Judgment (13), 1957

In the Privy Council

No. 6 of 1956.

ON APPEAL FROM THE SUPREME COURT OF FIJI

BETWEEN

SERGIUS ALEXANDER TETZNER .. (*Respondent*) *Appellant*

AND

THE COLONIAL SUGAR REFINING COMPANY LIMITED .. .. .. (*Appellant*) *Respondent*

RECORD OF PROCEEDINGS

INDEX.

EXHIBITS.

Exhibit Mark.	Description of Document.	
	Respondent's Exhibit.	
E	Plan showing the division of the 17 Assessments	*Separate document*

DOCUMENTS OMITTED FROM THE RECORD.

Exhibits " A " to " D " and " F " to " U ".
Judge's Notes of Hearing of Appeal on 12th, 13th and 14th May 1954.
Judge's Notes on Delivering of Judgment on 27th May 1954.

In the Privy Council

No. 6 of 1956.

ON APPEAL FROM THE SUPREME COURT OF FIJI

BETWEEN

SERGIUS ALEXANDER TETZNER .. (*Respondent*) *Appellant*

AND

THE COLONIAL SUGAR REFINING COMPANY LIMITED .. .. .. (*Appellant*) *Respondent*

RECORD OF PROCEEDINGS

No. 1.

Company's Notice of Intention to Appeal.

In the First Class Magistrate's Court at Lautoka.

No. 1. Company's Notice of Intention to Appeal dated 10th July, 1953.

IN THE FIRST CLASS MAGISTRATE'S COURT.

Western District,

Lautoka.

No. 1 of 1953.

IN THE MATTER OF the Towns Ordinance 1935.

AND IN THE MATTER OF an Appeal by the Colonial Sugar Refining Company Limited against the Valuations set out in the Lautoka Town Council's Assessment Notices Nos. 579 to 583, 585 to 590, 592, 593 and 623 made by S. A. TETZNER Esquire Valuer for the Town of Lautoka.

In the First Class Magistrate's Court at Lautoka.

No. 1 Company's Notice of Intention to Appeal dated 10th July, 1953. —*continued.*

TAKE NOTICE that the Colonial Sugar Refining Company Limited intends to appeal against the valuations by S. A. Tetzner of Suva Valuer for the Town of Lautoka of the lands owned by the said Company such lands being the lands referred to in and covered by the Lautoka Town Council Rating Assessment Notices Nos. 579 to 583 inclusive 585 to 590 both inclusive 592, 593 and 623 on the grounds that the said lands have been incorrectly described as to area and/or overvalued as is more particularly set out in the Schedule attached hereto and marked " A ".

Dated at Lautoka the 10th day of July 1953.

COLONIAL SUGAR REFINING COMPANY LIMITED.

Per : A. ROURKE.

To

S. A. Tetzner Esquire Valuer, Suva and

The Lautoka Town Council.

SCHEDULE "A"

Town Council's Assessment No.	Valuer's Plan No.	Area by Valuer	U.C.V. by Valuer	Area Claimed	U.C. Value Claimed	Remarks
			£		£	
579	500A	1100 std. ft. at £2.5	2750	1100 std. ft. at £2.5	2750	Not contested.
do.	do.	38.4 acs. at £125	4800	38.4 acs. at £100	3840	Some of this area is very low lying and £100 per acre is considered an average equitable value.
580	500B	1450 std. ft. at £3.5	5075	1200 std. ft. at £13.5	4200	There is only about 1200 ft. of frontage to the Queens Road considered suitable for Residential purposes.
do.	do.	1230 std. ft. at £3	3690	600 std. ft. at £3	1800	Excluding cane and market garden lane there is only about 600 ft. of frontage to Drasa Av. considered suitable for residential purposes.
do.	do.	13.6 acs. at £150	2040	29.08 acs. at £150	4362	The area referred to is cane land and although a value of £50 per acre has been used, this is considered excessive for this cane land and cane land referred to elsewhere in the schedule.
do.	do.	7.2 acs. at £125	900	16.57 acs. at £125	2071.15	Mostly elevated residential area with no proclaimed access.
do.	do.	20.8 acs. at £200	4160	(8 acs. at £200)	1600	Market garden land—good soil.
				(1.18 acs. at £100)	118	Market garden land—on mudstone slope.
581	500C	680 std. ft. at £2.5	1700	See below	See below	This area fronts the Queens Road —150 ft. of frontage is used for tramline purposes.
do.	do.	570 std. ft. at £4	2228	See below	See below	Fronts Queens Road—small clerical error and value should be £2280.
do.	do.	12.2 acs. at £200	2440	16.5 acs. at Nil	Nil	This area has been set aside for recreation purposes and it is claimed should be rate free. A deviation of the Government road is intended and will reduce the area at present available for recreation.

In the First Class Magistrate's Court at Lautoka.

No. 1. Company's Notice of Intention to Appeal dated 10th July, 1953 Schedule "A" —*continued.*

Town Council's Assessment No.	Valuer's Plan No.	Area by Valuer	U.C.V. by Valuer	Area Claimed	U.C. Value Claimed	Remarks
			£		£	
582	500D	750 std. ft. at £3.5	2625	750 std. ft. at £3.5	2625	Not contested.
do.	do.	1000 std. ft. at £2.5	2500	1000 std. ft. at £2.5	2500	Not contested.
do.	do.	1650 std. ft. at £2	3300	1050 std. ft. at £2	2100	About 600 ft. of frontage to road from Loco Shed to Top Lines is used for agricultural purposes.
do.	do.	500 std. ft. at £3	1500	—	—	The 500 ft. fronting Drasa Av. referred to is used for agricultural purposes.
do.	do.	—	—	3.79 acs. at £150	568.10	The frontages 600 ft. and 500 ft. above should be considered as agricultural land for which the value of £150 per acre is temporarily used. Refer to remarks under 580.
do.	do.	24 acs. at £200	4800	24 acs. at £200	4800	Not contested.
583	500E	600 std. ft. at £4	2400	600 std. ft. at £4	2400	Not contested.
do.	do.	450 std. ft. at £5	2250	450 std. ft. at £5	2250	Not contested.
do.	do.	470 std. ft. at £5	2350	1.62 acs. at £250	405	This area fronts road from P.W.D. to Loco Shed and is already used for tramline and material stocks. It should be treated similarly to the 3.8 acs. below, i.e., valued at £250 per acre.
do.	do.	2.5 acs. at £500	1250	3.8 acs. at £250	950	The valued £500 per acre appears excessive in view of £300 assessed for industrial flats under 585.
585	500G	300 std. ft. at £6	1800	300 std. ft. at £6	1800	Not contested.
do.	do.	800 std. ft. at £5	4000	3.75 acs. at £300	825	This area fronts roads from P.W.D. to Loco Shed and is part of the mill area which should be treated similarly to the 21.7 acres below, i.e., valued at £300 per acre.

Town Council's Assessment No.	Valuer's Plan No.	Area by Valuer	U.C.V. by Valuer	Area Claimed	U.C. Value Claimed	Remarks
			£		£	
585	500G	1700 std. ft. at £2.5	4250	5.85 acs. at £150	877.10	This area fronting the road from Loco Shed to the Top Lines is used entirely for agricultural purposes.
do.	do.	1550 std. ft. at £3	4650	(350 std. ft. at £3)	1050	1200 ft. of frontage to Drasa Av. amounting to 4.13 acres is used for agricultural purposes.
				(4.13 acs. at £150)	619.10	
do.	do.	1580 std. ft. at £3.5	—	(730 std. ft. at £3.5)	2555	850 ft. of frontage to Drasa Av. amounting to 2.92 acres is used for agricultural purposes.
				(2.92 acs. at £150)	438	
do.	do.	1000 std. ft. at £3.25	3250	(250 std. ft. at £3.25)	812.10	750 ft. of frontage to Tavewa Av. amounting to 2.58 acres is used for agricultural purposes.
				(2.58 acs. at £150)	387	
do.	do.	95.6 acs. at £250	23900	—	23900	Not contested.
do.	do.	21.7 acs. at £300	6510	—	6510	Not contested.
586	500H	22 acs. at £150	3300	—	3300	Not contested except as to agricultural land valued at £150 per acre. See 580, 582.
do.	do.	3.5 acs. at £50	175	—	175	Not contested.
587	500I	10.4 acs. at £150	1560	6 acs. at £75	450	Best land is rice land of which there are only 6 acres.
do.	do.	20.4 acs. at £50	1020	24.8 acs. at £50	1240	
588	500J	2050 std. ft. at £3	6150	(1200 std. ft. at £3)	3600	850 ft. of frontage to Drasa Av. amounting to 2.92 acres is used for agricultural purposes.
				(2.92 acs. at £150)	438	
do.	do.	58.6 acs. at £150	8790	—	8790	Not contested except as to value of agricultural land.
do.	do.	6 acs. at £50	300	—	300	Not contested.

In the First Class Magistrate's Court at Lautoka.

No. 1 Company's Notice of Intention to Appeal dated 10th July, 1953. Schedule "A" —*continued.*

Town Council's Assessment No.	Valuer's Plan No.	Area by Valuer	U.C.V. by Valuer	Area Claimed	U.C. Value Claimed	Remarks
			£		£	
589	500K	500 std. ft. at £3.5	1750	1.72 acs. at £150	258	500 ft. of frontage to Drasa Av. amounting to 1.72 acres is used for agricultural purposes.
do.	do.	50 acs. at £150	7500	(29.3 acs. at £150)	4390	Cane fields to south of Tavewa Av. Fair slopes south of cane fields.
				(11 acs. at £7.5.9)	825	Former cane fields south of hospital—now uneconomical due to expansion of town.
				(7 acs. at £100)	970	
do.	do.	113.6 acs. at £50	5680	—	5680	Not contested.
590	500L	261 std. ft. at £6	1566	261 std. ft. at £6	1566	Not contested.
do.	do.	700 std. ft. at £4	2800	See below	See below	This area which fronts Waterfront Road is part of a recreation ground.
do.	do.	10 acs. at £400	4000	See below	See below	Balance area.
do.	do.	—	—	5 acs. at Nil	Nil	The recreation area which it is claimed should be rate free.
do.	do.	—	—	7.345 acs. at £250	1836.5	Balance area at £250 per acre. Compare 21.7 acres at £300 under 585.
592	500N	352 std. ft. at £3.5	1232	352 std. ft. at £1.75	616	This area which fronts Drasa Av. is inaccessible in parts and would be difficult to use for building purposes on account of sloping mudstone formation.
593	500O		200		150	This land slopes steeply and would be difficult to build on. It has no proclaimed access.
623	530	3.5 acs. at £150	525	(1.5 acs. at £150)	225	A house site of about 1.5 acres has been formed.
				(2 acs. at £100)	200	Balance of land (2 acres) is steeply sloping and of little use for house sites.
			154236		114117	

No. 2.

In the First Class Magistrate's Court at Lautoka.

No. 2. Memorandum of Appeal dated 18th July, 1953.

Memorandum of Appeal.

IN THE FIRST CLASS MAGISTRATE'S COURT.
Western District,
Lautoka.

No. 1 of 1953.

IN THE MATTER OF the Local Government (Towns) Ordinance 1947.

AND IN THE MATTER OF an Appeal by the Colonial Sugar Refining Company Limited against the valuations set out in the Lautoka Town Council's Assessment Notices Nos. 579 to 583, 585 to 590, 592, 593 and 623 made by S. A. TETZNER Esquire Valuer for the Town of Lautoka.

COLONIAL SUGAR REFINING COMPANY LIMITED *Appellant*

AND

S. A. TETZNER .. .. *Respondent.*

The appellant says :—

1. The lands referred to in the Lautoka Town Council's Assessment Notices 579 to 583 both inclusive 585 to 590 both inclusive 592, 593 and 623 valued by the above-named respondent have been incorrectly described as to area and/or overvalued as set out in Schedule attached to this Memorandum and marked " A ".

Dated at Lautoka this 18th day of July 1953.

COLONIAL SUGAR REFINING COMPANY LIMITED.
Per : A. ROAKE.
Manager, Lautoka.

In the First Class Magistrate's Court at Lautoka.

No. 3. Notice of Motion to Amend Memorandum of Appeal dated 6th August, 1953.

No. 3.

Notice of Motion to Amend Memorandum of Appeal.

IN THE FIRST CLASS MAGISTRATE'S COURT.

Western District,

Lautoka.

No. 1 of 1953.

IN THE MATTER OF the Local Government (Towns) Ordinance 1947

AND IN THE MATTER OF an Appeal by the Colonial Sugar Refining Company Limited against the valuations set out in the Lautoka Town Council's Assessments Notices Nos. 579 to 583, 585 to 590, 592, 593 and 623 made by S. A. TETZNER Esquire Valuer for the Town of Lautoka.

BETWEEN

THE COLONIAL SUGAR REFINING COMPANY LIMITED .. .. *Appellant*

AND

S. A. TETZNER .. .. *Respondent.*

TAKE NOTICE that the Court will be moved on Tuesday the 11th day of August 1953 at 9.30 o'clock in the forenoon at the Courthouse, Lautoka, by Mr. P. Rice of Counsel for the above-named appellant Company for an order that the appellant Company's written Memorandum of Appeal filed herein be amended upon such terms as to costs or otherwise as shall seem just by deletion therefrom of the first paragraph thereof and by substitution therefor of the following paragraphs :

" 1. The respondent was wrong in law in treating the appellant Company's land situated in the town of Lautoka as the subject of seventeen assessments inasmuch that such lands which are the whole of the land comprised in Crown Grant registered in Book J Folio 1382 and part of the land comprised in Certificate of Title Number 7489 form one property only and hence should have been the subject of one assessment only or at the most of two assessments.

" 2. A comparison of the respective valuations set out in each of such said seventeen assessments *inter se* shows that the Respondent has failed to assess the unimproved value of the said lands in accordance

with correct legal principles inasmuch that he has wrongly taken into account factors which must in law be disregarded in assessing such unimproved value.

" 3. Correct application of the legal principles which ought to have guided the respondent must inevitably have led him to the conclusion that the unimproved value of the said lands did not exceed the sum of £13000.0.0 which the appellant Company submits is the maximum figure at which such unimproved value can properly be assessed."

IN THE ALTERNATIVE the appellant Company says :

" 4. If it be held that the respondent was correct in law in treating the appellant Company's said lands as the subject of seventeen assessments (which the appellant Company denies) then the lands comprised in certain of the said assessments have been incorrectly described as to area and or overvalued particulars of such incorrect description and or overvaluation being specified in the Schedule attached to the said memorandum of appeal and marked with the letter ' A '."

Dated the 6th day of August 1953.

Sgd. RICE & STUART

Solicitors for appellant Company.

To the Respondent and to The Lautoka Town Council.

This Notice of Motion is taken out by Rice & Stuart, Solicitors for the appellant Company, whose address for service is at the Chambers of the said Solicitors at Lautoka and Ba.

No. 4.

Notes of Hearing of Motion to Amend.

IN THE FIRST CLASS MAGISTRATE'S COURT,
Lautoka.

Before C. L. Regan Esq. Magistrate.

11th August 1953.

RICE for applicant : On motion for amendment of Memorandum of Appeal.

KERMODE : For respondent, we oppose.

In the First Class Magistrate's Court at Lautoka.

No. 4. Notes of Hearing of Motion to Amend dated 11th August, 1953— *continued.*

RICE : See section 110 as amended subsection (6). This invokes Magistrate's Court rules O.14 r.1 which corresponds to R.S.C.O. 28.r.l. Amendment should be on terms of applicant paying costs. Admit that, but submit that is only condition. See Tyldesky *v.* Harper 10 Ch. 396 referred to in White Book under 0.28.r.1. It may be suggested that amendment creates new cause of action. Submit it doesn't and in any case would submit we are still entitled. Para. 4 is the same as in old S/C. We ask for same relief by different routes. Submit we can raise new case. See O.28 r.1 at 465 (1935) edition. See new case. This case is not a fresh action Budding *v.* Mardock 1 Ch. 42, 45 L.J. Ch. 213 and Hubbuck *v.* Herms (White Book p. 2). Before 1873 new case by amendment was refused in C.L. but allowed in equity. Those two cases indicate the trend.

KERMODE : Respondent's objection is that this is an appeal which was filed on very last day, section 110(2). The notice must give the grounds. If amendment is new it is out of time and should not be allowed if a different cause of action. Submit this is a new appeal. From memory cite Babu Ram Prasad *v.* Ram Charan Singh (Fiji Court of Appeal in May this year). Under heading of scope in White Book O.28 r.1, notes, N.B. " provided no undue delay ". Time for filing past, and it is new appeal. Admit that subsection 4 of section 110 of Ordinance allows appeal out of time. Submit Magistrates' Courts Rules don't apply where appeal out of time.

RICE : In reply. No authority cited by respondent. If a litigant issued writ just before being statute barred he could amend afterwards. We have given the substance of para. 1, in our amended plea. We served Notice of Motion on Council. I produce acknowledgment of Town Clerk of service. I served it. No attempt to show that injustice will be done. We will pay costs. In Babu Ram's case it was a question whether a man was a partner. Plaintiff appealed 7 days out of time and was disallowed.

C.A.V. 18/8/53.

No. 5. Decision allowing Amendment dated 18th August, 1953.

No. 5.

Decision Allowing Amendment.

In this interlocutory matter the appellant seeks to amend the grounds of his appeal and the respondent opposes him. The appellant has made out a very strong case for the amendment which I need not

detail at length. It is based on the fact that the law relating to civil trials in a Magistrate's Court applies. This enables appellant to invoke Magistrates' Courts Rule O.XIV.r.1 the very words of which are strong in his favour, as also is section 27(2) of the Ordinance itself and I do not see why it should not apply. The cases and the dicta cited to me seem unequivocally in appellant's favour, as also do the notes in the White Book on the corresponding English rule, viz., R.S.C.O. 28.r.1.

