objection.

Court : Allowed. New Ground 6.

Rice : Judgment, p. 31 of Record, para. 6. " He said . . ."

Exhibit " A."

Sukuna did not say this. See page 9 Exhibits " A " and " B."

Page 32, para. 3 Ex. " A." Not correct.

Sukuna said as at p. 8 bottom.

" A."

Entailed interest is different from life interest.

Not clear what Sukuna meant.

Grounds 2, 3, 4, and 5.

Cap. 122 contemplates payment of lump sum as compensation.

Sec. 6.

Sec. 9—more than one estate or interest is contemplated.

Sec. 12, line 5. " any person . . ."

Sec. 13 : subsec. (*b*)—" person interested . . ."
subsec. (*c*)— do.
subsec. (*d*)— do.
subsec. (*e*)— do.

Sec. 15. " . . . all parties entitled to any estate or interest . . ."

Sec. 16. Proviso. " . . . all persons entitled to any estate or interest . . ."

Sec. 17. Proviso . . . " such estate or interest, such person . . ."

Sec. 18. Proviso. " . . . estate less than an estate of inheritance . . ."

All these contemplate that a number of estates or interests may be involved.

Estate less than fee simple—lump sum should be paid—but not an annuity—not contemplated by Cap. 122.

If only life estate, lump sum on expectation of life should be paid.

Summons for Directions, p. 3.

Falvey is *amicus curiæ.*

Occupation. p. 10.

Sale. Proceeds to be paid to N.L.T. Board.

Exchange of property.

Sec. 9. Sec. 15 (2), N.L.T. Ordinance, 1946 Vol. of Laws, p. 78.

Rejected by C.J. Judgment. Page 33, para. 4. No sale. Correct.

In the Court of Appeal.

No. 11. President's Notes of Hearing, 12th November 1954, *continued.*

Hudson v. *Kirkness* [1953] 2 All E.R., p. 64.

Ex. " A.10," p. 22. Letter from N.L.T. Bd.

C.J. then went on to deal with money—to be invested—heard no argument on this point.

What interest in the land did my clients have ? Not argued in Court below.

Type not known to English Law. A usufructory title. Vol. 5. 3rd Ed. Halsbury, p. 693, para. 1479. " full effect will be . . ."

Amodu Tijani v. *Sec. for Nigeria* [1921], 2 A.C. 309. 19 L.J.P.C., p. 236. Headnote.

Judgment. Haldane. Top p. 239. " There is . . ."

p. 239. Last para. " Their lordships . . ."

In this case whole compensation given to those in possession and in being.

Page 242—end of para. 2. Haldane said, " No doubt . . ."

Nigerian Ordinance provided that compensation was to go as decided by meeting of chiefs.

Page 401 of A.C. report refers to this. Top of p. 239. L.T.

Nothing for future generations—only for those living and in being.

Sakariyawo Oshodi v. *Noriamo Dakolo & Ors.* [1930] A.C. 667, 99 L.J.A.C. 233. Headnote.

Chief's right of revision. No question of this being set aside—it was valid as at present, and value paid to chief in lump sum.

Nigerian usufructory title and Fiji customary title can be compared.

Re Ground 2 : Judgment of C.J. last para. p. 32 and para. 2 p. 33. " Can it be argued . . ."

Sense meant by C.J. is that the same law could apply to money as to land—but disposal of money is not a transaction regarding land. Cannot be sustained by P.C. cases.

Sec. 3 (Cap. 85) only deals with tenure of land.

Not the question in dispute here. Question here is, what is method of disposal of proceeds when converted into money ?

Sukuna said there was no custom relating to money.

Re Ground 5 : P. 13 Ex. " A " (a), p. 14. Ex. " A.2 ", para. 2. Compensation—paid to war charity.

Outright payment. Wishes of owners.

Sukuna said he would have invested it—p. 9.

Suggestion that it was a mistake.

C.J.'s judgment at p. 34, at bottom—this was wrong.

I suggest it was not a mistake but a correct distribution of the money.

Ground 1 : Tied up by C.J. in perpetuity—void.

10th Ed. Underhill Trusts, p. 71.

Gifts to clubs at p. 73. Bequests to a club—analogous.

Test—existing members of tokatoka could not spend as they pleased.

Grey—Perpetuities. 2nd Ed., p. 604.

" Gifts to definite person . . ." " The general . . ."

P. 605. para. 896.

C.J. said Rule does not apply. Page 34, para. 3.

C.J. gave no reason. No argument addressed to him.

C.J. referred to wrong passage in *Cooper* v. *Stuart*, i.e., (1889) 14 A.C. 286. 58 L.J.P.C. 93.

P. 34 of Judgment, para. 2.

Sec. 34 Supreme Court Ordinance.

But see p. 293, para. 2 (*Cooper* v. *Stuart*) Applies to Fiji.

Not quoted by C.J.

No suggestion in P.C. Nigeria cases re rule against perpetuities, i.e., that it does not apply.

Ground 6 : Public Trustee Ordinance, Cap. 31.

Can only accept certain trusts—sec. 4.

Sec. 5—Custodian trust.

Present trust is not included in these.

Sec. 6—Ordinary trustee. Rules : Schedule. p. 493.

Rule 3. Authorised Trusts and Duties.

(a) to (d) not applicable. (e) not applicable. Money to be paid to the infant's father.

Public Trustee had no jurisdiction and could decline trust if he had.

Wrong to compel my client to accept Public Trustee.

They do not want a Government trustee. Government let them down. Land taken in 1944.

Sec. 9, Cap. 122.

Duty of Director of Lands to take out Originating Summons.

Did not do so.

Suggest a trust company.

Doyle :

Chief Justice should have directed payment to Native Land Trust Board.

In the Court of Appeal.

No. 11. President's Notes of Hearing, 12th November 1954, *continued.*

Perpetual trust wrong.

Statute law here enables natives to transfer land in fee simple—all natural results follow—proceeds—should follow English law.

Chief Justice had not created annuity—wrong.

Compensation dealt with as lump sum. Correct—but interests should not be broken up.

Tenure is held by division of people. Compensation should be divided on this basis.

Sec. 4 (1), Cap. 122.

Land property of mataqali or division—dealt with as a unity. 10

Rule against perpetuities will not then arise.

Sec. 37, Supreme Court Ordinance. Same rule as in *Stuart's* case.

C.J. right in principle but decision wrong.

Inconvenient to tie up money in perpetuity.

Rule applies to proceeds of land sold.

Nigerian cases. Tenure similar to land in Fiji.

Sec. 7. Cr. Acquisition of Lands Ordinance.