Like Socrates of old I have done my best to see if perhaps the worse can be made to appear the better cause by giving all possible weight to respondent's arguments, which consist mainly in assuming that appellant wishes to change the whole ground of his appeal and that there has been undue delay. The question of an amendment altering the whole cause of action is dealt with in the 1934 White Book at p. 465 and I have read Budding *v.* Mardock and I can see little in respondent's favour there. In any event this is a matter of grounds of appeal (an appeal would be by nature a more definite thing than a cause of action) and though the amendment adds extra legal grounds and incidentally gives more information to respondent for which he should be thankful, the main substance of the appeal remains and its nature is not altered. I do not see that the delay is great nor does it prejudice respondent. There is no injustice to respondent in any way. If the amendment were disallowed it could result in grave injustice to appellant and an infringement of Cap. 3, section 27(2) in the event of appellant not being allowed to file his appeal out of time : and if he were allowed to file his appeal out of time, the delay would possibly react against respondent.

The amendment as filed is allowed, costs of the application as taxed or as agreed on to be paid by appellant.

Costs agreed at £1.1.0.

C. L. REGAN, 18/8/53.

Adjourned for hearing to 1/9/53.

C. L. REGAN.

In the First Class Magistrate's Court at Lautoka.

No. 6. Amended Memorandum of Appeal dated 19th August, 1953.

No. 6.

Memorandum of Appeal (as amended by Order of this Court dated the 18th day of August 1953).

IN THE FIRST CLASS MAGISTRATE'S COURT.

Western District,

Lautoka.

No. 1 of 1953.

IN THE MATTER OF The Local Government (Towns) Ordinance 1947

AND IN THE MATTER OF an Appeal by the Colonial Sugar Refining Company Limited against the Valuations set out in The Lautoka Town Council's Assessment Notices Nos. 579 to 583, 585 to 590, 592, 593, and 623 made by S. A. TETZNER Esquire Valuer for the Town of Lautoka.

BETWEEN

THE COLONIAL SUGAR REFINING COMPANY LIMITED .. .. *Appellant*

AND

S. A. TETZNER .. .. *Respondent.*

The Appellant says :—

1. The Respondent was wrong in law in treating the appellant Company's lands situated in the Town of Lautoka as the subject of seventeen assessments inasmuch that such lands which are the whole of the land comprised in Crown Grant registered in Book J Folio 1382 and part of the land comprised in Certificate of Title Number 7489 form one property only and hence should have been the subject of one assessment only or at the most of two assessments.

2. A comparison of the respective valuations set out in each of such said seventeen assessments *inter se* shows that the respondent has failed to assess the unimproved value of the said lands in accordance with correct legal principles inasmuch that he has wrongly taken into account factors which must in law be disregarded in assessing such unimproved value.

3. Correct application of the legal principles which ought to have guided the respondent must inevitably have led him to the conclusion that the unimproved value of the said lands did not exceed the sum of £13000 which the appellant Company submits is the maximum figure at which such unimproved value can properly be assessed.

In the Alternative the appellant Company says :—

4. If it be held that the respondent was correct in law in treating the appellant Company's said lands as the subject of seventeen assessments (which the Appellant Company denies) then the lands comprised in certain of the said assessments have been incorrectly described as to area and or overvalued particulars of such incorrect description and or overvaluation being specified in the Schedule attached to the said Memorandum of Appeal and marked with the letter " A."

Dated the 19th day of August 1953.

Sgd. RICE & STUART,

Solicitors for appellant Company.

No. 7.

Opening Address of Appellant's Counsel.

1/9/53.

RICE AND STUART for appellant.

KERMODE for respondent.

RICE : Appeal is against number of assessments. Appellant has 2 C.T.S., viz., 7489 containing 2255 acres 0 roods 32.47 perches acquired by appellant 4/12/1899, and J Folio 1382 acquired by appellant 13/5/13 and contains 12 acres 3 roods 31 perches. Total area within town is 650 acres approximately, i.e., exclusive of land leased. Whole of second title is within town. Produce certified copies of the titles, Exhibits A and B and Map Ex. C. Encumbrances mostly leases on Exhibit A are leases and don't affect present claim.

In the First Class Magistrate's Court at Lautoka.

No. 7. Opening Address of Appellant's Counsel dated 1st September, 1953— *continued.*

Say that altogether the 2 C.T.S. form one property and are the site of mill, residences, recreation grounds, etc. Say they are in fact one property and one business undertaking carried on by one Company. Refer to Ordinance 26 of 1947 sections 99/100. Improvements as mentioned in Section 100 is nowhere defined. No parallel English legislation, but there is in N.Z. Rely on N.Z. case, viz., Broadways Ltd. *v.* V.V.G. reported 1922 24 N.Z.G.L.R. p. 532. N.B. definition of improvements by N.Z. legislature in 2nd column of p. 533, N.Z.G.L.R. Definition of unimproved value approximates Fiji therefore submit N.Z. definition of improvements applies here. This case though 1922 still stands in N.Z. I have this from a reliable solicitor in N.Z. Every improvement on subject land in Lautoka has been made by appellant and take them out you have virgin land. Rely on C.S.R. *v.* V.G. 1927 N.Z.L.R. 617. I have ascertained that this still stands as good law. One point in issue concerns us here, viz., that special use to which appellant puts land is irrelevant. See Reid J. 626/27. Appellant has refinery on North Auckland harbour, and requires dams for water. 22½ acres of mudflat was leased. It therefore was of special use to appellant. Court held such special user must be disregarded. Submit that we must therefore regard this land as virgin and situated in town where no sugar industry. Evidence will show that highest value on this basis is £13000. Respondent has failed to regard the block as one and has divided into 17 notional blocks. He has been guided by fact that certain land, e.g., fronts certain road and has valuable frontages or maybe it is good sugar land. In each case respondent has assumed proximity to Mill, but N.Z. case does not permit this. I now put in the 17 assessments, Exhibit D (1—17). Appellant says he has supplied all the amenities. Produce Gazette No. 12 of 17/2/11 p. 87. Produce plan made by respondent showing how land divided into 17 assessments Exhibit E. Put in Gazette to show construction of roads by appellant. Gazette No. 12 of 17/2/11. Exhibit F see pages 86/87. See proclamation and schedule part No. 6 p. 87. Four roads mentioned as taken over and therefore presumption is that roads were made by appellant. See Gazette 62 of 1912 at 579. This Gazette sets out long correspondence. In para. 14 of Manager's letter, there is evidence of road made by Company. See Gazette 44 of 1907 at p. 372—373, Exhibit H. This publishes agreement between Government and appellant. See agreement to make road. See Gazette of 11/11/32 No. 57 at p. 364. See Proclamation of land for public road. Submit appellant formed it as public road before resumption. Refer to work called Cyclopedia of Fiji contains photo of subject land in 1907. It also contains description. This shows state of land in 1907. That is our case. Call 1st Witness.

No. 8.

In the First Class Magistrate's Court at Lautoka.

No. 8. Evidence of Henry Stokes. Examination on 1st September, 1953.

Evidence of Henry Stokes.

Sworn: C.S.R. Company Lautoka Reg. Surveyor and Chartered Engineer, and member of Valuers Association of Fiji. I commenced career in New South Wales. I was articled to Surveyor M. M. Hyndes in Muswellbrook. He is now Examiner and is on Board of Valuers. My experience there brought me in contact with valuing as Hyndes valued for Maitland Land Board. He also did private valuing. I went then to Main Roads Board New South Wales. I then had 5 years in Fiji with Native Lands Commission as Surveyor—6 months with New South Wales on engineering, drafting, 2 years with Lacklan Shire Council, then 15 years with C.S.R. in Fiji as Surveyor and Civil Engineer and handling land matters, outside construction in way of estimates, etc. Valuers Association in Fiji was formed about a year ago. Admission is based on experience or examination. I am a member of Lautoka Fair Rents Board for 3 years. I see Exhibit E Item 1 in 1st proclamation is back road Item 2 is Queens Road. Item 3 is front Road from P.W.D. towards back of M.H's. Item 4 is road from Mill to C.S.R. lines I refer to 1912 Gazette, and say it is part of Queens Road already referred to. I refer to agreement in 1907 Gazette. I point on map to tramline from Ba to Navokai. It includes Queens Road. Gazette says appellant had to form these roads. I refer to 1932 Gazette. It refers to road running through M.H's compound. I refer to Exhibit A. The appellant erected all the buildings on 650 acres in town area, unleased referred to in that title. Appellant has large Sugar Mill in Lautoka since 1903. The 650 acres includes Mill and houses and power house. Appellant supplies own light to houses from its power house. Water comes through appellant's mains and reticulation from dam jointly owned by Government and appellant. Drainage, i.e., means of getting surface waters has been supplied by appellant and also septic tank sewerage. Tramlines were laid by appellant, also rolling stock. Bridges have been made by Company and decked where required by Ordinance for other traffic. There are other roads on the property besides those already mentioned. I have seen the drains in Drasa are cleaned by appellant's employees since 1938. To best of my knowledge appellant got no recompense. As regards capital values presence of Company's Mill influences other values on the hill. If there were no Mill I doubt if other buildings would be there. I refer to Exhibit B 12 acres. That was originally land below high water mark. As far as I know no improvements have been made on it except by appellant. Appellant has built the land above high water mark and on it are 2 coal ramps, system of tramways, a meal room, part of wharf lines, a playing field, and one molasses tank is or partly is

In the First Class Magistrate's Court at Lautoka.

No. 8. Evidence of Henry Stokes. Examination on 1st September, 1953— *continued.*

on that site. These improvements are still in use. All the improvements have been built by appellant. Respondent has dealt with land comprised in Exhibit B (500 L on map) as follows :—

He has taken a strip 330 × 100 at £6 on 330 (refer to assessment 590 which includes all 500L) and also a strip of 700 ft. shown on plan at £4 per ft. and then balance of 10 acres at £400 per acre. Say playing field in 10 acres includes 330 ft. frontage. I got this information from valuation sheets open to public inspection. I have considered valuation of the 650 acres without improvements, Mill, houses, etc. I take comparable sales. I refer to photostat copy of land. Transfer No. 49285 sold for £15000. On it are 37 cane blocks totalling 517 acres. Of balance of 408 another 50 acres could be brought under cane. Average is £16.4.0 per acre of the 925 acres. Cane land only is £29 per acre, i.e., regarding rest as worthless. This land is improved, great part was already under cane production. Rice and maize were also being produced. Of 517 acres 50 acres are 1st class cane land, 150 are 2nd class cane land and balance of 317 is 3rd class cane land. Tramline is already within reach of block by portable lines. Main Government road passes through block, i.e., Queens Road and on the block are subsidiary roads. Refer to Ct. No. 1694 (photostat). This comprises 463 acres and purchased by Bayly for £4650. Two leases are endorsed on transfer one is company's tramline (an advantage) and piece of about 30 acres retained by Government for defence—none of it cane land. This was originally offered to C.S.R. at £5000 and upwards. Block was leased then to J. P. Bayly (1949) at £100 per acre. Appellant turned offer down. On land are 14 cane blocks totalling 134 acres. Of this 67 acres 2nd and ditto 3rd class. Average price was £10.1.0 per acre. If bought entirely as cane land price would amount to £34.14.0 per acre cane land. I inspected this block myself for appellant. In addition to cane land there is also 40 acres of quite good land rather poorly drained. Reverting to 1st block (i.e., Nalovo). Inspected on behalf of Bank of New South Wales and with other appellant's officers and I was of opinion that that land worth £12000 and so I informed bank. Purchasers were then trying to arrange mortgage with bank. Both blocks are freehold. Refer to C.T. 1694 land is under cane and has been for years. The tramline passes through the block itself. There is a road from Queens Road right through the block to the coast. There is a block on road from Nadarivatu to Tavua. It has been subdivided into 70/90 acre blocks. They are for grazing, peanuts, and recently a little for cane to be transported by lorry. Sale price was £20 per acre and blocks have been sold during last 2/3 years. The first two properties are comparable to appellant's subject land but cane land here must be slightly better quality. I refer to 4th case, viz., land behind Lautoka Hospital 10¼ acres. It was applied for by Government for quarters,

i.e., building of Government houses. It was sold to Government freehold for £40 per acre. That is shown on transfer No. 40451 on Exhibit A. My 5th case is Director of Lands negotiating for 38½ acres part of Exhibit A lying between previous land just mentioned and Flugers Hill. He accepted this by letter dated 20/7/48. Director of Lands has since advised that he doesn't wish to proceed with purchase at £40 per acre. Approximately 10 of the 38½ acres was originally cane land—now out of production because of non-access to line. About ⅔ balance is slope land and balance again is hilltop. Director of Lands wanted this land for town development purposes.

4 p.m. Adjourned to 4/9/53 at 9 a.m.

C. L. Regan.

No. 9.

Evidence of Henry Stokes.

4/9/53.

Same appearances.

Witness continues (warned still on oath). There is a road through area known as Simla Road and is company's road. I refer to various rents charged. Up to 1952 Company were charging £1.10.0 per annum rent for superior cane land, viz., river flats, 1st class land £1 per acre or less and 2nd class cane land less still. These rents closely followed rents charged by Government at that time. Of the 650 acres I estimate that 390 acres would be flat land or arable slopes and of the 390 acres the Company have 144 acres under cane, i.e., growing it themselves—12 acres for fodder crops and of the 144 acres best of it is 2nd class A land. Balance of the 650 is hill land. The areas are approximate as boundary between hill and slope. In 1952 N.L.T.B. drew up a schedule of rents and C.S.R. followed suit. These rents now work out at £2.15.0 per acre for superior and 1st class £2 to £2.10.0 and 2nd class £1.7.0 to £1.18.0 3rd class land from £1 to £1.5.0 and where exceptionally poor 15/- per acre. On that basis our 2nd class land in the 650 would not be rented at more than £2. In all cases no question of premium arises, none is charged. The N.L.T.B. have supplied instructions to agents and I base estimate on that. Therefore take 5% and we find that maximum value of cane land in 650 acres is £40 per acre improved e.g.

In the First Class Magistrate's Court at Lautoka.

No. 9. Evidence of Henry Stokes. Examination on 4th September, 1953— *continued.*

by fertilizers, cultivated, etc., and therefore unimproved would be something less. There are 14 acres at Ba end of town adjoining Namoli Bridge—2nd class A land. Old rental was £8.8.0 and is now £26.12.0. It is crown land let to us and we sublet at what we pay. There is another case of 13 acres of 2nd class A land. Old rental was £7.16.0 and present rental £24.14.0. There are 11 acres 1st class B land, old rental was £9.19.9. and new rental £22.0.0. At other end of town near pineapple cannery. I quote instance of 10 acres (can be divided into 6 acres of 2nd class A land, 2 acres of 2nd class B, and 2 acres of 3rd class A). Old rental £4.10.0 and new rental £16.12.0 and another case near cannery, viz., 10 acres 2nd class B, old rental £7.10.0 and present rental £20.0.0. The best of our 144 acres is 2nd class A land, i.e., field behind mill overseers office. Our fields have been improved largely with coral sand, Mill mud, etc., and do nursery work in them therefore best possible improvements added. I move on to rents charged for various leases for house sites. They are not in 650 acres but as leases from us. i.e., our land not subject of this appeal. I refer first to M.H's quarters—area—put (by consent) typed list. I add one instance in manuscript, List Exhibit J. Referring to Exhibit J with exception of Nos. 3/4, in close proximity to M.H's store and amounting to between $\frac{1}{8}$ and $\frac{1}{4}$ acre, each is rented at £10. Rentals in this list vary from nothing in case of Government leases and 1s. for 22 acres to Methodist Mission to maximum of £5 for $\frac{1}{2}$ acre. All in Exhibit J is C.S.R. land and leased. These rents were fixed at various times. W. L. Bygrave's was fixed this year. Harvey's was fixed about early 1950 and ditto Northern Club. All these areas in which properties in Exhibit J are, have roads and are improved. In case of Harvie and Bank of New South Wales, where 1st mentioned, the company were made responsible for forming the road. These are 1st turn left in Drasa Avenue on way to Mill after leaving Court House. See plan on 12 acres, viz., DMO. on Exhibit J there are several houses used by Government. Go on to figures on crops, assuming that the land I value at £40 per acre were not cane land. I estimate on basis growing rice and maize in rotation as being next best user of land. Land isn't particularly suited for either, because rice would have to be hill variety which doesn't give big yield. Maize requires good land for paying crop and maize tends to impoverish land. There would in fact be no net profit on growing rice and maize. It is my opinion that the U.V. under conditions, viz., no cane would be £15 per acre for flat and arable land and £2—£3 per acre for hill land. That totals only half the value of £13000. On basis of these being a cane industry. I value the 390 at 15 average and the cane part, viz., 144 at £40 and the hill at £2 to £3. If Mill were not here cane growing would not be a commercial proposition as nearest Mill is 30 miles away at Rarawai which is owned and operated by C.S.R. and Railway between is owned by them. Rarawai Mill couldn't take any cane from Lautoka Mill

because it hasn't got the capacity. Lautoka takes all cane from within few miles of Ba. The sugar made in both Ba and Lautoka is exported from Lautoka. The appellant owns and built the wharf here. Road leading to Golf Links is attended to by C.S.R. I have seen it. Enquiries lead me to believe that road was originally used by Company as field road. Resumption No. 1 of 46 resumed that road. Government said they had no survey information of it. They said they wished to survey and asked if Company would be agreeable to width being increased from 33 to 40 feet. Road as surveyed doesn't correspond with plan Exhibit E see dotted marks. Harvey's road was made about 1950. P.W.D. made it and appellant paid total cost. Re Nalovo there was an adjoining lease of 70 acres, C.G. 1293. I was informed that Bayly told purchasers that if they raised the £15000 for Nalovo block of 925 acres he would give them the 70 acres as well without further cost. I hear there is litigation about that now.

11 a.m. Adjourned temporarily.

CROSS-EXAMINED.

Cross-examination.

I was in Upper Hunter 1923—4. I was articled to Surveyor and Valuer. I then worked for New South Wales M.R.B. about 1929—30. That didn't involve valuations but road work. I worked then for Locklan Shire Council. I then had no direct connection with valuations and some with work with N.L.T.B. but surveying and valuing overlap. I am called Surveyor to C.S.R. but my work is 80% civil engineering. When C.S.R. in Lautoka require valuations Field staff do cane fields. I did appeal against Town Board's valuation some years ago. Other was private within Company. Rarely am I asked to assess U.C.V. for Company. Fair Rents Board has mostly to do with improvements and work to a formula. Basic factors of U.C.V. are value of property less improvements. If no improvements I work on what land might be worth if improved. I would take into account potential use of land That would be main factor, the basic factor. Re 500K on plan—I would envisage improvements and possible subdivision possibility of business or factory sites on it. I would take into consideration adjoining installations, e.g., roads and proximity to settlement or port. That is not altogether the basis of my estimate of value of subject land. I did it on basis of no Mill being here but one in Ba. Rentals charged to tenants was only a factor. I agree that another method is comparable sales, and rents from comparable land, and fourthly there being no comparable sales an expert could in certain circumstances walk on land and value. I have used comparable sales, rent, and return from crops. I went and inspected Gusuraga 463 acres. We went with field officer and accepted his figures as to various categories I rough checked him.

In the First Class Magistrate's Court at Lautoka.

No. 9. Evidence of Henry Stokes. Cross-examination on 4th September, 1953— *continued.*

We could see the whole lot from one or two hill tops. We didn't then consider U.C.V. I have since (I refer to rates). At 134 acres cane land excluding all improvements would only be about £5 per acre. I didn't actually work out U.C.V. only I.C.V. There is tramline through it. It has been drained, fertilized and mud put on it. I regard application of fertilizer would be an improvement lasting over a long period. I didn't take into consideration Bayly's case. We would have left him as tenant. I ignored the lease. Bayly bought it and he was at same time lessee for some years. Rent Bayly was paying was on par with value. Rent we would have demanded would have been close to what Bayly was paying. I didn't check that value from point of view of letting the land for rental. This property isn't on main road and 18 miles from nearest town Nadi. Land extends from sea coast and back boundary is $\frac{1}{4}$ to $\frac{1}{2}$ mile from main road. C.S.R. took lease into consideration and apart from it price asked was too much. We took into account rent payable by B's tenants. I don't remember them. The spot is not isolated. It is accessible by train and road and Momi Bay has been used for shipping. C.S.R. put tramlines through Momi about 1912 and probably taking cane from about that time. Referring to Nalovo, at time of inspection I can't say various areas of classification of land. We considered possible cane land were between 400/500 acres. I gave this in chief. The 150 acres valuations in it I gave to Bank. I can't remember what it was. It is only in last 2/3 years that contracts have been taken from Nalovo area. Average tons per acre per annum would be 10 tons on basis of plant then ratoon, then 1 year fallow. The 517 acres are worth on average U.C.V. £6 per acre. The 925 acres was sold for £15000. Total improvements amount to £10000. Improvements are tramline—land not much use without line for cane. The cane land is accessible by portable line. Land without tramline would be useless for cane. Basis of value is willing purchaser and seller. The £15000 is a value on that basis. I can't altogether reconcile this with my U.C.V. of £5000. Re Wainivoce I have inspected it. Approximate price was £20 per acre. All blocks have not been sold. I see plan produced of Wainivoce and point to block 17, 14, 20, 1, 86, 76 acres, 78 acres, 81 acres, majority of the lots are under 70 acres. Blocks Nos. 15, 23, 28, 24 may have been sold. My information was got on enquiry. I have no information gathered from new titles as to sales. I didn't work out accurate U.C.V. of Wainivoce. Re sale of $10\frac{1}{4}$ acres for hospital site. It is land of no use for agriculture. It is for Government houses. Price is good—a little on the expensive side. Land is unimproved except for drainage on perimeter. I say U.C.V. is not sale price, viz., £40 per acre. I would say U.C.V. is £2 per acre. I treat the block as isolated block. Willing buyer and seller is only one basis and on that basis only £40 per acre is received. Re $38\frac{1}{2}$ acres and in 1948, i.e., from Hospital to Flugers Hill, offered to Government for £40 per acre. No cane there

since 1943. I know land at Drasa of M. N. Naidus. I didn't know it had been sold. It is similar to subject land I don't know of sale at Yalalevu Ba of 20 acres for £5024. I don't know of sale of Veikailevu of 38 acres at Nailega. I know of sale of 4 acres 2 rd. 7 perches for £1450 at corner of Tavewa Avenue. It was part of original title. It was subject of previous appeal. U.C.V. was fixed at £1300/£1350. I consider Court overvalued it. It has since been sold for £1450. The 13 acre block of subject land is worth £15 per acre. Company paid £5000 for it in 1913. I don't know of sale of Varadoli, Ba. I didn't investigate rents of freehold I know of Mrs. Johnson's leases in Nadi. The Drasa sale was at £100. I work out at £70 per acre average, i.e., £14000. The land is generally comparable to subject land. If that land were moved right into town value would be affected. In my £15 estimate for subject land I assumed no Mill. Rents received by Company have no reference to what could be obtained. Admit rent to Northern Club is very reasonable to them. Re $\frac{1}{8}$ acre (M.H's), rent £10 per year. U.C.V. would be £200, i.e., £1600 per acre, capitalized at 5%, £2000 at 4%. All roads on plan are proclaimed roads. Within that area are still Company's private roads. Submit respondent took no account of roads at present owned and maintained by Company. All land within 500G was valued at per acre, except areas fronting main roads. Road from V.O. Company to creek is not formed but mown, etc., by Company. C.G. of 13 acres was made in 1913 and road round it dedicated in 1911. In 1907 C.S.R. got right to put tramway through and had to make road beside it. 500A in a sense is a material subdivision and so with other assessments. As a surveyor I admit that it is quite a rational thing to subdivide in that way for valuation, since proclaimed Company has cleaned and dug drains so that water could get away from Company's lands. Drains would be filled by muck from Government Roads. In other spots Company have formed drains, e.g., Loco Shed to Navutu and Wharf to P.O. and Loco Shed to P.W.D. We have evidence that Company has maintained roads since proclamation. If Government hadn't put work into roads there would still be basis there. Basis of my valuation is that Lautoka Mill does not exist. Rarawai could increase its size and take Lautoka cane. Agree that subject land would then have value of £70 per acre. As a valuer I say it is right to value Drasa land on basis that Mill is here, but Mill land on basis that there is no Mill. I didn't arrive at the £13000, Company did. I prepared Schedule " A " in amended S/C based on my opinion and figures. Total of amount claimed is over £100,000. That was my opinion at that time now I differ. A legal point is involved. If Mill were off subject land but still here, total value would be appreciable but not as much as Schedule " A." There is nothing to stop Company from subdividing and selling. If Company subdivided and sold it would get prices as valued—for a while but would glut market. If subject

In the First Class Magistrate's Court at Lautoka.

No. 9. Evidence of Henry Stokes. Cross-examination on 4th September, 1953—*continued.*

Re-examination.

land were cut up and no Mill, Company couldn't get valuers' valuations on subdivision (Prairie value defined from text book). My valuation has been based on prairie value.

RE-EXAMINED.

We use all subject land for residence, playing fields, cane land, etc. The Company allows old employees to build marginal areas and sons now live there. There is no likelihood of Rarawai being increased. Rarawai is older than Lautoka, viz., 1883—1887 and 1901—1903. I have never heard of cane going from here to Rarawai before Lautoka Mill built. If Rarawai were increased only means of transport would be Company's tramway. Government wanted to form town where 13 acres are and the price linked with that fact. Company bought the 13 acres and surrendered land at Namoli I regarded Namoli and rest of town as being here when I assessed prairie value. Encyclopedia of Fiji. Exhibit K admitted without objection. See p. 248 and 253.

No. 10. Evidence of Bhagan. Examination on 4th September, 1953.

No. 10.

Evidence of Bhagan.

Father's name Phal. Sworn: Of Sabeto, cultivator. I once was Sirdar to C.S.R. I was indentured labourer. I came on 1st Avon. I don't know what year. I remember Mill starting here. I was here. Mr. Fenner was Manager. I worked on back road, one below here. I worked on it in 1903 under direction of Company. They paid me. There were a lot of other indentured labourers working on it too. I went and worked in Mill then. I then worked on my land at Sabeto and have been there since. Ganpat was Sirdar before me. I don't know about work on road after me.

Cross-examination.

CROSS-EXAMINED.

There was a path there before Mill started. The C.S.R. collected the gravel and earth and put it on path. I worked there a short while and they levelled path road.

Re-examination.

RE-EXAMINED.

There was no Mill when I got here. I completed my term of 5 years at Ba and lived there 14 years before coming to Lautoka. Mill was nearly completed when I got here. Path was always here.

In the First Class Magistrate's Court at Lautoka.

No. 11.

Evidence of Awasi Gounden.

No. 11. Evidence of Awasi Gounden. Examination on 4th September, 1953.

Father's name Ram Samy Gounden. Sworn : I live in town and work for C.S.R. I was born in India. I came here as indentured labourer on N.O.1 Satlaj. It got here 1910—11. For first 2/3 months I worked in fields for C.S.R. I have worked on road below Court. When I first got here, it was like an old road, a path with grass and bush. Vehicles didn't use it—horses and mules did. They pulled nothing they pulled buggies (ploughs). It took 4 horses to pull them. After 2/3 months I became Sirdar on road. I used to bring people to work on road and drains. I am still Sirdar. The road was levelled and drains cleaned for 5/6 years. We worked on it employed by C.S.R. I saw prisoners on the road working after 4/5 years. During first 4/5 years I saw no one working on road except Company's labourers. I don't recollect when P.W.D. worked on road first. I think after 30 years or more. I know road from Loco Sheds to Dairy. Company made it. I worked on it. I was Sirdar. There was a path already there and we put earth on it and kept on doing that. We haven't worked on this road for some time.

4.5 p.m. Adjourned to 11/9/53. Part heard at 9 a.m.

C. L. Regan.

No. 12. Evidence of Awasi Gounden. Examination on 11th September, 1953— *continued.*

No. 12.

Evidence of Awasi Gounden.

Same appearances.

Re-sworn : I remember that road from Loco Shed to P.W.D. was worked on by C.S.R. Mill labourers when Mill not working. White coral stone was applied by C.S.R. I was Sirdar for that work too. There is concrete culvert across that road. It was put there by the Company. I know Mill overseer's office. There is a culvert near that. I saw C.S.R. men working there. I know road from Loco shed to top lines. I remember working on that road with portable line and getting stones and rubbish and making road high and level. After digging drain we threw the mud on road, and Mill waste was thrown on road so that it wouldn't get boggy. Coral was also put on. I came to Lautoka between 1910—11. I know road from Wharf to Namoli. That road was not then in existence. I don't remember when that road was made, but there was a Solomon village near Shell Company. There was a sugar plantation where Hotel now is. There was no road there. People went by the tramline. That road was made about 30 years ago. C.S.R.

In the First Class Magistrate's Court at Lautoka.

No. 12. Evidence of Awasi Gounden. Examination on 11th September, 1953—*continued.*

employees made the road. I know golf links road. I took the people and got it made. This was during my indentures. Road was made so that carts could take rubbish up there. C.S.R. maintained it. I know cemetery road. The C.S.R. labourers made it. I remember getting it made and maintaining it.

Cross-examination.

CROSS-EXAMINED.

There was a road in 1910—11 where back road now is. The C.S.R. had dug drain and put it there to make road. The road from Navutu to Loco shed was there in 1910, but not good. C.S.R. people used it and others, but people not working in Mill didn't live that way. There was a small path behind M.H's used by public in 1910. A cart could use it. That road lead to Customs in those days. To get from Solomon village to Customs people used tramline. I know where road and tramline diverge and road goes on to Customs and tramway goes into Mill. There was a track from there to sea and over timber bridge. The timber bridge was where concrete bridge is today. Cart could go over bridge, but would get bogged elsewhere. A lot of those places there were under the sea. Road from P.W.D. to Loco Shed was a pathway and Company made road. There was also in 1910 a pathway from Loco Shed to top lines. We improved on existing road. The roads in 1910 were not good and were about 10/12 ft. wide with a drain on either side. Most of the roads were earth roads with coral sand. We didn't use crushed metal. None of the roads were then tar sealed. The culverts were for water from Mill and also for field water. After a long time Government took over these roads. I don't remember when.

Re-examination.

RE-EXAMINED.

The timber bridge was made before I came. The concrete bridge was put there something more than 20 years ago.

No. 13. Evidence of Sydney Eric Brandon Snowsill. Examination on 11th September, 1953.

No. 13.

Evidence of Sydney Eric Brandon Snowsill.

Sworn: Field Officer, C.S.R. Home Estate, Lautoka. I first came to Lautoka in June 1922 in C.S.R. employ. I stayed 8 months. I remember the roads then. They were tracks. They were used by vehicular traffic. They were practically no M.V's, mainly horse drawn. I don't know who maintained these roads. I don't remember seeing people work on roads or knowing of or hearing of P.W.D. After 8 months I went to Nadi. We used to come back to Lautoka in 1920s and 24, 25, 26, roads were being improved and cars could get from Nadi to Lautoka. In 1935 I returned to Lautoka in charge of home estate.

There was a road from cannery triangle leading through town to Ba. The main road was on seaward side and up to Loco sheds then turn down to P.W.D. In 1935 from triangle to cemetery turn off was dirt road defined by drains of canefields and not usable except in good weather. No one worked on it. I maintained drains with field labour up to 1939. From cemetery turn left to Namoli it was gravelled road and I remember Government graders on it occasionally. The drain on sea side of existing road was put there by estate labour. I still occasionally do maintain on that road. On hill coming nearer Namoli I deepened the drain in 1935—6 right down to Namoli bridge. I had nothing to do with road from Loco to lines. I have seen it built up and also eroded. After heavy rain water goes right down that road to Mill. I had only normal work, e.g., cutting grass and digging drains on golf links road. It was for golf links and for C.S.R. nightsoil and rubbish dump which was 100 yards beyond 1st rise.

CROSS-EXAMINED.

Cross-examination.

In 1922 I referred more particularly to Drasa Avenue as tracks. Roads around Mill were then maintained as now by Mill labour. In 1922 the Navutu-Mill road was gravelled. I don't remember condition of road past wharf. Work done was of necessity to get water away. I don't know about legal obligation. In 1935 drain on upper side of Drasa Avenue was there. C.S.R. have improved it. Existing drains from cemetery turn off to junction of Drasa Avenue and Queens Road were there in 1935 practically filled in. I deepened them. They are filling in again now. I haven't done anything to them for some years. I don't know if the drains were on proclaimed roads or not. In one place drain was where road now is.

RE-EXAMINED.

Re-examination.

Nil.

No. 14.

Evidence of Ranga Swamy.

Father's name Subrayan Mudele. Sworn : Of Lautoka, cultivator. I was born in India. I came to Fiji as an indentured labourer on Sangola No. 6. I arrived on June 5th 1910. I went to work with C.S.R. I became messenger in office after 2/3 days here and there. I was messenger for 5/6 months and became assistant labour Sirdar. I know road past M.H's. It was all a swamp previously. We threw mill waste there to make it, i.e., C.S.R. labourers. I superintended the work as assistant Sirdar. There was about a year after I got here. The drains were already there. They filled up and redug them again. We made that

In the First Class Magistrate's Court at Lautoka.

No. 14. Evidence of Ranga Swamy. Examination on 11th September, 1953—*continued.*

road from where M.H's chemist now is. Our work extended up to the bridge and from there back to tramline. We didn't make it a proper road—only a pathway.

CROSS-EXAMINED.

In 1910 Marks had store where M.H's now is. People got there by using tramline nearby. When I first came to Fiji there was a swampy path near M.H's. C.S.R. improved an existing pathway but not much.

RE-EXAMINED.

Nil.

Cross-examination.

Re-examination.

No. 15. Evidence of Frank Edwin Allen. Examination on 11th September, 1953.

No. 15.

Evidence of Frank Edwin Allen.

Sworn: Of Lautoka, retired. I was formerly employed by C.S.R. My last post was Manager in Melbourne. I was in Lautoka 14 years. I came here in 1906. I was here till 1920. During that period I was in Sigatoka 3 years. I was accountant at Lautoka for 5 years. I recollect the roads. C.S.R. Wharf was there. To get to office you came along tramline from wharf. There wasn't a road from P.W.D. to Loco sheds. There was a dirt track of stones and discarded material. It was maintained by Mill. I can't recall how it went. I can't visualise it. From Loco shed to office was a road as now. We closed it once a year with a bar as loco shed. There was a road following tramline. It was same type of road, viz., one that would carry drays, etc. For first few years there were no cars, i.e., until about 1915. You could then drive along road from Loco sheds out towards Nadi. Road past Court house was of similar type. It went about as far as cemetery road. It could be used for carts, etc. To get from wharf to Namoli you use walking track close to tramline. I remember C.S.R. working on the roads. I don't remember up to 1920. Government working on roads. I don't remember a P.W.D. establishment here.

Cross-examination.

CROSS-EXAMINED.

I would call the roads tracks in 1920.

Re-examination.

RE-EXAMINED.

Nil.

End of Appellant's case.

No. 16.

In the First Class Magistrate's Court at Lautoka.

No. 16. Evidence of Sergius Alexander Tetzner. Examination on 11th September, 1953.

Evidence of Sergius Alexander Tetzner.