Nigerian Ordinance 9/1917.

Only deals with interests of those existing at the time, but not those of persons not alive. 20

Ground 5 : Irrelevant.

Ground 6 : Agree with Mr. Rice. Not a trust acceptable by Public Trustee—money, not necessarily on account of an infant.

Money should be handed over under the Native Land Trust Ordinance.

Grants not title—title in native owners in accordance with Native Land Trust Ordinance.

Native Land Trust Board grants leases and licences on behalf of natives—trustees for owners.

Board has a function under section 7 of Cap. 86 re sale or acquisition.

Sec. 8—" otherwise disposed of " wide words. 30

Sec. 6 puts brake on alienation.

Duke of Northumberland v. *Attorney-General* [1905] A.C. 406.

Term " disposition," P. 410 at bottom.

Every conceivable way property can pass.

Sale, lease and licence are outside disposition.

" Disposition " is something else.

Certificate in sec. 7 (Cap. 86) in a disposition.

Sec. 15—rents, etc. sub-sec. (2)—all money for disposition of land must be so distributed.

"Purchase money"—not apt—badly worded—must be widely construed.

Intention—purchase money has wide significance—for any other disposition—including acquisition.

Law changed—to allow natives to dispose of fee simple.

Ordinance 21/1880. Native Land. Long title. Objects.

Sec. 1. Tenure by native custom.

Sec. 2. Native rights as if held in fee simple.

Outside native custom lands dealt with as in fee simple.

Sec. 14, 16. Manner of sale—to Crown only.

Sec. 23, 24. Refer to time when lands to be distributed individually. At time was intended to transfer native land to fee simple.

No provision made as to distribution of purchase money—necessary because of sec. 2.

Ordinance amended in 1882–1888—no relevant alteration.

1892. Native Lands Ordinance. Repealed Native Lands Ordinance of 1888. Repealed and consolidated law.

Sec. 2. Tenure of Native lands.

Sec. 3. In fee simple.

Sec. 4. Land inalienable.

Inclosure section. Time for division. No reference to purchase money or disposition.

Amended in 1893, 4, 5, 6, 7, 8.

1896. Ordinance.

Removed the two inclosure sections. Change of policy to distribute land—but sec. 2 not repealed—fee simple. No provision made for dividing money.

1905 amendment. Native Lands Ordinance 1905.

Sec. 4. Land only alienable by consent of Governor.

Sec. 3. Tenure amongst natives—but reference to fee simple does not appear any more.

Sec. 8, power to sell—sec. 15, to exchange.

Schedule B: form of grant of Native Lands in fee simple.

Sec. 17 said what happened to money. Ground of present sec. 15 of Native Land Trust Ordinance.

Second half reinvestment—invested for absolute interest.

In the Court of Appeal.

No. 11. President's Notes of Hearing, 12th November 1954, *continued.*

Ordinance 9 of 1907—drafting changes only.

Ordinance 1912—went back—land is inalienable except to Crown.

Ordinance 1916, 17—1923—amended. None material.

Ordinance 1921—Distribution of Native Rent Ordinance.

Laid down what happened to Native Rents.

Sec. 4—validates.

Sec. 3—distribution as in Schedule.

Ordinance 1924—consolidation. Distribution sec., sec. 34.

Amended in 1925—not relevant.

Ordinance 1927—small change made Buli the transferor.

Ordinance 1930, 2, 3, 6, 7—amendments—not material.

Ordinance 1940—Native Land Trust Ordinance passed.

No intent to take away stamp of fee simple, though not mentioned in Ordinance.

Sec. 7 shows this by reference to certificate.

When land dealt with proceeds are to be dealt with as if fee simple passes.

Rice : Ground 5—shows what was done was correct.

Sec. 7—compulsory acquisition is not contemplated.

Cap. 122, sec. 11. This confers title to land compulsorily acquired.

" disposition " means alienation by act of parties, not a compulsory acquisition.

Duke of Northumberland's case.

Vol. 1, 3rd Ed., Stroud—p. 843. " Disposition "—ninth definition.

" Disposition or devolution." Act of parties refers to disposition—act of law refers to devolution.

Deddington Steamship Coy. v. *Inland Revenue Commissioner* [1911] 1 Ch. 1075, p. 1089. I Hamilton. Disposition, by act of the parties.

Sec. 8—shows that sec. 11 of Cap. 122 and not sec. 7 of Cap. 86 must be invoked when land compulsorily acquired.

Crown invoked machinery of Crown Acquisition of Land Ordinance, Cap. 122, by amendment of Originating Summons.

Land not dealt with by act of parties.

Dealing connotes act of parties.

Note : See sec. 9, Cap. 85.

C. A. V.

(Sgd.) W. D. CAREW.

No. 12.

JUDGMENT.

In the Court of Appeal.

No. 12. Judgment, 16th November 1954.

This is an appeal against part of a judgment of the Supreme Court delivered by the learned Chief Justice on the 19th March, 1954.

By this judgment it was ordered, *inter alia*, that the sum of £7,985, which was the figure agreed upon as compensation for the compulsory acquisition of approximately 434 acres of native land by the Government of Fiji from the Tokatoka Nadrau, the native owners, less the taxed costs and disbursements of the Appellant's solicitors, be paid to the Public Trustee.

The Public Trustee was directed to invest this money for the Tokatoka Nadrau and to pay the income at half-yearly intervals in equal shares to those members of the Tokatoka Nadrau living at the time when such shares fell due, the share or shares of the minor or minors to be paid during minority to the parent of other person standing *in loco parentis* for the education and maintenance of such minor or minors.

The Appellant appeals against the whole of this order.

The sum of £7,985 was paid into Court after the commencement of the proceedings.

The issues to be tried by the Supreme Court were agreed upon by the parties. These were :—

(1) Should the capital, or any part thereof, of the fund in Court be paid to the present members of the Tokatoka Nadrau ; and

(2) If not, to whom should the same be paid ?

The grounds of appeal are as follows :—

" 1. The said judgment of the learned Chief Justice in the said cause was wrong in law in holding that the rule against perpetuities could not apply.

2. The said judgment was wrong in law in holding that on the proved facts a transaction in relation to native land was involved.

3. The said judgment was wrong in law in holding that the existing members of the Tokatoka Nadrau had only a life interest in the land therein referred to and that such land was held in perpetuity by successive members of the same Tokatoka Nadrau.

4. Assuming that the said judgment was correct in law in holding that the existing members of the said Tokatoka Nadrau had only a life interest in the said land (which the Appellant does not admit) then such judgment was wrong in law in holding that the sum of £7,985 therein referred to did not vest absolutely in the existing members of the said Tokatoka Nadrau.