Sworn : Of Suva, Surveyor Road Engineer and Valuer. I became cadet to Harrison Grierson of Auckland in 1930 and received surveyor's licence in 1935 and I continued with that firm till 1936 when I came to Fiji as Road Engineer in P.W.D. I was transferred to Lands Department in 1938 and I resigned in 1949 in order to commence practice as Surveyor, Road Engineer and Valuer. I had experience of valuing in N.Z. in country districts. I had none in 1936—8 but from 1938 I have been concerned with all types of valuations in Fiji. I am member of N.Z. Institute of Valuers since 1945 and am Fellow of Valuers Association of Fiji. With lands I was Official Valuer under S.D. Ord. since 1946. I am still Valuer for every town in Colony since about same time. Valuation field notes with particulars not relevant sealed off tendered. Rice objects that it is self-serving evidence. It may be used to refresh memory only. COURT : Admit it under evidence Ordinance Exhibit L. I valued the subject land in Feb. 1953. Total U.C.V. on original assessment as revised, which had minor errors as to area, which were pointed out and agreed on with Mr. Stokes gave total value of £161,297. The notes were written by me in February and amended by me in red ink after consultation on 10/7/53. The notes are in my handwriting and the notes I made. Principles I took into account were :—Company's land consists of part of one title and separate title, viz., C.T. 7489 and C.G. 1382. The 2 portions amount to 650 acres. I treated the 650 acres as one holding and I gave it one assessment No. A.500. Because of the variation of soils, natural features, accessibility, desirability, suitability and proximity to amenities other than those on land I split the whole area of 650 acres into convenient parcels and again those parcels into the component parts in order to be able to examine each component to fix a value for it and then to sum up all the values for the whole. I designated the divisions by letters. There were 15. Where I designated a division the boundaries were roads, streams, sea and title boundaries. As a valuer (Rice maintains that witness can't say what law is. COURT : He speaks only as a valuer). I thought it essential to split up the area in order to determine its values. I am aware of Company's roads and maintained by them. In arriving at values I ignored them as being an improvement made by Company on Company's land. All other improvements were ignored by me in arriving at valuation. I prepared Exhibit E on it I show roads coloured brown. They are Government proclaimed roads and are excluded from the title. I took those roads into account in arriving at valuation. The method I adopted in valuing was an analysis of comparable sales and a capitalization of rentals of comparative

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lands. I disregarded the method of determining capital value and subtracting improvements to arrive at U.C.V. for reason that there is no yardstick available in Fiji by which values of old Mills, railways, and buildings and water supplies and other machinery can be determined. The method of walking on to the land and giving it a glance value I disregarded as being unreliable. I was first concerned with productivity of soil. Then I considered natural features. Thirdly, I considered accessibility by proclaimed roads bearing in mind the possibility of profitable subdivision along those roads of small expense to the subdivider, no road formation being necessary and bearing in mind the very high price that is and has been fetched by similar lots in Lautoka, the demand for such lots as evidenced by Namoli subdivision undertaken by N.L.T.B. for residential and industrial purposes, where some 90 lots were leased as soon as the Board decided to receive applications. Fourthly, I considered desirability for special purposes such as elevated lands where most Company officers quarters are, the contour of which is such that internal roads are easily made and elevation gives good view. Soil is fairly suitable for lawns and gardens. Fifthly, I considered suitability as seen in part of assessment 500G where a considerable area of flat land has ready access to a sheltered deepwater harbour, where flat coastal strips running to S.W. and N.E. lend themselves for the easy construction of long range access routes, I considered that area and its suitability for any industrial installation depending on overland supply lines for rare materials and on ocean shipping for export of finished products. I considered the proximity to town of Lautoka with Banks, Parks, shops, etc. I say they have a bearing in U.C.V. of subject land. I investigated recent sales in the vicinity. I produce photostat of dealing No. 50875, Exhibit M. I know the land there involved. This land is situated about $3\frac{1}{2}$ miles from Ba towards Lautoka. It is 20 acres 22 perches. It has frontage to Kings Road and is all flat. It is used for cane growing and 4 acres of it have been harvested this year giving a yield of 25 tons per acre. The transaction was in October, 1952, and purchase price was £5034 7s. 6d. There were no improvements on the land other than by previous cultivation. The purchase price was £250 per acre. I took into account that land had been cultivated and improved thereby and by application of coral sand. I arrived at U.C.V. of £230 per acre. Although its yield is a good deal lower than yield from cane portions of subject land. I think it is comparable. I investigated sale of land, put to Mr. Stokes, at Drasa. I produce photostat of Transfer No. 49250, Exhibit N. I know that land, I surveyed it and valued it. I broke it into various classes of land. I classified it as containing 7 acres of good bila land at £150 per acre. 65 acres of first class cane flat at £150 per acre, 30 acres of second class cane slopes at £100 per acre, 65 acres of third class arable slopes at £50 per acre, and 32 acres of stony and poor hill land at £10 per acre. This total is £17370. The land was sold after

this valuation for £20000. This land has no proclaimed road frontage. It is a long way from any settlement and carried no improvements other than about 80 acres of land that had been cultivated. In comparing this with land under appeal I made an allowance of a further £20 per acre to allow for the value of cultivation. There were only 8 acres of cultivation out of the 200. I added this sum on to my valuation (viz., £17370) and I was still below purchase price. I therefore concluded that my values of £150 for first class cane land, and £100 for second class, and £50 for arable slopes were reasonable and I applied those values to comparable parts of appealed land. I investigated sale of Katar Singh. This land contains in all 19 acres and being part of C.T. 55/474 is situated about 5 miles west of Ba and has no road access and is subject of sale and purchase agreement between Katar Singh of one part, and Dayanand and another by which 6 acres of second class land without chattels and improvements other than value of cultivation are sold at price of £150 per acre. And 13 acres including cost of 5 sheets of iron, one No. 10 plough and $2\frac{1}{2}$ acres of young plant sugar cane are sold to another Phulkuar at £150 per acre. Making necessary allowances in latter transaction and accepting first transaction, I concluded that U.C.V. of whole land was £125 per acre. It was 2nd class cane land inferior to majority of cane land in appealed land. I also considered transfer No. 52423. I produce photostat (Rice objects—and put to appellant's witness—COURT rejects.) I investigated a lease from Mrs. J—Rice objects because not properly put to appellant's witnesses. The document about to be tendered was not put to him. COURT on basis of Brown and Dunn hold document not admissible.

1 p.m. Adjourned to 2 p.m.

2 p.m. Resumed.

KERMODE: Submit Brown *v.* Dunn doesn't apply. It has to do with impeaching veracity. See Fowler on evidence, 10th edition, p. 469. See Phipson, 8th edition, p. 468, or p. 467. Actual case of Browne *v.* Dunn is not available in Lautoka. Evidence now tendered is evidence on which witness bases his opinion and is not evidence suggesting that Mr. Stokes was telling untruths. The document tendered doesn't impeach Mr. Stokes' opinions but gives others. Evidence now tendered is to take further matter of comparable sales. Submit Browne *v.* Dunn does not apply.

RICE: Submit ruling already made.

COURT: Uphold that submission.

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Witness continues (warned still on Oath): In arriving at values I was aware of leases and searched and found and objected to—KERMODE refers to similar evidence given by appellant. He cannot have it both ways.

RICE: No objection made at time of admission of the particular evidence. Submit that respondent cannot give secondary evidence of document and in any case Browne *v.* Dunn infringed. Matter was not put to my client.

COURT: Two wrongs don't make a right. If appellant wishes now to insist on best evidence rule, I will have to uphold him. Would point out that further argument advanced since lunch re Browne and Dunn could alter my opinion of admissibility of future evidence tendered.

KERMODE: Submit that matter of Mrs. Johnson's leases were mentioned to Mr. Stokes but admit that actual documents were not tendered. My recollection is that I asked Stokes if he had investigated any of the Johnson leases, and he said " No ", and I also asked if he had investigated any other leases of freehold, and he said " No ".

RICE: Leases were not put to witness, i.e., terms of them. He should have been asked whether he agreed, etc. There might be all sorts of comments witnesses could have made. Opponent submits that Brown *v.* Dunn only applies to lying witness. Unfortunately case isn't here, but say that it includes incompetency, etc. Would e.g. in an action of negligence against doctor, COURT admit evidence in defendant's case for first time to effect that a certain anaesthetic was wrongly administered at a certain time. Brown *v.* Dunn applies not only to deliberate falsehood, but whatever it is, incompetence, etc., it is still necessary to put the case you are going to present. (Reads Cockle 3rd Edition and E. & E. digest.)

COURT: It is unfortunate that full report of Browne *v.* Dunn is not available. The extracts read from the text-books and E. & E. digest certainly indicate that it refers mainly to falsehood. That is all I have to go on, apart from Mr. Rice's memory of the case. I think I should take the nearest I can get to a report of the case, which is text book statements of the principle and the reports in Cockle and E. & E. Digest. I think that what has hapenned in the case before me must, judging from the dicta of the learned lords in that case, be far removed from the circumstances of Brown and Dunn. On that basis it can be distinguished. The law seems to be devoid of any further authority on the

point. It is certainly desirable that in cross-examining counsel should give proper opportunity to his opponent's witnesses to deal with any evidence he proposes to adduce ; but it is going too far in my opinion to say that from what we can find out about Brown and Dunn that it excludes the evidence now tendered. Overruling my previous decision, I hold that the evidence about to be given is admissible. I would point out that the appellant did have some notice of the evidence and could have been re-examined on it. I would also point out that the case before me is peculiar in that the expert witness on either side has had such a wide scope in which to seek examples that it is not likely that either would know of the examples investigated by the other. Evidence admissible.

(Witness continues) :

I investigated lease 49906 to Jakri Prasad. I know the land. It is situated at Taidamu—has no public road access, and is good quality cane land. I produce photostat of lease, Exhibit O. I also investigated lease No. 49704. It is part of same land and same remarks apply. In each case the lease was for period of ten years. A premium of £60 per acre is charged as deposit and a rental of £4 per acre per annum is also charged. The land carries no buildings but has been cultivated. The premium and rental amount to a payment of £10 per acre per annum by the lessee to lessor. This capitalised at 4% gives U.C.V. at £250 per acre. Discounting the value of cultivation, I conclude the land to be worth £200 per acre. I think it slightly inferior to appealed land, but it is more remote. I heard Stokes' evidence about 463 acres at Momi, viz., Gusunagaga. I know the land. I valued it on 9/6/53. On that date I assessed U.C.V. at £7000. That value was affected by a lease of the whole to J. P. Bailey at a rental of £100 per annum and in 1950 the lease had 11½ years to run. There was a further occupation of 33 odd acres by Government from Bailey for defence purposes. It is site of Momi battery. This Crown occupation didn't materially affect value because rental of £5.1.2 per annum for 33 acres represented a full five per cent. of value of the 33 acres. Lease to Bailey however affected owners' interest in the land. I fixed owners' interest at £4860 and lessees' interest, at £2140. A transaction went through later, and Bailey purchased at my valuation. That land is remote and about one mile from main road by washed out clay track. There is some fair cane land between sea and foothills. There is little rice lands in swamps. The balance deteriorates to poor grazing country. I think it is not comparable with subject land on account of remoteness and poor quality of soil. I know 925 acres 1 rd. 19 perches called Nalovu (dealing 49285).

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That land lies at remote distance from any centre. Queen's road passes through part of it and there is a small parcel of fertile land near road frontage. The block is rectangular in shape with long access at right angles to Queen's Road. The greater three-quarters of the block lies on sea side of Queen's Road. The boundary most remote from Queen's Road reaches a trig station (Senilabuli)—a barren pyramid. The soil deteriorates as one goes away from road, and becomes of little value as ground rises. I consider this area not comparable with subject land. I subdivided Wainicoce area. I refer to photostat of plan of a survey. Area was subdivided into 36 lots ranging in area from 5 acres to 86 acres. Apart from a few valley bottoms small in area, the whole of it is mountainous and barren. I know of only one transaction registered, i.e., lot 15 of 5 acres, 1 rd. 13 perches as a store site and was sold, I believe, for £100. That is the only registered transaction. In no possible way is it comparable to appealed land. It is remote, very poor in quality and I flew over it 10 days ago with special purpose of observing if cane there. I saw three acres partly cut on lot 15. There were slight traces of cultivation, but none of further cane cultivation. The land is 9 miles from Nadariavatu turn off. I produce photostat copy of dealing No. 43012. Exhibit " Q ". I know the land. It lies immediately adjoining the partly developed residential hill of Ba. It contains 133 acres and has no properly formed road access. Apart from a few stony areas, it is all cane land. It was sold in February 1949 at public auction for £15300 or £115 per acre approximately. It was subsequently resold at £220 per acre. I ascribe a goodly portion of its value to its proximity to a town and to its potential subdivisional value. In investigated sale by C.S.R. to D. P. Ragg (Transfer 48024). I produce photostat copy of it. Exhibit R. The land is on corner of Drasa and Tawewa Avenue. Price was £1450. That is approximately £350 per acre in July, 1951. There have been numerous subdivisional dealings after subdivision. I subdivided and I have bought a $\frac{1}{4}$ acre section for £500, which indicates value of £2000 per acre. I lent considerable weight in assessing appealed land to sale to Ragg because it was unsubdivided land. I took the value before subdivision occurred and discounted the subsequent subdivision, because it was a piecemeal dealing and not comparable. Appealed land is across road from it. I investigated C.S.R.'s purchase of C.G. of 13 acres. Price was £5000 or £384 per acre. The purchase was in May 1913. The land is described on the C.G. as a mudflat. I considered that this was not a good comparison because land had special value for appellant. At that time there were certain installations (see C.G.) and customs and roads adjoined the land and it carried some value for any far sighted person. I consider that value to have now increased to at least £1000 per acre for that part of it without wide road frontage, but I discounted this amount to £400 per acre on account of filling as distinct from reclamation work carried out by appellant.

Reclamation I apply to land artificially raised from below highwater mark. In my opinion reclamation is not an improvement, whereas filling or raising of land already above sea level is an improvement. In this case I allowed the filling as an improvement by reducing my estimated value of £1000 per acre to £400 per acre. I regarded the land as eminently suitable industrial land with a potential value for subdivision. I ascribed standard foot values to road for frontage comparable with values of other parts of town. A standard foot presupposes a frontage of one foot and 100 feet depth in case of industrial lots. In residential lots depth is increased to 150 feet. In order to arrive at valuation, I have taken examples of sales, and computed number of feet in land sold and divided in unimproved purchase price by total number of standard feet. I considered what part of the subject land with proclaimed road frontage was either in actual use for residential, commercial, or industrial purposes, or could be so used. A goodly proportion of road frontage in the subject land I ignored, but where the dotted lines appear in Exhibit E, I have assessed on foot basis and price per foot appears on Exhibit E. Exhibit E shows hypothetical subdivision in different colours and each subdivision is cut up into frontage areas and per acre areas. In 1952, land Development had purchased 141 acres and 32 perches contained in C.T. 7584 with about 10 chains of formed road frontage and situated in Rew St., Suva. Transfer was registered in dealing 48579. Price was £27500 which is £197 per acre approximately. The land was absolutely unimproved, is non-productive and is steep, and in places broken. Its value lies in potential subdivision. I personally am managing director and fifty per cent. shareholder. I sponsored the deal which has proved satisfactory to date through a sale of subdivided lots. I produce photostat copy of purchase of this. Rewa Street connects Flagstaff and Samabula. This land is approximately $1\frac{1}{2}$ to 2 miles from Post Office. Photostat Exhibit S. I see Exhibit J. I was aware of the existence of these tenancies. I discounted then because several appeared to me to be compassionate and not truly representative. There is a subtenancy by Morris Hedstrom of a little less than $\frac{1}{4}$ acre with no improvements. 99 feet frontage to metal road at annual rental of £20. This capitalized is £2000 per acre or more than £5 per standard foot. It is situated at extreme S.W. corner of M.H's lease 23/27. (See Exhibit E). I was aware of sale of land near hospital. It was put through for hospital extension. The majority of appellants red hill land is comparable to this, except that there is no access to this land. I knew this land had been sold at £40 per acre. I didn't regard it as a free sale. The red hill contained in subject land I put at £50 per acre. I regard it as superior both by contour and access. I re-valued old town and greater Lautoka at same period. I used all evidence available to me to obtain new values, and I paid particular attention to having Lautoka and greater Lautoka on

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comparable basis I valued old Lautoka three years prior. I used evidence of sales and leases as basis since and considered old values. In 1949 total value of old town containing slightly less than 200 acres was £124,000 approximately. This year same area is valued at approximately £150,000. The 650 acres of the subject land, I have valued at £161,000. I read the Ordinance and took it into consideration in making valuations. In my calculations I had to assume no mill, but I took into consideration the inherent qualities of the land, its features and its proximity to what in fact does exist, viz., Lautoka and amenities, e.g., Administrative centre, hospital, Courthouse, which installations are surrounded by appealed land. I took into account schools, churches, playgrounds. Access valley is secondary commercial centre round M.H's, P.W.D., Oil Depots, Wharf. I have reconsidered my valuations and adhere to them. I handed one valuation to council and gave it one assessment number, viz., 500, but in arriving at total, I made 17 hypothetical sub-divisions.

COURT : It is 5 p.m. Suggest rate book be produced on next hearing. Adjourned to 12/9/53 at 9 a.m.

Sgd. C. L. REGAN.

12th day of September 1953.

Witness (warned still on Oath): If no further work had been done on the roads since 1920, I think they would be now impossible. I think they would cease to exist after 10 years. There is a road leading from Malomalo inland constructed in 1943—44. It was just possible for a jeep in 1949. It is now impossible. It would be comparable to roads I have described as made by appellant in 1913 or so.

By leave a witness interposed.

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No. 17.

Evidence of Roy Colman Evans.

No. 17. Evidence of Roy Colman Evans. Examination on 12th September, 1953.

Roy Colman Evans, Town Clerk, Lautoka Council. Sworn : I produce rating book of Lautoka Council, Exhibit T.

CROSS-EXAMINED.

Cross-examination.

Exhibit D are the statutory notices issued from Exhibit T.

RE-EXAMINED.

Re-examination.

I have seen Tetzner's Valuation Book. He gave valuation roll Nos. He gave one number, but gave letters A to G, I think. They were given a grand total. (RICE asks for Q. and A. to be recorded).

Q. And his valuations were they totalled off ?—Yes.

Q. And was that grand total entered in Tetzner's rating book ?—Yes.

The grand total doesn't appear in rating book. (Exhibit T). By consent copy of rate book entries to be certified by Town Clerk to be substituted for Exhibit T.

No. 18.

Evidence of Sergius Alexander Tetzner.

No. 18. Evidence of Sergius Alexander Tetzner. Cross-examination on 12th September, 1953.

CROSS-EXAMINED.

(Warned still on Oath). Land belonging to Land Development is a mile or two from Post Office, Suva. I would not seek a small area to compare with it. In the main, amenities, e.g., recreation grounds, water sewerage have been supplied to the land by appellant—but not drainage entirely. Drain near adjoining canefield, e.g., has just been concreted by P.W.D. I couldn't assess proportion of drains supplied by Government. Rest of those amenities are available to Lautoka town on payment. I see Exhibit L. That is what I put in to Council. Total valuation came to £161,297, after amendment. The red ink shows amounts in Exhibit L. Details as to amount of £525 are in part of sealed part of Exhibit L. I unseal and show it. It is No. 530. I

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No. 18. Evidence of Sergius Alexander Tetzner. Cross-examination on 12th September, 1953—*continued.*

valued school, but it is exempt from rating. It is plan No. 518. It is not included in £161,197. It is correct that total of valuation is increased by £651 value of school site. I did not return one valuation to Council. I counted the coloured segments on plan, and I made it fifteen. I also said that I made 17 hypothetical divisions but gave one valuation to council. Re M. N. Naidu's land at Drasa, my idea is same as before—£86.10.0 per acre, I think. The land is comparable to appealed land, except for its situation. Appellant's overall average per acre as valued is £249 per acre. I admit amenities supplied by Company must be discounted, and also mill and its appurtenances, but still say £249 per acre is correct. I have studied the law re valuations.