In the Court of Appeal.

No. 12. Judgment, 16th November 1954, *continued.*

5. The said judgment was wrong in law in holding that the application of the sum of £25 therein referred to did not afford a precedent for application of the said sum of £7,985.

6. The said judgment was wrong both in fact and law in holding that the Public Trustee can and does act as trustee in matters of the nature specified in the last paragraph of such judgment inasmuch as the Public Trustee has no jurisdiction so to do."

The question in this appeal concerns the distribution of the sum of £7,985, payable by way of compensation, to the native owners, namely, the members of the Tokatoka Nadrau. In his judgment the learned Chief Justice said, at page 3 :—

> " . . . it seems to me to be abundantly clear that the members of a land-owning unit have only a life interest in the land and that the land is held in perpetuity by successive members of the Tokatoka. A tokatoka cannot therefore be said to be holders of the land in fee, nor indeed are they described in the proclamation as such. They are merely referred to as ' recorded owners ' and ' owners '."

And he continued, at page 4 :—

> " The position is that the Tokatoka Nadrau, whose members in succession are entitled to the use and occupation of the land, have lost that land, and in lieu of the land there is available to the Tokatoka a considerable sum of money. This money does not, in my view, belong absolutely to the present members of the Tokatoka. Can it be argued that because the property of the owning unit has changed its character from land to money the rights of succeeding members of the owning unit are absolutely extinguished ? I do not think so. Succeeding generations in the Tokatoka must have an interest in this money as they would have had in the land if it had not been acquired by the Crown, and I cannot agree therefore that members to come of this Tokatoka can be deprived of their interest in the compensation granted ; and the only way in which an interest can be reserved to them is by the investment of the capital sum of £7,985, less the costs and expenses incurred by the Plaintiffs' solicitors, a deduction which, in my view, is only reasonable and fair."

Mr. Rice, for the Appellants, contended that the present members of the Tokatoka Nadrau are entitled now to the compensation payable by the Government of Fiji. He submitted that as customary law related only to land and had no application to money, the Court could not tie up the capital in violation of the rule against perpetuities.

The first question to be examined is whether the Native Land Trust Ordinance (Cap. 86) has any application to native land which is compulsorily acquired through the machinery of the Crown Acquisition of Land Ordinance (Cap. 122). If the Native Land Trust Ordinance does apply, then the answer to the dispute would appear to be provided by section 15 (2) of that Ordinance.

Section 8 of the Native Land Trust Ordinance (Cap. 86) lays down that, with certain exceptions, native land can be alienated only in accordance with that Ordinance. Section 8 reads :—

> " Subject to the provisions of the Crown Acquisition of Lands Ordinance, the Forest Ordinance, the Oil Mines Ordinance and the Mining Ordinance, no native land shall be sold, leased or otherwise disposed of and no licence in respect of native land shall be granted save under and in accordance with the provisions of this Ordinance."

It is not, of course, suggested by either party that a compulsory acquisition of native land constitutes a sale. Mr. Rice, however, urged the view that compulsory acquisition of native land cannot be included in the term " otherwise disposed of " employed in section 8. He argued that a disposition can only be brought about by act of the parties ; that a compulsory acquisition of land does not fall within this description, and that therefore the Native Land Trust Ordinance (Cap. 86) has no application to native land compulsorily acquired.

The Attorney-General, who appeared for the Crown, contended that having regard to the intention of the Native Land Trust Ordinance (Cap. 86), the words " otherwise disposed of " should be given the widest meaning ; that they should accordingly be construed to include a compulsory acquisition of native land ; and consequently the Native Land Trust Ordinance (Cap. 86) should apply. He argued further that if the words " otherwise disposed of " were not intended to include a compulsory acquisition then there would be no need to have introduced the first eleven words, namely, " subject to the provisions of the Crown Acquisition of Lands Ordinance " into section 8.

Our attention was invited by both Counsel to *The Duke of Northumberland and Another* v. *Attorney-General* [1905] A.C., p. 406. In this case Lord Macnaghten, in commenting upon the term " disposition " in the Succession Duty Act, 1853, said, at page 410 : " It is clear that the terms ' disposition ' and ' devolution ' must be intended to comprehend and exhaust every conceivable mode by which property can pass, whether by act of parties or by act of law," and he added later in his judgment : " In many cases the purpose of the Act would be defeated unless you give to the term ' disposition ' the largest possible significance."

Section 6 (1) of the Native Land Trust Ordinance (Cap. 86) vests the control of all native land in the Native Land Trust Board, and provides that the Board shall administer such land for the benefit of the native owners. Native owners are stated by section 2 of the Native Land Trust Ordinance (Cap. 86) to be the mataqali or other division or sub-division of natives having the customary right to occupy and use any native land.

The fact that section 8 of the Native Land Trust Ordinance (Cap. 86) provides machinery for the sale, lease or other disposition of native land outside the provisions of the Native Land Trust Ordinance (Cap. 86) does not, it seems to us, alter the character of native land and the incidence attaching to such land. It is still native land and remains, in our opinion, under the control of the Native Land Trust Board until a transfer or acquisition has been finalised. This appears to be recognized by section 7 of the Native Land Trust Ordinance (Cap. 86). Whether native land is

In the Court of Appeal.

No. 12. Judgment, 16th November 1954, *continued.*

transferred or acquired, this section requires certain procedure to be followed. The section demonstrates that the Native Land Trust Board is the controlling body. Section 7 reads :—

> " When any native land has been transferred to or acquired by the Crown a certificate shall be executed in such form as may be prescribed. Such certificate shall contain a diagram of the land to be comprised therein on such scale as may be prescribed and shall be executed by the Board under seal on behalf of the Native owners and by the Director of Lands on behalf of the Crown. A record of such transfer shall be made in the ' Register of Native Land ' kept under the provisions of section 7 of the Native Lands Ordinance."

Mr. Rice submitted to us, however, that the word " acquired " in section 7 did not include a compulsory acquisition, because the provision for obtaining a certificate of title to land compulsorily acquired was contained in section 11 of the Crown Acquisition of Lands Ordinance (Cap. 122), and that section 7 of the Native Land Trust Ordinance (Cap. 86) therefore had no application to land so acquired.

We would observe, firstly, that since section 11 of the Crown Acquisition of Lands Ordinance (Cap. 122) deals only with cases in which there has been a dispute requiring a judgment or order of the Court made under the provisions of section 9, and since, where there is no dispute, the normal course would be for a deed of transfer to be executed as in any case of sale of land, it would appear to be a *reductio ad absurdum* to argue that the Native Land Trust Ordinance (Cap. 86) is applicable where the parties are agreed on the compensation and inapplicable where the amount of compensation has to be settled by the Court.

Secondly, since the words " or acquired by " were inserted into section 7 of the Native Land Trust Ordinance (Cap. 86) by the Crown Lands Ordinance of 1945, by reason of the definition of " Crown Land " in that Ordinance, it is clear that the word " acquired " in section 7 includes a compulsory acquisition. " Crown Land " is defined as including, *inter alia*, " all lands which have been or may be hereinafter acquired by or on behalf of Her Majesty for any public purpose (including native land acquired under section 4 of the Crown Acquisition of Lands Ordinance) or otherwise howsoever." In our opinion the words in brackets are not intended to be restrictive.

The question then remaining to be determined is whether the words " otherwise disposed of " in section 8 of the Native Land Trust Ordinance (Cap. 86) include a compulsory acquisition of native land. Bearing in mind the purpose of the Ordinance, namely, the control and administration of all native land by the Native Land Trust Board for the benefit of the native owners, we are of the opinion that in order to give effect to this intention the words " otherwise disposed of " ought to be construed to include a compulsory acquisition of native land.

If it is therefore our view that the provisions of the Native Land Trust Ordinance (Cap. 86), where applicable, must be invoked in cases of compulsory acquisition of native lands. The procedure provided by the Crown

Acquisition of Lands Ordinance (Cap. 122) is subordinate and additional to, but does not displace, the provisions of the Native Land Trust Ordinance (Cap. 86).

The Crown Acquisition of Lands Ordinance (Cap. 122) contains no provisions concerning the method of payment of money to the owners of native land : the Native Land Trust Ordinance (Cap. 86), on the other hand, does contain such provision. Section 15 (2) of this Ordinance contains the necessary directions. This section refers to " purchase money received in respect of a sale or disposition of native land." Having regard to the circumstance, we consider that the expression " purchase money " should be read to include compensation.

For these reasons we consider that the proper body to receive the capital sum now in Court is the Native Land Trust Board.

The order of the learned Chief Justice directing the payment of the sum of £7,985 to the Public Trustee is set aside. We direct that this money, namely, £7,985, which is now in Court, less such amount as may be allowed as costs, be paid to the Native Land Trust Board to be applied by the Board in accordance with the provisions of the Native Land Trust Ordinance (Cap. 86).

In view of the fact that the conclusions which we have reached are sufficient to decide this appeal, we consider that it is not necessary to express any opinion on the other points raised in the appeal.

We would invite the attention of the Native Land Trust Board to two West African cases which were referred to in argument by Counsel for both parties, namely, *Amodu Tijani* v. *The Secretary Southern Nigeria* [1921] 2 A.C., page 309, and *Sakariyawo Oshodi* v. *Mariamo Dakolo and Others* [1930] A.C., page 667.

The parties will pay their own costs of this appeal. Costs in the Court below up to the time leave was granted for the payment of the money into Court will be paid by the Crown ; costs incurred thereafter will be paid by the Appellant.

Costs payable by the Appellant may be deducted from the money in Court.

(Sgd.) W. D. CAREW,
President.

(Sgd.) C. F. C. MACASKI.

(Sgd.) R. G. HIGGINSON,
Judge.

Suva, Fiji.

16th November, 1954.

In the Court of Appeal.

No. 13. President's Notes of Hearing, 16th November 1954.

No. 13.

PRESIDENT'S NOTES OF HEARING.

Tuesday 16th day of November 1954.

APPEAL FROM DECISION OF SUPREME COURT.

Before—

MR. JUSTICE CAREW.
MR. JUSTICE MACASKIE.
MR. JUSTICE HIGGINSON.

Mr. D. M. N. McFarlane for Mr. P. Rice for the Appellant.

Mr. B. A. Doyle, Q.C., Attorney-General, for the Respondent.

Judgment delivered.

Stay of 21 days granted—payment of money to N.L.T. Board suspended for that time.

(Sgd.) W. D. CAREW.

No. 14. Notice of Motion for Leave to Appeal to Her Majesty in Council, 29th November 1954.

No. 14.

NOTICE OF MOTION for Leave to Appeal to Her Majesty in Council.

TAKE NOTICE that the Court will be moved on Friday the 21st day of January 1955 at ten o'clock in the forenoon by Counsel for the above-named Appellant Ratu Taito Nalukuya that leave to appeal to Her Majesty in Council from the judgment of this Honourable Court in this cause dated the 16th day of November 1954 be granted to the Appellant upon the condition referred to in Rule 4 (*a*) of the Rules regulating Appeals to Her Majesty in Council made by Order in Council dated the 31st day of May 1910 and amended by " The Fiji (Appeal to Privy Council) Order in Council 1950 " and upon such other conditions (if any) as having regard to Rule 4 (*b*) of the said Rules this Honourable Court may think it reasonable to impose and that the Order made for suspension of payment to The Native Land Trust Board of the sum of £7,985 mentioned in such judgment be continued pending the hearing and determination of such appeal to Her Majesty in Council and that the costs of and incidental to this application be costs in such appeal.

Dated this 29th day of November 1954.

RICE & STUART,
Solicitors for the Appellant.

To The above-named Respondents,
The Director of Lands, and
The Native Affairs Board,
and to The Registrar.

No. 15.

JUDGE'S NOTES OF HEARING.

Before
THE HON. MR. JUSTICE CAREW.

Friday the 21st day of January, 1955.

Between RATU TAITO NALUKUYA . . . . Appellant
and
THE DIRECTOR OF LANDS . . . Respondent.

NOTICE OF MOTION FOR LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL.

Mr. K. C. Gajadhar for Mr. Rice for the Appellant.

Mr. J. Lewis Crown Counsel for the Respondent.

Gajadhar : Rule 4 (*a*) and (*b*) P.C. Rules 1910. Vol. VI Laws of Fiji. p. 123—amount involved £7,985.

Rule 2 (*a*) 3 months to be allowed.

Mr. Rice absent in New Zealand—back April. Security fixed to be light—Appellants are Fijians. Suggest bond for £250 in cash. Full limit of time for preparation of record.

Mr. Lewis : For Respondent—No objection to what is proposed by Counsel for Appellants. Accepted figure suggested as security. No objection to suspension of execution. Crown may not appear in P.C.

Court : Leave to appeal.

Condition :

Security of £250 stg. cash to be given within three months—sum to be deposited in Court. Record to be prepared and despatched within three months.