(KERMODE objects).

(COURT: Law is for counsel).

I did not treat the mill as if it had never existed, merely as non-existing, and same applies to its appurtenances and installations. If Lautoka were to be a sugar producer, a mill would be needed somewhere to take its products. I don't disagree with suggestion that Ba Mill couldn't take Lautoka sugar production. I don't know if it would cost £5 to £10 million to build Lautoka mill today. I think the only way to value appealed land is by notional subdivision. I valued land development for Sir Henry Scott in 1949. I valued it also for rating purposes. When valuing for rating, I made notional subdivision. There were only squatters on the land when bought. If the cane parts of appealed land were to be let, it would be worth £10 to £12 per acre per annum. I think that could be got for round about ten acres. I don't know of any cane land in Fiji bringing that rent without premium. I use four to five per cent. as basis for capitalisation. I think the part I have classified as cane land would be so even if no mill in Lautoka. I think after cane I would go for peanuts and copra—after cane and before maize and rice. I say rice first, if land suitable, but not much suitable, and then peanuts—market gardening in some area being next. Historically cane started on other side of island, but eventually this side was found to be best. Rice is a bagatelle for appealed land. Area suitable being small. I think a lot of the area would be suitable for peanuts. I know of no deals of exclusive peanut land. From memory I know of farm of about thirty acres about ten being suitable for peanuts and lessees interest changed hands for £50 per acre being probably 21 years lease at low rent of native land. Balance of land was rough grazing. Indians like land, but particularly freehold. I don't know its valuation for valuation. I wouldn't value the leasehold at £1500. The sale referred to may have some relation to Indians sentimental attachment to land. I have to consider when dealing with potential subdivisions

whether they are practicable. If no mill here, a valuer would address his mind to question of someone erecting a mill. I didn't know if seven mills acquired by appellant have closed (one in Fiji). Running a sugar mill needs technical knowledge. Anyone now coming to Fiji would meet with strong opposition from appellant in milling sugar. Appellant is strong financially. I disagree that no one would start in opposition at Lautoka (presuming their mill not to be here). I think present site ideal. Appellant has resources and experience. I am surprised to know that Fiji once had 34 mills. There were certainly more than there are now. Appellant is only survivor. I accept that appellant was first to start in Lautoka. I didn't know it was the last mill put up. I think this ideal spot may have been last to have mill because appellants seem to have worked right round the island to here. I remember hearing of a debate in Legislative Council on nationalisation of the sugar industry. The area round Wainivoce is not extensively used for peanuts. I value it at about £20 per acre. I refer on plan to 500 F. It is included in total. It is approximately 2 roods, 19 perches. I arrived at value of £1355 on standard ft. value. I recollect property not appellants land on corner of Namoli Avenue and Tukani St., belonging to Johnson. Its area is 2 roods, 22 perches, a corner section valued at £559. It enjoys amenities, roading, being chief, which appellants' land does not. I justify difference between it and 500 F because latter is situated in commercial and industrial area with tar sealed road frontages in close proximity to shipping wharf, containing 224 ft. of frontage to one tar sealed road, 130 ft. frontage to another tar sealed road, which calculates to 271 standard feet which I value at £5 per foot, the £5 being based on land more remote from amenities enumerated and having frontage on metal road only of being part of M.H.s lease given in chief. But Johnson's land has frontage of 174 and depth 150, and situated on corner, neither roads being sealed and lies in close proximity to Fijian village. It is in remote part of town purely residential contains 170 standard feet at £3 and 15 standard feet at £3.25, total value £559. The appellants' wharf is the main wharf. Wharf I refer to is local shipping wharf. An overseas ship couldn't use it. Johnson's didn't require or receive notional subdivision. Access is gained to 500 F by a bridge which is an improvement on the land. I referred to property owned by C. S. Adams. Its area is one acre 14.7 perches. I valued it at £800. A hypothetical subdivision was made. I divided into front and rear land. I ascribed 150 ft. of depth to frontage (114.8 ft.). I thus had 114 standard feet at £3.5 per standard foot; which results in £400. The rear portion lying towards sea and containing about 2/3 acre I also valued at £400 (£800 total). It doesn't actually go right to sea. The land fronts Tukani St. I valued property 1 r. 13 perches owned by Crown. It is on corner of Drasa Avenue and Nanaya St. Valuation is £385. I valued it as a block (not notionally subdivided). It contains only 110 standard feet

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valued at same figure of £3.5 for tar sealed frontages. Value equals £1500 per acre. I also valued land owned by Council and next to previous block at £343. Its area is about 1 r. 20 perches. There was no notional subdivision. It contains 98 standard feet at £3.5 per standard foot.

All way round 500 G are not natural boundaries. They are natural or title boundaries all round. Boundary between 500 G and 500 L is the title boundary. I knew that both were used by appellant, for its installation. I valued 500 G at £59990. It is 165 acres, valued at £363 per acre. I couldn't justify that figure for first class cane land. Presence of company's installation on the block didn't influence me. 500 E works out at over £1000 per acre. Excluding 500 E no other valuation approaches 500 G in per acre value. I doubt if any other besides those two reaches value of £200 per acre. 500 G is valued so highly because it is bounded by proclaimed roads except for 12 chains along 500 L, and towards P.O. corner—about 3000 ft. The frontage of proclaimed roads is 8000 (nearly). To that frontage I have ascribed following values, viz., water front road—tar sealed—(separate triangular bit) £6 per standard foot. This value was based partly on value of £11 per standard foot ascribed by me to east portion of Vitogo Parade and also to £5 per standard on M.H.s sublease. This land has 800 ft. frontage to mill road. It is at £5 per standard foot. From mill to upper lines 1700 feet at £2.5 per standard foot. Along Drasa Avenue for distance of 1550 at £5 per standard foot and a further 1580 more elevated. Along Tawewa Avenue there is 1000 feet at 3.25 all these values being comparable with values in town. Balance of 120 acres, some cane land, some eminently suitable for residential development I valued at £250 per acre. The 120 acres are on one side of line on lower side of line is flat land at £300 per acre. These lands were envisaged as land suitable for subdivision. I didn't value these lands as cane growing properties. All these values are comparable to town of Lautoka.

The U.C.V. of land which has electricity and water available is greater than that of land which hasn't. I had amenities in mind when I valued, i.e., difference between old Lautoka and this land. Another consideration was distance from old Lautoka. 500 D has about $\frac{1}{4}$ not fronted to road. It is valued at £370 (approx.) per acre. In case of 500 G, it was 367 with less proportion of road frontage. I agree that whole of 650 acres is used by company for its undertaking. I think there is no reason why appellant should cease production. I discounted such a happening. 500 O has not been subjected to standard footage basis, also H and I and also 530. I divided into 17, and then subdivided them (e.g., footage basis), i.e., I have resubdivided fourteen out of the 17. 500 E comes to over £1000 per acre. It is small area entirely surrounded by proclaimed roads. I take main road at 600 ft. at £41,

450 ft. at £5 and 500 ft. along mill road at £5. That left area of 4.1 acres with long frontage to 3rd road which area I treated at £100 per acre, i.e., total of £9200. I envisaged this land not as cane land, but as industrial land—garages, etc., oils, etc. I had in mind way industrial lots were snapped up in Namoli. I think such industries could exist without sugar industry. I think major reason for development of Lautoka is partially of N.W. districts and it is a port and then sugar.

1 p.m. Sat. Adjourned to 2.15 p.m.

2.15 p.m.

The amenities I have in mind are all those provided by old town of Lautoka, e.g., shops, Post Office, Fire Station, Recreation Parks, Oil Installations, Court House, Administrative Centre, Hospital, Police Station. This Court house is surrounded by appellant's land, on next ridge is residential centres, schools and churches. To S.W. is Golf Course, and further along is M.H's residential compound, cemetery, then round to M.H's and Pharmacy, P.W.D., wharf for local shipping, customs, installations. These amenities are on proclaimed roads and on perimeter or within area. All these amenities are available to Namoli as well in general. I understand Lautoka Power Station is overloaded now. I didn't know Fire Station was of no use to appellant because no hydrants provided. Subject land has 2 recreation grounds. If appealed land assumed to be cane growing proximity of Administration offices, would not be of value to it. In computations of rentals, I gave them on basis that they were near sugar producing towns. I discounted the glance method of valuation. I was first concerned with productivity of soil for any agricultural purpose. Cane is most valuable in this district. In assessing lower part of 500 G I thought of processed manganese, or oil refinery (coconut) as possible occupants of the land. Manganese has come into being in Fiji in last five or six years. It is small as yet compared with other industries. Coconut oil is so controlled that there are difficulties in running one. I think coconut oil is more than a baby industry, but not equal to sugar, copra or gold. I refer to Exhibit M. Land is on Ba side of Nailaga. It faces Kings Road few hundred yards from end of Nailaga village. In Nailaga there may be a store, there is a hospital there, I don't know about administrative centre. Four acres were 25 ton per acre. I put cane land at 35/40 tons on subject land. I agree that 144 acres are used by appellant for cane land. I think that it would yield 35/40 tons. I based the 25 above on one year. I think he could do better. I think 27 tons for plants is an underestimate and I think they would get over 20 tons for ratoons. I have been in Fiji since 1936. During last ten years value of cane land has risen considerably, probably over 200 per cent. I base that on land

In the First Class Magistrate's Court at Lautoka.

No. 18. Evidence of Sergius Alexander Tetzner. Cross-examination on 12th September, 1953—*continued.*

at Namaka—inferior to subject land. Here it is just first class. In Nadi it is third class. A large area was taken for airport, and it may have been at £5 per acre. I said Johnson leases slightly superior to appellants land, but more remote. Remoteness makes a difference to U.C.V. of cane land. Remoteness from tramline is a big factor but not the only factor as regards remoteness. Re Kirk's property, it is close but not on line. I think that a lot of its price is involved with the land's proximity to Ba. The transfer of it at £224 per acre is not complete. I haven't seen the agreement, only correspondence. It is not fair to compare small with large block for valuation purposes. I agree that the £5000 paid by appellant for the 13 acre block must have been a special price paid by appellant. The £6 per ft. was arrived at from other transactions, e.g., 17 perches on Vitogo parade, lessee's interest only sold £7.18.0 per standard foot, and others. They were all tiny plots, except a 4 acre block. Land Development land has no electricity available and water is available along 10 chains frontage. It was bought as an investment. I say land behind hospital was not a free sale because no road access and sold to Government. Land further over towards Flungers Hill and not sold at £40.

Re-examination.

RE-EXAMINED.

Suva has no Sugar mill. Land Development land can't be considered cane land. I put value of £197 per acre. At same price here. At prices I put on them, I prefer appellant's land at Lautoka. Appellant's land assessments are lower than in town. I took into account lack of amenities in appellant's land. A speculator might have been prepared to buy the 13 ac. block in 1913, but not at that price. I assumed Lautoka as it is today in assessing. I didn't assume what Lautoka would be without the mill. I didn't use N.L.T.B. rentals as a basis. I have never known Government or N.L.T.B. rentals catch up to true values. I didn't value I.C.V. and arrive at U.C.V. by subtraction.

To COURT: I produce table in book of valuation practice showing table by which standard foot values can be worked out.

3.45 p.m. Adjourned to 14.9.53.

Sgd. C. L. REGAN.

14th September, 1953.

Certified extracts in lieu of rate book admitted by consent, i.e., in lieu of Exhibit T.

Same appearances.

No. 19.

In the First Class Magistrate's Court at Lautoka.

Evidence of Herbert Wimbledon Thomas.

No. 19. Evidence of Herbert Wimbledon Thomas. Examination on 14th September, 1953.

Sworn : Market Master, Lautoka. I was previously Road Foreman for Government. I started as Road Foreman in 1920 at Lautoka. Government then had P.W.D. here. In 1920 we kept the Road Foremen. I took over from Mr. McNamara, and he from Garside, and Garside from Fox Rogers. I couldn't say when last-mentioned started. I know where back road branches off. In 1920 road from there to loco sheds was maintained by Lautoka Road Board, and road from sheds to toplines was similarly maintained and so was road from Loco Sheds to present P.W.D., and so also with road from P.W.D. along shore road to Namoli. From cemetery road from cemetery and past Courthouse was maintained by Lautoka Road Board in 1920. I left Government in 1951. From 1920 to 1951 I was Road Foreman. All roads I have mentioned were maintained by Government during that period. In 1920 there was no tar sealing ; roads were pretty rough and about 18 feet wide.

Cross-examination.

CROSS-EXAMINED.

I can't remember names of Road Board. They were nominated. They were officials and also outside members. I don't know how they got revenue. In 1911 road now Drasa Avenue existed. I remember and know Mr. Allen. I don't deny his statement that no Government work done on roads up to 1920.

Re-examination.

RE-EXAMINED.

Nil.

No. 20.

No. 20. Address by Respondent's Counsel on 14th September, 1953.

Address by Respondent's Counsel.

KERMODE : Deals first with evidence. Stokes put forward as expert. I submit he cannot be so considered. He was taken fully through his experience. He is employed by appellant. It is strange that they couldn't obtain independent valuer. Stokes hasn't had much to do with valuations. He knows some recent sales. He is not valuation expert. He was far from clear. He has given two opinions, one, the schedule he prepared, Schedule " A ", note his valuations then. Then amendment to appeal made and Stokes couldn't say where £13000 came from. Note the big difference between this expert's different

In the First Class Magistrate's Court at Lautoka.

No. 20. Address by Respondent's Counsel on 14th September, 1953—*continued.*

valuation. His knowledge is recent. I refer to Collins 1936 Edition, Boland V.V.G. of 1935 (unreported) p. 56 in Collins, 3rd Edition re experts in valuation. Can't see how Stokes has related sales he speaks of to valuations. Assuming they were comparable sales, they are sales which assist Company. He hadn't investigated other more recent and more comparable sales. He quoted sale of land to Government at £40 per acre, yet Stokes puts appellants similar land at £15 per acre. There was appellant's sale of slightly over 4 acres at corner of Tawewa and Drasa Avenues at £1450. It was fixed at last appeals at £1350. Submit Stokes values were stab in dark. His values were not correlated to any another. On other hand respondent was not attacked on question of capabilities but only on methods. He was an expert witness. Refer to Section 110(5) of Ordinance. N.B. words, " Well founded ". Refer to Collins C.S.R. *v.* V.G. 1929 G.L.R. 252.

(RICE : Already in Court in N.Z.L.R.)

Court cannot take notice of private information, must come from witness and Stokes isn't expert witness and Tetzner therefore is only valid witness. See Ordinance, Section 100, for definition of U.C.V. Improvements not defined in Fiji—nor is English law of use. Australia and New Zealand use U.C.V. In N.Z. definition is statutory and quoted in Collins (my edition) 129. Submit we should look to Australia for definition. Our section 100 has been taken from N.S.W. (See Collins 13 (my edition)). See definition of improvements in Collins p. 13 (my edition). At Collins p. 129 re definitions of improvements. It differs from N.Z. definition of improvements. N.Z. definition is too wide, e.g., a wharf constructed by owner nearby is improvement in N.Z. but not in N.S.W. Company has network of roads on the area. They are not on plan before Court. They have been ignored because they are improvements. According to Broadway's case. Re word " appertaining " must use plain and ordinary meaning. See Oldhams Dictionary. Submit meanings excluded are appropriate or suitable. Submit " belong to as parts of whole " is meaning of appertain. Government roads don't appertain to the land. Appellants case based on Broadway's case. See Collins p. 128. (N.B. within meaning of N.Z.) That is why we omitted the roads, but it doesn't apply to public roads and see on same page Cooper *v.* Commissioners Taxation 19 N.S.W.L.R. p. 128/9. See Tooheys Ltd. *v.* V.G. 1925 A.C. 429 and see 443 (Lord Dunedin). " What Act requires is simple, assume nothing on it." See Collins p. 40 for case of McGeoch C.L.R. which excludes public roads as improvements. Re question of one or multiple assessments. The appeal is against valuation and not against assessment. 17 assessments made, but not 17 valuations. Assessments are not respondents. Submit comparable sales are most effective in arriving at U.C.V. See Collins 48 and Harris *v.*

Minister of Public Works 12 S.R.—value must be proved by expert evidence—and comparable sales. Collins at 47 points out method of valuation and Tetzner followed this. He also took into account potential value for residential and agricultural and industrial purposes. Submit that is correct. For potential value see Collins p. 44. See what J. said. See Appeals case of C. A. Todd in N.Z. Valuer (apparently unreported.)

1 p.m. Adjourned to 2 p.m.

2 p.m. Resumed.

It is suggested that notional subdivision was wrong. See Director of Lands *v.* Watson and Kennedy. Fiji Supreme Court No. 28/46 for market value and subdividing. It is permissible to envisage potentialities and visualise in industry. See 1914 A.C. p. 569 (Cedar Rapids *v.* Lacosts). See Lord Dunedin p. 576. Tetzner treated some lands on roads on standard foot basis. See appeals Board cases (1—95) of 1947 (Fiji).—Standard foot values was accepted by the Board. See Collins p. 55 (Henry's *v.* P.W.D. for standard feet valuation. Submit appellants case is based on two incorrect principles, one, Prairie value. Lord Dunedin refers to Prairie Value in Tooheys case see McGeoch, Collins p. 47. Prairie value. See 10 L.G.R. Booth *v.* Value G. Refer to Tetzner's evidence re Land Development Company. There is evidence that appellants land could be similarly subdivided. Even a rumour of advent of a mill can affect U.C.V. See Collins p. 43. Cairns *v.* P. Re roads, submit proclamations do not prove that the roads were ever property of appellant. In 1907 Gazette is memo. of Agreement between appellant and Government re tramway and road alongside. There was a *quid pro quo*, i.e., tramway for roads. What type of roads did they construct. All evidence shows there was a track there always. Submit the assessment of road is now exhausted and that question of exhaustion applies. Even if Court holds that there are 17 valuations what difference does it make.