Extension suspended.

W. D. CAREW.

In the Court of Appeal.

No. 16. Order granting Leave to Appeal to Her Majesty in Council, 21st January 1955.

No. 16.

ORDER granting Leave to Appeal to Her Majesty in Council.

IN THE FIJI COURT OF APPEAL.

Civil Appeal No. 1 of 1954.

IN THE MATTER of "The Crown Acquisition of Lands Ordinance" (Cap. 122).

Between RATU TAITO NALUKUYA of Saunaka in the District of Nadi Native Fijian . . Appellant

and

THE DIRECTOR OF LANDS (Defendant in the Court below) and THE NATIVE AFFAIRS BOARD (*amicus curiæ* by leave in the Court below) . . . . . Respondents.

Before:

THE HONOURABLE MR. JUSTICE CAREW in Chambers.

Friday the 21st day of January, 1955.

UPON READING the Summons herein praying for an order fixing the time within which the above-named Appellant Ratu Taito Nalukuya give security for appeal to Her Majesty in Council from the judgment of the Fiji Court of Appeal delivered the 16th day of November, 1954 and for an Order staying proceedings under the said Judgment pending the hearing and determination of the said Appeal AND UPON HEARING Mr. K. C. Gajadhar of Counsel for the Appellant in support of the said Summons and Mr. H. R. J. Lewis of Counsel for the Respondent contra and by consent IT IS ORDERED that within three months from this date the said Appellant give security by depositing with the Registrar of the Fiji Court of Appeal the sum of £250 sterling for the prosecution of the Appeal to Her Majesty in Council of the said Appellant AND IT IS FURTHER ORDERED that proceedings under the said Judgment be stayed pending the hearing and determination of the said Appeal and that the costs of and incidental to this application be costs in the cause.

G. YATES,
Registrar.

No. 17.

ORDER granting Leave to the Native Land Trust Board to Intervene

AT THE COURT AT BUCKINGHAM PALACE.

The 22nd day of March, 1956.

Present :

THE QUEEN'S MOST EXCELLENT MAJESTY

ARCHBISHOP OF YORK	Mr. Secretary LLOYD-GEORGE
LORD PRESIDENT	Mr. BROOKE
CHANCELLOR OF THE DUCHY OF LANCASTER	Mr. TURTON

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 15th day of March 1956 in the words following viz. :—

" WHEREAS by virtue of His Late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of the Native Land Trust Board of Fiji in the matter of an Appeal from the Court of Appeal in the Supreme Court of Fiji between Ratu Taito Nalukuya (Appellant) and the Director of Lands (Respondent) and the Native Affairs Board (*Amicus Curiæ* by leave of the Supreme Court of Fiji) (Privy Council Appeal No. 30 of 1955) setting forth that the above Appeal is pending before Your Majesty in Council : that the Petitioner is desirous of intervening in the Appeal : and humbly praying Your Majesty in Council to grant the Petitioner leave to intervene in the Appeal or for further or other Order :

" THE LORDS OF THE COMMITTEE in obedience to His Late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto on behalf of the Appellant no one appearing at the Bar on behalf of the Respondent Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to intervene in the Appeal and to lodge a Printed Case and to be heard by Counsel."

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor or Officer administering the Government of the Colony of Fiji for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

W. G. AGNEW.

Exhibits.

"A"
Letter, Rice & Stuart to Director of Lands, 15th January 1953.

EXHIBITS.

"A"

Letter, Rice & Stuart to Director of Lands.

Rice & Stuart,
Barristers & Solicitors.

Box 14, Ba.

15th January, 1953.

The Director of Lands,
Suva.

Dear Sir,

We have been instructed by the Tokatoka Nadrau to write to you with reference to two pieces of land compulsorily acquired from our clients by the Crown in pursuance of The Crown Acquisition of Lands Ordinance (Cap. 122). The lands in question are as follows :—

(A) 5 acres more or less more specifically described in the Schedule to the Notice of Acquisition contained in the Gazette No. 52 of 26th November 1943.

(B) 434 acres 3 roods 26 perches more or less more specifically described in the Schedule to the Acquisition Notice contained in Gazette No. 68 of 1st December 1944.

From the facts which we have had placed before us it seems clear that no compensation has been paid to our clients in respect of either of these blocks of land, and further that the position has arisen calling for the taking out of an originating summons by yourself pursuant to the provisions of Section 9 of the Crown Acquisition of Lands Ordinance.

We should therefore be glad to hear whether it is your intention to take out such a summons and in any event as to what (if any) offer of compensation you are prepared to make to our clients.

Yours faithfully,
RICE & STUART.

" A.2 "

Letter, Director of Lands to Rice & Stuart.

Exhibits.

" A.2 "
Letter, Director of Lands to Rice & Stuart, 26th January 1953.

Lands and Survey Department,
Suva,
Fiji.

L.D. 19/18/14.

26th January, 1953.

Gentlemen,

I refer to your letter dated the 15th January 1953 regarding the claim by the Tokatoka Nadrau for compensation in regard to the compulsory acquisition by the Crown of two areas of land as specifically set out in your aforesaid letter and to reply as follows :—

2. With regard to the area of 5 acres as described in Gazette No. 52 of 26th November, 1943, I have to inform you that this area was acquired as a military cemetery and is now registered as Certificate of Transfer No. 4. Compensation was agreed upon and paid to the native owners, who, in turn, donated the money to a war charity.

3. With regard to the area of 434 acres 3 roods 26 perches as described in Gazette No. 68 of 1st December, 1944, compensation has been offered to the native owners, who have been unwilling to accept the amount, and this is held, in trust, by the Secretary for Fijian Affairs. I cannot advise you further beyond the fact that no intention exists to take out an originating summons and an amount of compensation has been offered to your clients, which was considered reasonable by the then District Commissioner, Western.

Yours faithfully,

R. V. COLE,
Ag. Director of Lands.

Messrs. Rice & Stuart,
Solicitors,
P.O. Box 14,
BA.

Exhibits.

"A.3"

Letter, Rice & Stuart to Director of Lands, 31st January 1953.

"A.3"

Letter, Rice & Stuart to Director of Lands.

Rice & Stuart,
Barristers & Solicitors.

Box 14, Ba.

31st January, 1953.

The Director of Lands,
Suva.

Dear Sir,

re Tokatoka Nadrau—Compensation

We have your letter of 26th inst. L.D. 19/18/14, for which we thank you. We shall be glad if you will please let us have the following further information at your earliest convenience.

1. As regards the 5 acre block—

   (A) With whom was the compensation agreed upon and was such agreement evidenced in writing ?

   (B) What was its amount ?

   (C) To which war charity was it donated ?

   (D) Was the payment to the war charity made by the native owners themselves or by the Crown ?

2. With reference to the area of 434 acres 3 roods 26 perches—

   (A) What was the amount compensation offered to the native owners which they were unwilling to accept ?

   (B) By what authority was the unaccepted amount paid to the Secretary for Fijian Affairs ?

   (C) Why was an originating summons not taken out in pursuance of Section 9 of the Crown Acquisition of Lands Ordinance ?

Yours faithfully,
RICE & STUART.

" A.4 "

Letter, Director of Lands to Rice & Stuart.

Exhibits.

" A.4 " Letter, Director of Lands to Rice & Stuart, 6th February 1953.

Lands and Survey Department,
Suva, Fiji.

L.D. 19/18/14.

6th February, 1953.

Gentlemen,

re : Tokatoka Nadrau—Compensation

I have to acknowledge receipt of your letter of the 31st January, 1953 and to reply as follows :—

1. As regards the 5 acre block—

(A) Compensation was agreed to by the native owners and forms signed by the Buli Nadi.

(B) £25.

(C) This known to the Secretary for Fijian Affairs.

(D) By the S.F.A. at the request of the native owners.

2. With reference to the area of 434 acres 3 roods 26 perches, I am not in a position to advise you, as I wish to discuss this matter with the Secretary for Fijian Affairs, who is temporarily away from Suva.

Yours faithfully,

R. V. COLE,
Ag. Director of Lands.

Messrs. Rice & Stuart,
Barristers & Solicitors,
P.O. Box 14,
BA.

Exhibits.

" A.5 "

Letter, Rice & Stuart to Director of Lands.

" A.5 " Letter, Rice & Stuart to Director of Lands, 11th February 1953.

Rice & Stuart,
Barristers & Solicitors.

Box 14, Ba.

11th February, 1953.

The Director of Lands,
Suva.

Dear Sir,

re Tokatoka Nadrau—Compensation.

We have your letter of 6th instant (L.D. 19/18/14) for which we thank you, and which reached us only today.

We are grateful for your information regarding the 5 acre block. However as regards the 434 acres 3 roods 26 perches we regret we cannot regard your answer as satisfactory, particularly the passage that you "are not in a position to advise us etc. . . ." Under the provisions of " The Crown Acquisition of Lands Ordinance " the question of compensation is essentially one for you as Director of Lands, and as we are acting for the Tokatoka Nadrau we think you will agree that we are certainly entitled to the information in question. May we therefore request that you please supply the same to us by return of mail.

Yours faithfully,

RICE & STUART.

" A.6 "

Letter, Director of Lands to Rice & Stuart.

Exhibits.

" A.6 " Letter, Director of Lands to Rice & Stuart, 13th February 1953.

Lands and Survey Department,
Suva,
Fiji.

L.D. 19/18/14.

13th February, 1953.

Gentlemen,

Re Tokatoka Nadrau—Compensation.

I have to acknowledge receipt of your letter of the 11th February, 1953 and regret that you cannot regard my reply as satisfactory. I realise that you are in a position to request certain information and I have no desire to withhold this from you.

2. As stated in our telephone conversation I am to discuss this matter with the Secretary for Fijian Affairs on Thursday next, and I shall communicate with you immediately thereafter. I am endeavouring to go into this matter with all speed, but you must realize that I have only just come into the picture as Acting Director of Lands and I require a little time to investigate the whole position. In the meantime I shall be grateful if you will accept my assurance that everything is being done at this end with a view to settling the claim in a manner satisfactory to both sides.

Yours faithfully,

R. V. COLE,
Ag. Director of Lands.

Messrs. Rice & Stuart,
Barristers & Solicitors,
P.O. Box. 14.
Ba.

Exhibits.

"A.7"
Letter, Rice & Stuart to Director of Lands, 2nd March 1953.

"A.7"

Letter, Rice & Stuart to Director of Lands.

Rice & Stuart,
Barristers & Solicitors.

Box 14, Ba.

2nd March, 1953.

The Director of Lands,
Suva.

Dear Sir,

Re Tokatoka Nadrau.

We duly received your letter of the 13th ultimo (L.D. 19/18/14) for which we thank you. In that letter you stated that you would communicate with us immediately after 19th ultimo, but so far we have not received any further communication from you.

In these circumstances we must, with regret, give you notice that unless we receive the information asked for in our letter of 31st January last by return of mail we shall have no option but to commence Court proceedings in this matter.

Yours faithfully,

RICE & STUART.

" A.8 "

Letter, Director of Lands to Rice & Stuart.

Exhibits.

" A.8 "
Letter, Director of Lands to Rice & Stuart, 7th March 1953.

Lands and Survey Department,
Suva,
Fiji.

L.D. 19/18/14.

7th March, 1953.

Gentlemen,

Re Tokatoka Nadrau.

I have to acknowledge receipt of your letter dated 2nd March, 1953 and regret my omission to notify you of the present position concerning your claim for compensation on behalf of your clients, the Tokatoka Nadrau.

2. Briefly, the position is that since my return to Suva I am seeking certain information which may be a factor in determining the amount of compensation payable by the Crown and which will render any action in the Supreme Court unnecessary. I can assure you that I am doing all in my power to obtain the necessary information which I hope will lead to a satisfactory settlement and as I have only recently taken over the control of this department, I would ask you to be patient and await a further letter from me as soon as the necessary information which I am seeking has come to hand.

Yours faithfully,

R. V. COLE,
Acting Director of Lands.

Messrs. Rice & Stuart,
Barristers & Solicitors,
P.O. Box 14,
Ba.

Exhibits.

" A.9 "

Letter, Rice & Stuart to Director of Lands.

" A.9 " Letter, Rice & Stuart to Director of Lands, 10th March 1953.

Rice & Stuart,
Barristers & Solicitors.

Box 14, Ba.

10th March, 1953.

The Director of Lands,
Suva.

Dear Sir,

re Tokatoka Nadrau.

We have just received your letter of 7th instant (L.D. 19/18/14) for which we thank you. We desire to explain that as we had received no reply to ours of 2nd instant, we sent to Suva on 7th instant an originating Summons for sealing and service upon you.

Regarding the second paragraph of your letter we fully appreciate the fact that this matter is an unfortunate legacy left to you by your predecessor in office, and we sympathise with you in the matter. At the same time we feel sure you will realise we must do our own duty to our clients. We note you are seeking information which may be a factor in determining the amount of compensation payable by the Crown. In this connection may we suggest that a study of the Judgment of the Supreme Court in the case of *Director of Lands* v. *Watson and Kennedy* (No. 28 of 1946) may perhaps resolve your difficulties.