COURT: Raise question as to whether, e.g., a commercial land owner can increase his own U.C.V. by building on it.

KERMODE: Refers to Lord Dunedin in Toohey's case.

In the First Class Magistrate's Court at Lautoka.

No. 21. Address by Appellant's Counsel on 14th September, 1953.

No. 21.

Address by Appellant's Counsel.

RICE : Submit it is impossible for owner to increase his own U.C.V. by building. Again refer to Lord Dunedin that improvements are to be taken not only as non-existent but as never having existed. Also refer to C.S.R.N.Z. case cited initially. The report I said was already in was a 2nd case between same parties, and same land. That is a case in which question of increasing own U.C.V. impliedly arises. Submit Stokes is expert. See Collins 3rd edition p. 56 (re box 1922 1 V.L.R.). for definition of expert. Re Stokes having prepared two cases. He put figures in schedule. He has 2 cases because if one fails he relies on the other. Re differences between definitions of U.C.V. and improvements. N.Z. amendments have since 1925 moved away from Fiji. See Collins (3rd) p. 131—2. The pre-1925 situation (akin to Fiji) is in Broadways case. The fact of the wharf appertaining to the land, must be regarded as an improvement. See Stroud for definition of appertaining (see ct. edition at p. 110) (re pew in a church). Say appertaining refers rather to something not on the land. It is hard to conceive anything on land but see Collins 38. Rights of way and to fish are not on land but are improvements. Wharf here therefore must be regarded as improvement. Re Cooper *v.* Commissioners (Collins 3rd Edition p. 130—1). Produce full report of Coopers case N.S.W.L.R. In this case owner had subdivided and let on 99 years leases. See Stephen J. on p. 4. para. 4. He agreed with Muswellbrook case and see Cohen J. 2nd para. p. 7. This case is for otherwise than instant case. There is authority opp. to Coopers. See Kiddle *v.* Field Commissioner 27 C.L.R. 316 Collins 3rd Edition 107. Ct. should see rate book to see if 17 valuations. At any rate 17 notional subdivisions were made in valuing. See C. A. Todd in N.Z. Valuer March 1953 in full. The Watson's case (Fiji 28/1946) and Cedar Rapids case are valuations for compensation purposes. I.C.V. was being dealt with, Collins at p. 110 or bottom of 109 discusses difference between compensation and rating cases. St. Johns *v.* Auckland 1945 N.Z.L.R. (a compensation case) shows difference between two. Re standard footage basis I agree its principle is right, but it is not to be applied in appellant's case. See Collins p. 61. It is not right for valuer to go on land and say that is how it ought to be cut up. Re roads we did our best with evidence after this length of time. Mr. Snowsill said he had seen a coral foundation on road between lines and loco ; i.e., appellants foundations are still there. Also see N.Z. Valuer p. 28, J. R. and C. P. Tilbey. It is fundamental principle in tax cases that Court should choose the interpretation more favourable to subject. See Hennel *v.* J.R.C. 1933 1 K.B. 415 see bottom p. 420 and see last para. of p. 428. Submit apply the most generous definitions of improvements

where it is a case of choosing. Submit there is not much difference. I admit at first sight that there may be some difference between Tooheys and Broadways case, but they can be reconciled. In Tooheys case it was U.C.V. of Licensed Premises. Salient point was whether licence had been allowed for. It was held that merely deducting improvements would not in case of licence would give U.C.V. Broadways can be reconciled. What each case was concerned with was to get a value of land in natural state. Each wanted to eliminate an unnecessary factor. Even if there is a conflict because whether Broadways adopted or Tooheys adopted respondent didn't follow either, certainly not Broadways. Nor has he adopted Tooheys. He has taken mill as not existing but not as never existing. Tetzner said so in evidence. That in itself is sufficient to condemn the whole valuation. He has failed to follow principle laid down. He has used mill to increase the value of all the rest. See Collins 37 1933 50 C.L.R. p. 182. Valuer was wrong in adopting notional subdivision and further dividing notionally. He said he discounted possibility of C.S.R. going out of business. Kiddles case condemns notional subdivision and follows Grand Junction case (see in Cooper's case). See Grand Junction 1897 2 Q.B. 209. See middle p. 216. See Payne *v.* Field Commissioner 1924 V.L.R. 231 cited by Collins at 109. Brown *v.* Muswellbrook 1922 L.G.R. 14. See Collins footnote at p. 347. The land should be valued as a block. A notional subdivision adroitly uses mill land to increase value of all rest of appellant's land. See Cairns Shire *v.* Lloyd 1912 Q.W.N. p. 15—Collins p. 48. Respondent said he treated mill as non-existing but not as never having done so. He said a mill would be needed somewhere. He said in considering valuation and no mill he would have to think of other uses. He laid stress on presence of sugar mill. He could not assume a mill about to exist if not there. The mill on the land has stepped up the value of every other part. Stokes also gave evidence and said if no mill here land would be useless and no chance of sending sugar to Ba. Respondent is wrongly using the mill and installations to make Lautoka a sugar town. Respondent views appellants land as if sugar mill there and asset owned by someone else. Respondent said that 500 G equals £363, and 500 E at over £1000. He said he didn't treat 500 G as cane growing land but by reference to M.H's lease. He said his values depended on Lautoka or Ba as sugar producers. N.B. Piteous attempt to tell Court what were to be exports if no mill. Even if respondent justified in regarding Lautoka as sugar producer he stretched it to its utmost, i.e., make a wealthy company pay. Respondent says he made no effort to assess value of the land if sugar discounted. If he did this then Stokes evidence must be accepted. See ladies Hosiery West Middlesex 1932 2 K.B. 679. Respondent admitted it wouldn't be fair to compare small with large block for valuation purposes. Yet he admitted that for rent purposes he compared tiny blocks except Ragg's 4 acres. Isn't it tiny as compared

In the First Class Magistrate's Court at Lautoka.

No. 21. Address by Appellant's Counsel on 14th September, 1953— *continued.*

with 650 acres. He didn't use Government or N.L.T.B. rentals. Why not ? This case is all important and its importance may not be properly envisaged. It merits considerable thought. Submit that even one wrong principle is enough to succeed.

KERMODE (by special leave): Rebut suggestion ? See Tooheys case p. 433. See Supreme Court case of Fiji.

Court adjourned for consideration.

C. L. REGAN.

10th October 1953.

Appellant having filed Notice of intention to appeal I fix security for costs at cash deposit of £25.

C. L. REGAN.

No. 22. Judgment dated 10th October, 1953.

No. 22.

Judgment.

Portion of the appellant's large holding of land in the district has recently been incorporated into the town of Lautoka; and appellant appeals against the valuation of its land made by the respondent, Mr. Tetzner. It is notorious that appellant operates the largest of its five sugar mills in Fiji on the subject land, on which also are numerous quarters for its staff of all races, its own power house for supplying electricity to its staff, and plant: its own reticulation of roads and of pipes conveying water to mill and staff from its own reservoir. The wharf which adjoins the mill was built by appellant and is the only wharf in Lautoka at which overseas vessels can berth ; I could no doubt mention many other factors indicating that appellant is the paramount employer and industrial entity of the district. It is not surprising, therefore, that it appears from Mr. Tetzner's evidence that appellant's land both in area and value exceeds that of the old town of Lautoka. The appeal is brought under section 110 of Local Government (Towns) Ordinance.

The first paragraph of appellant's Memorandum of Appeal claims that there should have been only one valuation, or at most two, appearing in the Council's Rate book. I take it that wherever appellant mentions assessments he means valuations, he having apparently misconstrued the terminology of the Ordinance. I do not think appellant means to

say that the mere plurality of items against his name in the Rate book is a burden on him. It is obvious from paras. 2 and 3 of the Memorandum and from his evidence and argument that appellant says that respondent is not entitled to subdivide his land notionally and arrive at the U.C.V. of each subdivision by taking into account the improvements on all the other subdivisions. The ultimate of appellant's case as indicated by its amendment and case is that in the beginning the whole of the appealed land was one holding of virgin country and that everything that has happened since from the proclaimed roads through the property to the buildings and plant on it and from the fact that the district has been converted from primeval native land to a rich sugar producing area, is all its doings and to be regarded as improvements. It says that the U.C.V. must give it the credit for all these things, except, so it seems to me, for something in the nature of a town nearby. That is the theme of its amendment, and I have to decide to what extent it succeeds on this part of its case and if it fails to any extent it may then be necessary for me to see if in fact any part of the land has been overvalued or misdescribed as to area.

I take first of all the question of the proclaimed roads. On the evidence I hold that now and for many years past they have been maintained by Public Authority and that if they had not been so maintained they would now be useless and impassable. If we assume a deal *now* taking place of the whole of the property the roads and all other improvements not being there but forming part of the property. We can also assume from the fact that the roads are now there a Public Authority able and willing to make and maintain such roads without expense to appellant and that it should be to appellant's advantage to donate the land for such roads. If it would not be advantageous to him, then the roads cannot be considered to be of any consequence as an improvement. The effect of such assumptions is that the only part of the improvement for which appellant may be responsible is the land actually dedicated to the roads and as this area is not included in the valuations and its proportion of the total cost of making and maintaining roads infinitesimal, the matter of appellant being entitled to regard the roads as its improvement can be disregarded.

I see nothing wrong in a valuer making notional subdivisions of large areas of land for the purposes of making a valuation provided his total is on an *in globo* basis. He has to subdivide notionally where he is valuing rural land consisting of both stony ridges and river flats or where he values a block of urban land with a frontage both to a main street and a secondary street. There was therefore nothing legally wrong in respondent making the subdivisions he did make as indicated

In the First Class Magistrate's Court at Lautoka.

No. 22. Judgment dated 10th October, 1953— *continued.*

by the rate notices and map tendered. I think that, as I indicated already, appellant objects to a process such as was adopted by the valuer successfully in Cooper *v.* Commissioners of Taxation XIX N.S.W.L.R. 303 but by implication disapproved of in Broadways Ltd. *v.* Valuer General 24 G.L.R. 532. I agree with appellant's objection. Neither case is binding in Fiji ; but as some Australian and New Zealand reports are available here and as both countries use U.C.V. as the basis for taxing and rating, there is strong reason to heed authorities from both countries. From the report of Cooper's case kindly made available by counsel it is impossible to ascertain the actual legislation with which the N.S.W. Court were dealing. It is clearer in the Broadways case and the latter is a later case. Moreover neither section 100 nor any other section of the Local Government (Towns) Ordinance makes any provision for taking any land parcel by parcel or lot by lot, as appears to be the position in N.S.W. for Local Government purposes (although not necessarily for Coopers case). See Collins, Valuation, Compensation and Land Tax 3rd Edition p. 350. In any case there was already a subdivision made in Coopers case. Appellant has made no subdivision nor is there any evidence that it has even thought about it. I would say that the facts before me are more in line with Bowman *v.* Municipality of Muswellbrook digested at p. 374 in Collins. Therefore in order to arrive at appellant's U.C.V. you take the whole of his land *in globo* and following the words of the Ordinance and the authority of Tooheys *v.* Valuer General (1925 A.C. 439 at 443) (an appeal from the Supreme Court of N.S.W.) you treat it as if the improvements never had been made, i.e., not only as non-existent but as never having existed. It appears from the same page of the same report that the definition of U.C.V. is in N.S.W. the same as it is in Fiji. There is, therefore, Privy Council authority for saying that in Fiji it is not permissible for a valuer to arrive first at the I.C.V. and then assess the U.C.V. by subtracting the value of the improvements. In other words the effect of his own improvements on his own land cannot be brought into account in arriving at an owners U.C.V. For instance a speculator may purchase a large vacant area in the commercial or residential portion of a town and cover it with buildings. This will have the effect of increasing the value of all land in the vicinity including his own ; but by treating the buildings as never having been built the valuer, following Toohey's case, loads no part of the increased value on to the land of the speculator. The result is that the large owner has a lower U.C.V. than an adjoining small owner, and rents and sales in the vicinity are scarcely relevant to him. It is in just such a position that we find appellant in the present case. Mr. Tetzner's evidence is equivocal on this point. His evidence generally indicates that he took appellant's land as one whole, but then he said that he did not treat the Mill as never having existed and he has also given the method forbidden by the Privy Council in Tooheys case as a method which would achieve the

same result as the method he used. I therefore came to the conclusion that in making his valuation he did not allow for the fact that if all appellant's improvements never had been made the value of much land now in the vicinity of them would be much lower with a corresponding effect on appellant's land. This applies particularly to commercial sites; and as regards residential sites appellant's buildings not being there, sites now covered with buildings become notionally available for the subdivisions he imagines. He has, in my opinion, in estimating for possible subdivisions, taken the situation as it is rather than as he should visualise it. I take it to be the law that the only supposition the valuer makes is that the improvements never have been there, but that the demand for land remains constant. It is not increased by the demand from those whose buildings are notionally taken from them, nor decreased by a notional decrease in population due to a notional shrinkage in the size of the town due to the notional subtraction of so much of it. I feel sure that in supposing so much subdivision respondent has not taken into account that all the present houses would not be there and yet demand no greater than if they were there. He should work on the basis that the whole square mile is vacant land. That he did not do this seems to be obvious from his evidence that he considered what part of the land was either *in actual use for residential commercial or industrial purposes* or could be so used; and the amount of land valued on standard foot basis is further indication of this. In all just over 20000 feet (or nearly 4 miles) of frontage with an area of 67 acres are valued as potential building sites. That allows for 200 allotments of 100 ft. frontage or 400 with 50 ft. frontage—an impossible target for a dealer in Real Estate. In addition to allowing for all this standard foot frontage respondent regards other large areas valued on an acreage basis with the eye of a speculator and burdens them with extra value as prospective subdivisions on the assumption that section 100 of the Ordinance says is to be made. I assume the present demand for town allotments. The section sanctions no notional assumption in regard to demand for land; but I also assume the whole of appellant's land available to meet that demand. I think, therefore, that respondent is entitled to value very little of appellant's land on a standard foot basis.

Appellant claims not only this but also the likelihood that if appellant's Mill had never been erected then there would not be a mill inLautoka nor would Lautoka be a cane growing district. I do not think section 100 justifies any such assumption I think the assumption applies strictly to the land itself. Lautoka is endowed by nature with the capacity to support a large Sugar Mill supplied with cane by the rich cane growing lands about it. Section 100 does not justify any notional interference with nature. The destruction of the whole sugar industry is not to be presumed from the assumption that no improvements had ever been

In the First Class Magistrate's Court at Lautoka.

No. 22. Judgment dated 10th October, 1953— *continued.*

made to appellant's land. If the U.C.V. of a city power house is being assessed one does not assume a city without electricity and all the consequences of the lack of such an amenity.

I do not propose to go very deeply into the meaning of the word appertaining, occurring in Section 100 of the Ordinance. It is important only in deciding whether the wharf erected by appellant and serving its mill near by is to be regarded as an improvement appertaining to the land. I do not go deeply into the matter because it appears to me that a slight consideration leads to the conclusion that the wharf cannot be so regarded. I think that reference to Dictionaries and Stroud show that the sense of belonging permeates the word and see Collins 3rd Ed. p. 155 citing McDonald *v.* Commissioner 20 C.L.R. 231. There is no evidence that the wharf belongs or appertains to appellant's land. It certainly belongs to appellant but not to his land. It is not as if the right to build the wharf or a right over the water and sea bed beneath the water was on appellant's title. In that case the wharf would be an improvement appertaining to the land; but on the evidence the wharf has no legal connection with appellant's land and cannot be said to appertain to it. From respondent's evidence I gather that he treated it as an improvement. He need not and ought not to have done so. Actually the reservoir may be in the same category as the wharf, but I have no evidence on the point and ignore it.

Appellant seems to endeavour to argue that as it has provided its land with its own water and electricity the proximity of supplies of these commodities should not be taken into account for valuation purposes. I do not agree with this proposition. It disregards section 100, the whole basis of which is that improvements are to be treated as not having been made. A land owner in a city would not have his valuation reduced because he installed his own electricity and tanks to collect the water from his roof. Appellant is entitled to have its land valued on the basis that it has no electricity or water, but that due to the proximity of a town providing such amenities it has prospects in these matters.

To sum up the basis of what I hold to be the proper method of valuing appellant's land, I say a valuer must first take the whole of the 650 acres and notionally remove all improvements and notionally exclude it from the amenities of water and electricity, though giving its prospects for such amenities. Neither the wharf nor the proclaimed roads should be regarded as an improvement. Having first removed every improvement from the whole block, he may then if it suits his purpose value piecemeal; but in doing so he must remember that one deal for the whole area will go through at a lower figure than seventeen different deals and that the owner is entitled to the benefit of this. See Payne *v.*

Federal Commissioner of Land Tax 1924 v. L.R. 231 (digested in Collins at p. 109). I now propose to take the divisions made by respondent and deal with each in turn and I then propose to deduct $7\frac{1}{2}\%$ from the grand total to allow appellant the benefit of an *in globo* sale. I might say at this stage that I have not sufficient evidence on the value of appellant's land as cane land to enable me to make any alterations to this factor in respondent's calculations. I discarded the value of the land based on rent as not being reliable because the fixing of rents for cane land seemed to me to be an arbitrary affair, there being no evidence as to what the rents would be in an open market. Then on the evidence of comparable sales I found myself without any sufficient guide as to what class of cane land each individual acre of appellant's land belongs. In addition it was difficult for me to feel sure that any of the sales of which evidence was given was sufficiently comparable for me to follow. I also disregarded the Land Development venture in Suva, as being far different land in a far larger town. I think it has been definitely proved that cane land can be worth as much as £200 per acre and it is as such land that I have treated appellant's land except where less value is placed on it by respondent.

I now consider 500 A on the plan Exhibit E. I accept respondent's overall valuation of £125 per acre, but I eliminate the subdivisional factor. The area is some miles from the main Lautoka township and in the imaginary world in which I am, it is vacant land with little immediate hope of electricity or water, and nothing between it and the main town except a secondary shopping area and one or two other buildings. I arrive at a figure for this land in this way of £5250 as against the entry in the rate book and valuation notice of £7550. 500 A £5250.