Yours faithfully,

RICE & STUART.

" B "

Letter, Director of Lands to Rice & Stuart.

Exhibits.

" B "
Letter, Director of Lands to Rice & Stuart, 9th April 1953.

Lands and Survey Department,
Suva,
Fiji.

9th April, 1953.

Sir,

Tokatoka Nadrau—Claim for Compensation.

I have to acknowledge receipt of your letter of the 24th March, 1953, and to inform you that Government has agreed to your claim, subject to the consent of Finance Committee, which is due to meet on the 24th of this month.

2. It is agreed therefore that your claim for the sum of £7,985. 0. 0 in respect of compensation for the land acquired is accepted, and also your claim for interest calculated at the rate of 5 per centum per annum on the above sum from 22nd November, 1944, the date of acquisition until the date of payment.

3. In this connection it is realized that some delay must necessarily occur between the date of approval by Finance Committee and the date on which the money becomes available for payment. I have therefore adopted the 22nd May as the date up to which the interest claimed should be computed, and this gives an even period of $8\frac{1}{2}$ years. The compensation claimed by you as regards interest therefore will amount to £3,393. 1. 6 and Finance Committee is being requested to approve this additional amount.

4. I shall inform you later of developments as soon as practicable, but in the meantime I assume that you will proceed as intimated to me in the matter of obtaining an order from the Supreme Court as to the disposal of the compensation. This will no doubt be done after consultation with the Solicitor-General.

Yours faithfully,

R. V. COLE,
Ag. Director of Lands.

Messrs. Rice & Stuart,
Barristers & Solicitors,
P.O. Box 14,
BA.

Exhibits.

" A.10 "

Letter, Native Land Trust Board to Director of Lands.

" A.10 " Letter, Native Land Trust Board to Director of Lands, 5th May 1953.

Suva, Fiji.

5th May, 1953.

The Director of Lands.
Suva.

Sir,

Namaka Aerodrome.

I refer to our conversation regarding the purchase price of some 350 or more acres at Namaka, Nadi, during the war for the construction of what is now Nadi Airport.

At the time of purchase a sum of approximately £2,000 was offered to the owners, who refused to accept. This money was, however, handed over to the Central Fijian Treasury and is, I understand, still held there. I am now informed that under a recent settlement, the owners, the Tokatoka Nadrau of the Mataqali Vunaivi, are to receive a total amount (including interest) of some £11–12,000.

Subsection (2) of Section 15 of the Native Land Trust Ordinance, Cap. 86, as amended by Section 9 of Ordinance 30/45, reads as follows :—

> " The purchase money received in respect of a sale or other disposition of native land shall, after deduction therefrom of any expenses incurred by the Board in respect of such sale or other disposition, be either distributed in the manner prescribed or invested and the proceeds so distributed as the Board may decide."

In the circumstances, therefore, it would appear that the purchase money, both that held by the Central Fijian Treasury, and that to be paid, should be paid to this Board who, in the terms of section 15, would then pay the Solicitor's costs.

As I have already discussed this with Mr. P. Rice, Solicitor for the Tokatoka Nadrau, I have sent a copy of this to him to permit him to place his views before you.

Yours faithfully,

J. HANSEN,
Secretary.

" A.11 "

Letter, Director of Lands to Rice & Stuart.

Exhibits.

" A.11 " Letter, Director of Lands to Rice & Stuart, 6th May 1953.

Lands and Survey Department,
Suva, Fiji.

6th May, 1953.

Gentlemen,

Re: Tokatoka Nadrau.

Further to my letter of the 22nd April, I have to inform you that the compensation agreed upon in respect of the purchase of an area of native land from your above clients, has been approved by Standing Committee on Finance, and that the money will be made available shortly. I presume therefore that you will proceed to obtain confirmation by the Supreme Court as stated in your letter of the 21st April, 1953.

2. I would, however, inform you that I have received a request from the Secretary, Native Land Trust Board that the purchase money in question to be paid to his Board, after deduction therefore of any legal expenses incurred, to be either distributed in the manner prescribed or invested and the proceeds so distributed as the Board may decide. You may, therefore, wish to question this claim, and I am informed by the Solicitor-General, that he is prepared to discuss the case with you with a view to arriving at a satisfactory conclusion.

3. I shall no doubt be hearing from you in the near future.

Yours faithfully,

R. V. COLE,
Ag. Director of Lands.

Messrs. Rice & Stuart,
Barristers & Solicitors,
P.O. Box 14,
BA.

Exhibits.

" A.12 "

Letter, Rice & Stuart to Native Land Trust Board, 8th May 1953.

" A.12 "

Letter, Rice & Stuart to Native Land Trust Board.

Rice & Stuart,
Barristers & Solicitors.

Box 14, Ba.

8th May, 1953.

The Secretary,
Native Land Trust Board,
Suva.

Dear Sir,

Re Namaka Aerodrome—Your reference 8/4/25.

We are in receipt of the copy of your letter to The Director of Lands dated 5th instant for which we thank you.

We desire to make it clear that in our view your Board has no right whatsoever in law to payment of the compensation moneys in question. We do not think it necessary or desirable to state in detail our reasons for this view. If therefore your Board still desires to press its claim in this regard it will no doubt consider taking appropriate legal action in the matter.

A further matter to which we should refer is the statement in the penultimate paragraph of your letter that your Board " would then pay the Solicitors' costs." Assuming that you refer to our own costs in this matter we desire to emphasise that your Board is not liable to us for any costs in as much as it has given us no instructions. On the other hand, quite apart from the legal considerations to which we have above referred, we wish to give you definite notice that we have a lien on these compensation moneys for payment of our costs, disbursements and Counsel's fees against the Tokatoka Nadrau. This circumstance alone would entitle us to payment of such moneys.

There is yet another factor in this matter which we had hoped would be allowed to rest, but your action in writing to The Director of Lands obliges us, albeit with reluctance, to mention. As you are aware, The Director of Lands as the representative of the Crown, is, in this particular matter, in a situation where his interests as the Crown's servant in the matter of compensation could not but conflict with his duty as a member of your Board as a trustee for the Fijian owners who are suing the Crown. Our clients' land was compulsorily acquired as far back as the 22nd November 1944. Soon after this the then Director of Lands was well aware that the native owners would not accept the paltry sum of £2,000 which The Director of Lands as the Crown's representative offered to them. Despite this The Director of Lands failed to carry out his plain duty under Section 9 of The Crown Acquisition of Lands Ordinance (Cap. 122) of taking out an Originating Summons in order to have the amount of compensation judicially determined. We cannot help contrasting his attitude

in this regard with one of his utterances in the Legislative Council during the Debate upon the passing of Ordinance No. 29 of 1948 when he is reported to have said in Council : " The Government vested the control (that is of Native Land) in a Board of Trustees, The Native Land Trust Board—and it is the paramount duty of that Board to carry out its work and exercise control in the best interests of the Fijians and nothing less."

When we were instructed in this matter in our first letter to the present Acting Director of Lands dated 15th January last we asked whether it was his intention to take out an Originating Summons. His reply, dated 26th January, 1953, was as follows : " I cannot advise you further beyond the fact that no intention exists to take out an Originating Summons, and an amount of compensation has been offered to your clients which was considered reasonable by the then District Commissioner Western." To that letter we replied on 31st January last asking these questions :—

" (B) By what authority was the unaccepted amount paid to the Secretary for Fijian Affairs ?

(C) Why was an Originating Summons not taken out in pursuance of Section 9 of The Crown Acquisition of Lands Ordinance ? "

To neither question have we had a reply, although an amount of compensation has now been offered which is acceptable to our clients.

Again quite apart from the legal situation regarding your Board's claim, we think the foregoing facts would amply justify a Court in holding that your Board would not be an acceptable trustee for our clients. It is but fair to inform you that should the matter go to Court we would be obliged to place before the Court all of the foregoing facts together with any other relevant circumstances.

Yours faithfully,

RICE & STUART.

Exhibits.

" A.13."

Letter, Rice & Stuart to Native Land Trust Board, 11th May 1953.

" A.13 "

Letter, Rice & Stuart to Native Land Trust Board.

Rice & Stuart,
Barristers & Solicitors.

Box 14, Ba.

11th May, 1953.

The Secretary,
Native Land Trust Board,
Suva.

Dear Sir,

re Namaka Aerodrome. Your Reference 8/4/25.

Further to our letter of 8th inst., we wish to place on record the following additional facts relative to this matter.

Two blocks of land were compulsorily acquired from our clients, the one containing 434 acres 3 roods 26·1 perches on 22nd November, 1944, and the other containing 5 acres on 17th November, 1943. The former is the subject of our present Court proceedings against the Crown.

With reference to the latter the Acting Director of Lands by letter to us dated 26th January 1953 wrote as follows: " With regard to the area of 5 acres as described in Gazette No. 52 of 26th November, 1943, I have to inform you that this area was acquired as a military cemetery and is now registered as Certificate of Transfer No. 4 Compensation was agreed upon and paid to the native owners, who, in turn, donated the money to a War Charity."

We further desire to refer to the following extracts from your letter of 5th inst. to The Director of Lands relating to the large area taken—"At the time of purchase a sum of approximately £2,000 was offered to the owners who refused to accept. This money was, however, handed over to the Central Fijian Treasury, and is, I understand, still held there." Arising out of these facts we should be glad if you would please let us have answers to the following queries at your earliest convenience.

(1) Did your Board insist (as it is now doing) upon payment of the compensation for the above 5 acres being made to your Board ?

(2) If not, in view of its present attitude, why not ?

(3) When your Board, or the then Director of Lands as one of its members, first became aware that the native owners would not accept the above sum of £2,000, did your Board, or any member of your Board, take any (and if so, what) step in furtherance of the interests of the native owners as a trustee for them ?

(4) Has your Board, or any member of your Board, ever taken any (and if so what) step or steps ?

Yours faithfully,

RICE & STUART.

" A.14 "

Letter, Native Land Trust Board to Rice & Stuart.

Exhibits.

" A.14 " Letter, Native Land Trust Board to Rice & Stuart, 15th May 1953.

15th May, 1953.

Messrs. Rice & Stuart,
Barristers & Solicitors,
Ba.

Gentlemen,

Namaka Aerodrome.

I beg to acknowledge with thanks your letters dated 8th and 11th May, 1953.

The details of the acquisition of the two portions of land from the Tokatoka Nadrau are not known to the writer or to any other member of the staff of this Board, as they are contained in Lands Department records not normally available to the Board. Furthermore, the circumstances were different, for the reasons following.

Prior to 1946, administration of the Native Land Trust Ordinance was the responsibility of the Director of Lands (as appears from the Ordinance in its unamended state) and the staff of the Board discharged their duties in connection therewith as members of the staff of the Lands Department. This being so, any claim for the payment of the money would needs have been addressed by the Director of Lands to himself.

When it became known to the writer that a sum of £2,000 was held by the Central Fijian Treasury on behalf of the owners, a proposal was put forward that the money should be handed to the Board to be invested, so that it would not lie idle pending a settlement. This was not done as on the advice of a member of the Board, acceptance of the money by the Board might have prejudiced the Tokatoka Nadrau.

Yours faithfully,

J. HANSEN,
Secretary.

Exhibits.

" A.15 "

Letter, Rice & Stuart to Native Land Trust Board, 28th May 1953.

" A.15 "

Letter, Rice & Stuart to Native Land Trust Board.

Box 14, Ba.

Rice & Stuart,
Barristers & Solicitors,

28th May, 1953.

The Secretary,
Native Land Trust Board,
Suva.

Dear Sir,

re Namaka Aerodrome.

We have to acknowledge receipt of your letter of 15th inst., 8/4/25, for which we thank you.

We regret we cannot regard your letter as a satisfactory reply to our two letters of 8th and 11th insts. However it seems to us that no good purpose would be served by further correspondence or discussions regarding this subject. As pointed out in the second paragraph of our letter of 8th inst., and quite apart from moral considerations in this matter, we are clearly of opinion that in law your Board has no right whatsoever to payment of the compensation moneys in this case. We are therefore proceeding to complete the case on this basis, and we are forwarding a copy of this letter to the Solicitor-General.

Yours faithfully,

RICE & STUART.

No. 30 of 1955.

In the Privy Council.

ON APPEAL

FROM THE FIJI COURT OF APPEAL.

BETWEEN

RATU TAITO NALUKUYA (Plaintiff) . . . . . *Appellant*

AND

THE DIRECTOR OF LANDS (Defendant)

and

THE NATIVE AFFAIRS BOARD (*amicus curiæ*) . . . . *Respondents*

AND

THE NATIVE LAND TRUST BOARD OF FIJI . . . . *Intervener.*

RECORD OF PROCEEDINGS

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Solicitors for the Second Respondent and for the Intervener.

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