By the same process, i.e., eliminating foot frontage factor, I arrive at a figure of £9475 for 500 B as against £15735 in rate book and £15865 in notice 500 B £9475.

For 500 C I again accept respondent's acreage basis but I eliminate all foot frontage except 510 ft. at Northern end of it which I value at £3 per foot. This gives a total of £4410 for 500 C as against £6420 in the rate book and £6368 in the rate notice. 500 C £4410. 500 D is still a long way from a proper township and I cannot think of it in terms of value per foot of frontage. I accept respondent's overall value of £200 per acre but eliminate all question of frontages. This gives a value of £7420 for this item on the map as against the rate book entry of £14725 the rate notice showing a similar amount. 500 D £7420. I think item 500 E is well entitled to be considered a prospect for subdivision, but I think the overall price per acre assessed by the respondent takes this prospect fully into account. I accept his figure of £500 per acre but

In the First Class Magistrate's Court at Lautoka.

No. 22. Judgment dated 10th October, 1953— *continued.*

eliminate the element of foot frontages. I thus get a total of £3700 for 500 E as against £9200 in the rate book and £8900 on the rate notice. 500 E £3700.

500 F is as well situated a block as there is in the square mile being 5/8 of an acre on a corner but I think it would not be worth more than 3 times the value per square foot of 500 E. This gives a total of £937, the amount in the rate book and rate notice being £1355. 500 F £937.

500 G is in three or four separate parcels. I accept the frontage subdivision of 1000 ft. along Tawewa Avenue at £3.5.0 per foot and of 1580 feet along Drasa Avenue at £3.10.0 per foot, and 300 feet fronting the coast road at £6 per foot; but I exclude all further notional subdivisions. I say that account has been taken of them in the overall values of £250 per acre of the top portion and £300 per acre of the lower portion 500 G in this way has a total value of £50675 as against £59990 in the rate book and £53890 in the rate notice. 500 G £50675.

On the evidence I can see no reason for altering 500 H. It is valued on acreage basis throughout. I place a value of £3475 on it and it so appears in the rate book and in the rate notice. 500 H £3475.

I notice that 500 I appears as £1690 in the rate book but £2580 in the rate notice working on the figures from the map Exhibit E, £1690 is the correct figure and I see no reason why it should be altered. 500 I £1690.

From 500 J I exclude the suggestion of allotments along the frontage. There are many more closer to the town to be absorbed before it can be treated in that way. A value on an acreage basis gives a value of £10125 as against a value in the rate book and rate notice of £15260. 500 J £10125.

In 500 K I accept the standard foot basis for valuing the frontage to Drasa Avenue and find it to be well in harmony with sales in the neighbourhood. I also accept the respondent's valuation of 50 acres of cane land £150 per acre as appears from the map Exhibit E. But on the evidence of negotiations for land closer in than most of the back portion of 500 K which respondent values at £50 per acre. I think £30 per acre is a proper value for it. This gives a total of £12658 for 500 K as against £14930 in rate book and rate notice. 500 K £12658.

In 500 L I allow the standard foot basis for the 330 ft. frontage at £6 per foot, but prospects of further subdivisions are well taken care of in the overall value of £400 per acre placed on the area by respondent.

The claim of 700 ft. at £4 per foot is therefore disallowed. It is this block which appears to have been sold as a mud flat to appellant in 1913 for £5000. I have disregarded this. Indeed respondent did not press the point. In any case I think it is too remote in time to be considered. Its value therefore works out at £6780 as against £8780 in the rate book and £8366 in the rate notice. 500 L £6780.

500 M is described as being between the water front road and the sea coast. I cannot see any such piece of land on the map, although there is piece at the dead end of the waterfront road which may be it, but it is not between the road and the coast. It appears in the rate book and rate notice at £250. I have no evidence on it. I presume neither side will worry if it remains unaltered. 500 M £250.

From the evidence I could not say that there was anything radically wrong with the assessed value of £1232 for 500 N situated as it is adjacent to a residential area. It appears in the rate book and on the rate notice at £1232. I leave it at that. 500 N £1232.

500 O is an area adjacent to a residential area but without proclaimed access. I see no reason to alter its value from the £200 in the rate book and on the rate notice. 500 O £200.

611 is the school site and in a residential area. Its value as per rate book and rate notice seems quite fair to me. It would not be much affected by the notional removal of improvements from the rest of appellant's land. 611 £651.

The same applies to 530 as to 500 O and it will remain as per rate book and rate notice. 530 £525.

I summarise as follows and deduct the 7½% working to the nearest pound.

				Net
500A	£5250	less 7½%	£394	£4856
500B	9475	,, ,,	711	8764
500C	4410	,, ,,	331	4079
500D	7420	,, ,,	556	6864
500E	3700	,, ,,	278	3422
500F	937	,, ,,	70	867
500G	50675	,, ,,	3801	46874
500H	3475	,, ,,	261	3214
500I	1690	,, ,,	127	1563

In the First Class Magistrate's Court at Lautoka.

No. 22. Judgment dated 10th October, 1953— *continued.*

				Net
500J	£10125	less 7½%	£759	£9366
500K	12658	„ „	949	11709
500L	6780	„ „	509	6271
500M	250	„ „	19	231
500N	1232	„ „	92	1140
500O	200	„ „	15	185
611	651	„ „	49	602
623	525	„ „	39	486
	£119,453		£8960	£110,493

I would mention that in arriving at these figures I have not adhered to the schedule in appellant's Memorandum of Appeal. The reason is that I have taken a different view of the law and I have therefore applied the law as it appears to me. All legal aspects of the matter were fully canvassed, so there is no question of either side being misled.

I do not think it matters how the figures appear in the rate book. This is according to section 106 a matter for Council to determine or it may be prescribed by subsidiary legislation. I think, however, that there should be a grand total if council decides to itemise the property of any one individual. As the rate book now stands, I order it to be amended in accordance with the details I have just read out with the grand total of £110,493 appended thereto.

Sgd. C. L. REGAN.

No order as to costs.

Sgd. C. L. REGAN.

No. 23.

Notice of Intention to Appeal.

In the First Class Magistrate's Court at Lautoka.

No. 23. Notice of Intention to Appeal dated 10th October, 1953.

IN THE FIRST CLASS MAGISTRATE'S COURT.
Western District,
Lautoka.

No. 1 of 1953.

IN THE MATTER OF The Local Government (Towns) Ordinance 1947

AND IN THE MATTER OF an Appeal by the Colonial Sugar Refining Company Limited against the Valuations set out in The Lautoka Town Council's Assessment Notices Nos. 579 to 583, 585 to 590, 592, 593 and 623 made by S. A. TETZNER Esquire Valuer for the Town of Lautoka.

BETWEEN

THE COLONIAL SUGAR REFINING COMPANY LIMITED .. .. *Appellant*

AND

S. A. TETZNER .. .. *Respondent.*

To The Senior Magistrate Lautoka and

To Mr. Tetzner the Respondent abovenamed and

To the Lautoka Town Council.

TAKE NOTICE that the Colonial Sugar Refining Company Limited the appellant abovenamed intends to appeal from the decision of your C. L. Regan Esq. sitting in the First Class Magistrates Court at Lautoka and given on the 3rd day of October 1953.

Dated this 10th day of October 1953.

Sgd. RICE & STUART,

Solicitors for the Appellant Company.

In the First Class Magistrate's Court at Lautoka.

No. 24. Notice of Motion for Extension of time to file Grounds of Appeal dated 30th October, 1953.

No. 24.

Notice of Motion for Extension of Time to File Grounds of Appeal.

IN THE FIRST CLASS MAGISTRATE'S COURT.
Western District,
Lautoka.

No. 1 of 1953.

IN THE MATTER OF The Local Government (Towns) Ordinance 1947

AND IN THE MATTER OF an Appeal by the Colonial Sugar Refining Company Limited against the Valuations set out in The Lautoka Town Council's Assessment Notices Nos. 579 to 583, 585 to 592, 593 and 623 made by S. A. TETZNER Esquire Valuer for the Town of Lautoka.

BETWEEN

THE COLONIAL SUGAR REFINING COMPANY LIMITED .. .. *Appellant*

AND

S. A. TETZNER .. .. *Respondent.*

To the Senior Magistrate Lautoka and

To Mr. Tetzner the Respondent abovenamed.

TAKE NOTICE that Mr. K. A. Stuart of Counsel for the Colonial Sugar Refining Company Limited abovenamed appellant will move this Court on Monday the second day of November at 10 o'clock in the forenoon for an order granting the appellant time for filing the Grounds of Appeal in this matter until the third day of December One thousand Nine Hundred and Fifty-three (1953) upon the grounds that the appeal involves important questions of policy to the appellant upon which the appellant desires to have legal advice from overseas.

Dated this 30th day of October 1953.

Sgd. RICE & STUART,

Solicitors for the Appellant Company.

No. 25.

Notice of Appeal.

In the Supreme Court of Fiji.

No. 25. Notice of Appeal dated 1st December, 1953.

IN THE SUPREME COURT OF FIJI.

No. 21 of 1953.

IN THE MATTER OF The Local Government (Towns) Ordinance 1947

AND IN THE MATTER OF an Appeal by the Colonial Sugar Refining Company Limited against the valuations set out in The Lautoka Town Council's Assessment Notices Nos. 579 to 583, 585 to 590, 592, 593, and 623 made by S. A. TETZNER Esquire Valuer for the Town of Latuoka.

BETWEEN

THE COLONIAL SUGAR REFINING COMPANY LIMITED .. .. *Appellant*

AND

S. A. TETZNER .. .. *Respondent.*

The appellant Company doth hereby give notice to you and each of you that the grounds of its appeal in this cause are as follows :—

1. That the method of valuation adopted by the learned Magistrate did not regard as it should have done all the improvements upon the Appellant Company's land both as non-existant and as if they had never existed and did not as it should have done treat the said land as bare land.

2. That the said method of valuation exceeded the standard value prescribed by Section 100 of " The Local Government (Towns) Ordinance " (26 of 1947).

3. That the valuation fixed for the said lands erroneously presupposes the existence of a Sugar Mill and its appurtenances adjacent to or in the vicinity of such lands and the valuation took into consideration the enhanced value of the said lands owing to the actual existence of a Sugar Mill and its appurtenances adjacent to or in the vicinity of such lands and in some cases the possible future development of the land for other industries.

In the Supreme Court of Fiji.

No. 25. Notice of Appeal dated 1st December, 1953—*continued.*

4. That it was erroneous to value the said lands partly as sugar cane land and partly as land suitable for industrial or residential subdivision. In so far as he valued such lands as sugar cane land the learned Magistrate wrongfully speculated as to their value and wrongfully assumed that every acre thereof was of equal value and equal in value to the most valuable cane land in the North Western District.

5. That in so far as he valued such lands as prospects for subdivision the learned Magistrate failed to have regard to the fact that the Appellant Company's improvements upon the same wholly or substantially created the real or notional demand for any such subdivision.

Dated this 1st day of December 1953.

Sgd. RICE & STUART,

Solicitors for the Appellant Company.

To the Respondent,

And to his Solicitors, and

To the Clerk of the Court.

These grounds of appeal are filed and served by Rice & Stuart Solicitors for the Appellant Company whose address for service is at the Chambers of the said Solicitors at Ba and Lautoka and also at the Chambers of Messieurs Wm. Scott & Company Solicitors Suva.

No. 26. Judgment dated 27th May, 1954.

No. 26.

Judgment.

IN THE SUPREME COURT OF FIJI.

No. 21 of 1953.

Appellate Jurisdiction.

BETWEEN

THE COLONIAL SUGAR REFINING COMPANY LIMITED .. .. *Appellant*

AND

S. A. TETZNER .. .. *Respondent.*

This is an appeal by the Colonial Sugar Refining Company Limited against the valuation made by Mr. S. A. Tetzner, valuer for the town of

Lautoka in respect of the property of the appellant Company. This property is approximately 650 acres in extent ; it lies within the Lautoka Township, and it is contained in two certificates of title, namely, C/T. 7489 and Crown Grant J. Folio 1382.

The value placed on the property by the valuer is £161,297. The appellant Company was dissatisfied with this valuation and appealed against it to the Magistrate's Court, Lautoka. The valuation was reduced by order of that Court to £110,493.

The appellants are dissatisfied with the decision of the Magistrate's Court, and they now appeal to the Supreme Court. The basis of their complaint is that the method of valuation adopted by the learned Magistrate was based on wrong principles.

The Colonial Sugar Refining Company's sugar mill and subsidiary installations are situated on the subject land. The valuer divided the property into 17 hypothetical subdivisions and valued each one separately, the total of which came to £161,297. The Lautoka Town Council issued a separate notice of assessment in respect of each of these subdivisions. Some of these areas of land were valued as land suitable for growing cane, and commonly referred to as " cane land " ; and some areas were valued on the standard foot basis as building sites.

At the hearing before the Magistrate a number of witnesses were called. Mr. Stokes gave evidence on behalf of the appellant Company as an expert in land valuation. He valued the subject land at £13000, and he gave his reasons for doing so. Mr. Tetzner, the valuer who had valued the property at £161,297, also gave evidence ; he described the methods he had adopted in arriving at his valuation.

The learned Magistrate did not accept Mr. Stokes's valuation. He examined the valuation which the valuer Mr. Tetzner, had made. He accepted the valuations which the valuer had put on seven lots, but he reduced the value of ten lots because he disagreed with the value placed on these lots by the valuer. The learned Magistrate then reduced his own grand total of £119,453 by 7½% to £110,493, because in his opinion the appellant should have the benefit of an *in globo* sale. He said in his judgment : " I now propose to take the divisions made by the respondent and deal with each in turn and then I propose to deduct 7½% from the grand total to allow appellant the benefit of an *in globo* sale."

It may be convenient to state here that counsel for the respondent did not press before me for the acceptance of the Magistrate's valuation. Counsel conceded that, the Magistrate could only vary the figure of the

In the Supreme Court of Fiji.

No. 26. Judgment dated 27th May, 1954— *continued.*

valuer on evidence that had been adduced before him ; that he could not put himself in the position of an expert, which is in fact what he appears to have done. I agreed with these observations Counsel for the respondent then intimated that his arguments would be directed only in support of the valuation of the valuer. Argument before me proceeded accordingly on this basis. Counsel for the respondent conceded, furthermore, that there should be one assessment for the subject property of 650 acres, and not seventeen. With this view I am also in agreement.

Valuation for rating purposes is governed by the Local Government (Towns) Ordinance, No. 26 of 1947. Rates are assessed on the unimproved value of land within a town. Sections 99 and 100 read as follows :

> " 99. Subject to the provisions of section 98 every rate made and levied by a town council under the provisions of this Ordinance shall be assessed at a uniform amount per centum on the unimproved value of all rateable land within the town, or within that area of the town to which the rate applies.
>
> " 100. The unimproved value of land shall be the capital sum which the fee simple of the land might be expected to realize if offered for sale on such reasonable terms and conditions as a *bona fide* seller would require assuming that the improvements, if any, thereon or appertaining thereto and made or acquired by the owner or his predecessors in title had not been made."

Having regard to the definition of " unimproved value " the duty of the valuer was to determine the unimproved value of the subject land. It is contended by the appellant Company that the value fixed by the valuer was not the unimproved value of the subject land, because the method which he had adopted in determining the unimproved value was based on wrong principles.

The guiding principles for the valuation of unimproved land for rating purposes are set out in the Privy Council case of Toohey's Limited *v.* The Valuer-General (1925) A.C. p. 439. The headnote reads as follows :

> " The appellants owned and occupied land in New South Wales upon which were buildings licensed under the Liquor Act (No. 42 of 1912, N.S.W.). The site had no special adaptability for the purposes of licensed premises. The ' unimproved value ' of the land for the purposes of the Land Valuation Act (No. 2 of 1916, N.S.W.) was assessed at an amount arrived at by deducting the value of the buildings, as appropriate to and suitable for licensed premises, from the amount which would have been realised if the

whole subject had been sold as licensed premises. By s.6 of the Act of 1916 the ' unimproved value ' of land is the sum which it might be expected to realise upon sale assuming that the improvements (if any) had not been made :

> " Held, that the assessment was made upon a wrong principle, since the value arrived at included the enhanced value due to the fact that the premises were licensed ; and that the valuer should be directed to make a valuation of the land itself with such advantages as it possessed as bare land, without any consideration of its value as including licensed premises."

Except that in the first line of section 6 of the Land Valuation Act (No. 2 of 1916 N.S.W.) the word " Is " appears, whereas in the first line of section 100 of the Local Government (Towns) Ordinance, No. 26 of 1947, the words " Shall be " are used, the two sections are identical. The principles, therefore, laid down in Toohey's case (*supra*) are applicable to rating valuations in Fiji. In Toohey's case (*supra*) which was a stated case, Lord Dunedin said in the course of his judgment (at page 443) in referring to the duty of the valuer :

> " Now, what he has to consider is what the land would fetch as at the date of the valuation if the improvements made had not been made. Words could scarcely be clearer to show, that the improvements were to be left entirely out of view. They are to be taken, not only as non-existent, but as if they never had existed. It is therefore, to approach the question from a completely wrong point of view to begin with a valuation which takes in the improvements and then proceed by means of subtraction of a sum arrived at by an independent valuation in order to find the required figure. What the Act requires is really quite simple. Here is a plot of land ; assume that there is nothing on it in the way of improvement ; what would it fetch in the market ? It will be observed that the value is not what has been sometimes designated by the expression ' prairie value '. The land must be taken as it exists at the date of the valuation.
>
> " It has again and again been pointed out what the value of land on compulsory acquisition is, and the principle here is exactly the same. The value has been formulated by this Board in the cases of Cedars Rapids Co. *v.* Lacoste (1914) A.C. 569, and Fraser *v.* Fraserville City (1917) A.C. 187. Citing the former case the value to the owner consists of all advantages which the land possesses, present or prospective. In the stated case there is a finding of a negative character : (f) That the subject land possesses no special advantages or adaptabilities as a site for licensed premises by reason

In the Supreme Court of Fiji.

No. 26. Judgment dated 27th May, 1954— *continued.*

of its position or otherwise which render it more valuable than any similarly situated land in the immediate neighbourhood. But that negative finding, which declares that the land is not better as a site for licensed premises than any other land similarly situated, does not exclude a value which may adhere to the land in respect of its suitability.

" Their Lordships do not attempt themselves to make a valuation to be deduced from the figures given, for the simple reason that the valuer has not applied himself to the only questions presented to him by the Act, and it is his business to do so. But, as already said, the result obtained is not only contrary to the method permitted by the Act, but is demonstrably fallacious. Proceedings are begun by the taking of a figure for the subject as it stands as licensed premises. It is obvious that this figure is composed of three ingredients; first, the bare land itself; second, the buildings themselves constructed for and appropriate for licensed premises; third, the enhanced value due to the fact that the land and buildings in question are not only suitable for licensed premises, but are in fact licensed premises.

" When, however, the subtraction sum is entered upon it is only item 2 that is subtracted from the total figure; the result being that item 3 is all included in the unimproved value. From this follows the extraordinary result that the land is enhanced by the value of a licence which could only be granted in connection with buildings—for a licence such as this cannot be granted to sell liquor without premises—in a calculation in which you are told to assume that no building is there.

" Their Lordships will, therefore, humbly advise His Majesty that the appeal should be allowed and the case remitted to the Supreme Court to direct the valuer to make a valuation of the land itself as it at present stands with such advantages as it at present possesses, and viewed as bare land without any buildings upon it, and without any consideration of the value of the subject as including *de facto* licensed premises."

When indicating that the principle in the valuation of land on compulsory acquisition is exactly the same as that in the valuation of land for rating purposes Lord Dunedin referred to the case of Cedars Rapids Co. *v.* Lacoste (*supra*) and Fraser *v.* Fraserville (*supra*). For the purpose of showing what this principle is, I quote a passage from the judgment of Lord Dunedin in the Cedars Rapids case (*supra*). At page 576 he said :

" For the present purpose it may be sufficient to state two brief propositions : (1) The value to be paid is the value to the owner as it existed at the date of the taking, not the value to the taker. (2) The value to the owner consists in all the advantages which the land possesses, present or future, but it is the present value alone of such advantages that falls to be determined.

" Where, therefore, the element of value over and above the bare value of the ground itself (commonly spoken of as the agricultural value) consists in adaptability for a certain undertaking (though adaptability, as pointed out by Fletcher Moulton L.J. in the case cited—i.e., in re Lucas and Chesterfield Gas and Water Board (1909) 1 K.B. 16—is really rather an unfortunate expression) the value is not a proportional part of the assumed value of the whole undertaking, but merely the price, enhanced above the bare value of the ground which possible intended undertakers would give. That price must be tested by the imaginary market which would have ruled had the land been exposed for sale before any undertakers had secured the powers, or acquired the other subjects which made the undertaking as a whole a realised possibility."

In the case referred to in this passage, re Lucas and Chesterfield Gas and Water Board, the principle is stated thus by Fletcher Moulton L.J. at page 29 : " The owner receives for the land he gives up their equivalent, i.e., that which they are worth to him in money. His property is therefore not diminished in amount, but to that extent it is compulsorily changed in form. But the equivalent is estimated on the value to him and not on the value to the purchaser, and hence it has from the first become recognised as an absolute rule that this value is to be estimated as it stood before the grant of the compulsory powers. The owner is only to receive compensation based on the market value of his lands as they stood before the scheme was authorised by which they are put to public uses. Subject to this he is entitled to be paid the full price for his lands, and any and every element of value which they possess must be taken into consideration in so far as they increase the value to him."

Counsel for the appellant company and counsel for the respondent fully accept the principles laid down in the judgment of Lord Dunedin, but they disagree on their interpretation. Counsel for the appellant Company contend that the valuer has not applied these principles in that he has not valued the subject land as " bare " land ; that he has not taken the improvement, namely, the sugar mill which is situated on the subject land, not only as non-existent but as if they had never existed. Counsel therefore argued that the valuation of the valuer, namely

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£161,297, should not be allowed to stand. If this view were accepted then the only evidence of valuation left for the Court to consider would be that of Mr. Stokes; he valued the subject land at £13000, and this valuation it was submitted, should be accepted.

Counsel for the respondent took the opposite view. He argued that the valuer had made the valuation on the correct principle as laid down by Toohey's case (*supra*) but that Mr. Stokes had not done so.

In view of this conflict of opinion it is necessary to refer to the methods of valuation adopted by the valuer and Mr. Stokes. The valuer, Mr. Tetzner, said that the method he had adopted in valuing was an analysis of comparable sales and a capitalization of rentals of comparative lands. He said he had disregarded the method of determining capital value and subtracting improvements in order to arrive at the unimproved capital value because there is no yardstick available in Fiji by which values of old mills, railways, buildings, water supplies and other machinery can be determined. I give the following extracts from his evidence which throw further light on his methods:

> " In my calculations I had to assume no mill, but I took into consideration the inherent qualities of the land, its features and its proximity to what in fact exists namely, Lautoka and amenities; for example, administrative centre, hospital, Court House, which installations are surrounded by appealed land. I took into account schools, churches, playgrounds. Access valley is secondary commercial centre round Morris Hedstrom Ltd., Public Works Department, Oil Depots, Wharf. I have reconsidered my valuations and adhered to them. I handed in one valuation to Council and gave it one assessment, No. 500, but in arriving at the total I made 17 hypothetical subdivisions . . . I did not treat the mill as if it had never existed, merely as not existing, and the same applies to its appurtenances and installations. If Lautoka were to be a sugar producer a mill would be needed somewhere to take its products. I don't disagree with the suggestion that Ba Mill couldn't take Lautoka sugar production. . . . I think the part I have classified as cane land would be so even if no mill at Lautoka. . . . I agree that whole of 650 acres is used by Company for its undertaking. I think there is no reason why appellant should cease production. I discounted such a happening. . . . In computation of rentals I gave them on basis that they were near sugar producing towns. . . . I assumed Lautoka as it is today in assessing. I didn't assume what Lautoka would be without the mill. . . ."

It is a fair assumption, and, indeed, it is not denied by counsel for the respondents, that the values placed by the valuer on his seventeen notional subdivisions for rating purposes are their present market values. In fixing this value regard has been had, it can reasonably be inferred, to the fact that Lautoka is a sugar growing and crushing centre, and that land values and the prosperity of the district are to a very large extent indeed governed by the existence of the sugar mill.

It was argued by counsel for the appellant that the valuer's method stands condemned by his own words; that although he did not regard the mill as never having existed he did regard it as not existing, and at the same time he valued part of the subject land as cane growing land. Counsel contended that if the mill had never existed, or if there were no mill, there would be no cane land, or even if the land were suitable for cane growing it could not attract the value placed on it by the valuer. Furthermore, if no mill existed or ever had existed Lautoka would not be in the prosperous state in which it is today, and portions of the subject land could neither be classified nor bear the value placed on them by the valuer.

Counsel for the respondents freely admitted that the land must be valued as " bare " land and as if the mill had never existed thereon. He relied, however, on Lord Dunedin's words in Toohey's case (*supra*), that the land must be taken as it exists at the date of the valuation with such advantages as it possesses. The advantages possessed by the subject land today viewed as bare land are, counsel argued, its position in Lautoka township having regard to the prosperity of that township and the amenities and services it supplies. And although the subject land must be regarded as if the mill had never existed thereon, the influence of the mill, which today is responsible for Lautoka's prosperity, cannot and should not be ignored when arriving at the value of the subject land. Counsel contended that this is the only practical and common-sense method of approach, and for these reasons the valuation of Mr. Tetzner should be accepted.

I agree with counsel for the respondent that his method of approach would be convenient, but I cannot agree that it is a logical one. In the first place, if the mill must be regarded as never having existed, how can any influence flow from it ? A thing which never existed can hardly exert an influence. Secondly, his method of approach would seem to offend against that principle of rating taxation which requires the exclusion of improvements made at the owner's expense. Counsel would have the appellant Company taxed on an influence which it had built up at great expense by the erection on the subject land of a sugar mill.

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No. 26. Judgment dated 27th May, 1954—*continued.*

Although it does not refer to an " influence " created by improvement made by the owner of a property, the Australian case of McGeoch *v.* Federal Commissioner of Land Tax, C.L.R. Vol. 43, p. 277, deals with the principle. At page 291, in the majority judgment of the Court, this passage appears : " Such a construction of the words of the Act as that suggested would, in the case of the greater part of the rural lands in Australia, result in the inclusion in the subject matter of the tax—the unimproved value of the land—of any amount wholly attributable to operations generally recognised as improvements in fact which had been effected by the owner at his own expense—a result which appears to us entirely inconsistent both with the expressed intention of Parliament and with the theory underlying the imposition of the tax." I accept this principle.

Generally, the valuation of " bare " land as it exists having regard to advantages which it possesses at the date of the valuation, may not present a difficult problem. In McGeoch's case (*supra*) these advantages at the date of valuation were deemed to be " extrinsic circumstances," and to have reference to the land in relation to the circumstances of the neighbourhood in which it is situated.

The circumstances of the neighbourhood in which the subject land is situated, namely, Lautoka, are circumstances which have arisen because the appellant Company has established a sugar mill on the subject land. No case has been cited to me the facts of which bear any analogy to the facts of this appeal. Should the appellant Company be taxed, as counsel for the respondents suggest it should, on the influence which its operations have caused to become a major factor in land values in Lautoka, a sugar town which very largely owes its present prosperity to the Sugar Mill ? It can hardly be doubted that if the Lautoka Sugar Mill closed down land values would drop very considerably. Should its influence in keeping land values at their present level in the neighbourhood be included or excluded in considering the value of the bare subject land as it stands at present with such advantages as it at present possesses—one of those advantages being the influence exerted by the Sugar Mill in retaining surrounding land values at their present level ?

This is a perplexing problem. Is the answer to be found in Toohey's case (*supra*) ? The effect of the definition of unimproved value dealt with by Lord Dunedin in that case was considered in the Australian case of McGeoch *v.* Federal Commissioner of Land Tax to which I have already referred. Although this case is not binding on this Court, I accept it as I think it affords some assistance. It does not conflict with the decision in Toohey's case (*supra*) ; on the contrary it helps in determining the question of what surrounding circumstances should

be considered in deciding the value of bare land as it stands at the date of valuation. I refer to a passage in the majority judgment of the Court at page 290 :

" In the legislation in Australia imposing tax on unimproved value of land we think it is clear that the subject matter sought to be taxed has always been that part of the value of the land at the relevant date which has been commonly described as the ' unearned increment '. The value at any given date of any given parcel of land has been considered as including two factors, namely (1), the portion of the value at the relevant date attributable to improvements on or appertaining to the land made by the owner or his predecessors in title and (2) the portion of the value at such date attributable to extrinsic circumstances, such as public roads or railways, increased settlement in the neighbourhood, public services brought within reach and other causes not brought about by the operations on the land of successive occupiers. See Cox *v.* Public Trustee (1918) N.Z.L.R. 95 at pp. 99, 103. Adopting the language of Hosking J. in that case, we think the unimproved value which is the subject of taxation under this Act is the value at the relevant date of the land in its natural state as for the time being affected by extrinsic circumstances of every kind, as, for example, those above mentioned, but not by what has been done to it or upon it in the shape of improvements of any kind effected by the operations of successive owners the benefit of which continues as a factor in the then present value of the land. It is suggested that this view is inconsistent with the opinion expressed by Viscount Dunedin, speaking for the Judicial Committee in Toohey's case in these words : ' What the Act requires is really quite simple. Here is a plot of land ; assume that there is nothing on it in the way of improvement ; what would it fetch in the market ? It will be observed that the value is not what has been sometimes designated by the expression " prairie value ". The land must be taken as it exists at the date of the valuation '. We do not think Viscount Dunedin, when he made these observations, meant anything inconsistent with what we have said, or indeed adverted at all to the subject we are considering. In our opinion the expression ' prairie value ' in this quotation was used as denoting the value of the land on the assumption that there was to be excluded from such value not only portion resulting from improvements made on the land by its successive owners but also the portion attributable to extrinsic circumstances existing at the relevant date. In other words, we think the phrase ' prairie value ' was used to denote the value which the land in its natural state and surroundings would have had at the relevant time assuming that nothing had ever been done by the

In the Supreme Court of Fiji.

No. 26. Judgment dated 27th May, 1954—*continued.*

hand of man either on the land itself or in its neighbourhood. The observation that ' the land must be taken as it exists at the date of valuation ' appears to us to be directed to what we have called ' the extrinsic circumstances ', that is, to refer to the land in relation to the circumstances of the neighbourhood in which it is situated."

This passage seems to me to suggest that the portion of the value of " bare " land attributable to extrinsic circumstances should not include those circumstances which have been brought out by operations on the subject land and should not be regarded as a factor in the value of the land.

In my opinion, the benefits given to the neighbourhood by the operations of the Sugar Mill on the subject land which continue to be a factor in the value of that land should be disregarded in assessing its value.

This factor was not disregarded by the valuer when making his valuation. He proceeded accordingly on wrong principles, and his valuation cannot stand.

The valuation made by Mr. Stokes now remains to be considered. I am not happy about this valuation. I quote certain passages from his evidence which I regard as unsatisfactory. His reasons for arriving at the figure of £13000 are not convincing. He said : " It is my opinion that the unimproved value under conditions, viz., no cane, would be £15 per acre for flat and arable land and £2—£3 per acre for hill land. That totals only half the value of £13000. On the basis of there being a cane industry I value the 390 at £15 average and the cane part, viz., 144, at £40, and the hill at £2 to £3. If Mill were not here cane growing would not be a commercial proposition as nearest mill is 30 miles away at Rarawai which is owned and operated by the C.S.R. Company, and railway between is owned by them. Rarawai Mill could not take any cane from Lautoka Mill because it hasn't got the capacity. . . . Rarawai could increase its size and take Lautoka cane. Agree that subject land would then have £70 per acre. . . . I didn't arrive at the £13000—Company did. I prepared Schedule " A " in amended S/C based on my opinion and figures. Total amount claimed is over £100,000. That was my opinion at that time ; now I differ. A legal point is involved. If Mill were off subject land but still here, total value would be appreciable but not as much as Schedule " A ". There is nothing to stop Company from subdividing and selling. If Company subdivided and sold it would glut the market. If subject land were cut up and no mill, Company couldn't get valuer's valuations on subdivision. (" Prairie value " defined from text book). My value has been based on prairie

value. . . . Company bought the 13 acres and surrendered land at Namoli. I regarded Namoli and rest of town as being here when I assessed prairie value."

These passages show that Mr. Stokes's valuation has no sure basis. For example, he doubled his valuation of £6500 to £13000. Why ? If he believed £6500 to be the correct figure, what reason existed for increasing it ? Mr. Stokes has given none. Again his statement that he had regarded Namoli and the rest of the town as being there when he assessed prairie value, leaves one in doubt as to what principles he proceeded upon and whether he fully understood them. In the circumstances I feel it would be unsafe to accept his valuation : I therefore reject it.

I set aside the valuation of the Learned Magistrate ; and on the evidence before me I do not accept the valuation either of the valuer, Mr. Tetzner, or of Mr. Stokes. The only course thus left for this Court is to remit the proceedings to the Magistrate's Court with a direction.

I remit the proceedings to the Court below to direct the valuer to make a valuation of the land itself as it at present stands with such advantages as it at present possesses, and viewed as bare land without the sugar mill upon it, and without any consideration of the value of the subject land as including the *de facto* sugar mill.

The principles enunciated in this Judgment may assist the valuer in his task.

The appeal is allowed, with costs.

Sgd. W. D. CAREW, Judge.

Suva, Fiji.

27th May 1954.

In the Supreme Court of Fiji.

No. 27.

Formal Judgment.

No. 27. Formal Judgment dated 27th May, 1954.

IN THE SUPREME COURT OF FIJI.

Appellate Jurisdiction.

Civil Appeal No. 21 of 1954.

BETWEEN

THE COLONIAL SUGAR REFINING COMPANY LIMITED .. .. *Appellant*

AND

S. A. TETZNER .. .. *Respondent.*

Before the Honourable Mr. Justice Carew the 12th, 13th and 14th days of May, 1954, AND for judgment Thursday, the 27th day of May 1954.

UPON READING the Notice of Grounds of Appeal on behalf of the Appellant dated the 1st day of December 1954, and the record of the proceedings before the Magistrate's Court of the First Class at Lautoka

AND UPON HEARING Sir Henry Milne Scott, Q.C. (with him Mr. Phillip Rice and Mr. H. Maurice Scott) of Counsel for the appellant AND Mr. A. D. Leys (with him Mr. R. G. Q. Kermode) of Counsel for the respondent

AND HAVING FOUND that the valuer proceeded on wrong principles in that the benefits given to the neighbourhood by the operations of the sugar mill on the subject land which continue to be a factor in the value of that land were not disregarded by him in assessing its value IT IS ORDERED that this appeal be allowed and that the valuation of £110,493 determined by the Magistrate and set out in his judgment dated the 10th day of October 1953 be set aside AND THAT the proceedings be remitted to the said Magistrate's Court to direct the valuer to make a valuation of the appellant's land itself as it at present stands with such advantage as it at present possesses and viewed as bare land without the sugar mill upon it and without any consideration of the value of the subject land as including the *de facto* sugar mill.

AND IT IS FURTHER ORDERED that the appellant's costs of this appeal be taxed and paid by the Respondent.

By the Court,

Sgd. G. YATES,

Registrar.

No. 28.

Order in Council Granting Special Leave to Appeal.

AT THE COURT OF BALMORAL.

The 31st day of May 1955.

Present :

THE QUEEN'S MOST EXCELLENT MAJESTY.

LORD PRESIDENT. MR. GEOFFREY LLOYD.

EARL OF MUNSTER.

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 23rd day of May 1955 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 Sergius Alexander Tetzner in the matter of an Appeal from the Supreme Court of Fiji between the Petitioner and The Colonial Sugar Refining Company Limited Respondent setting forth (amongst other matters): that the Petitioner desires to obtain special leave to appeal from an Order of the Supreme Court of Fiji allowing an Appeal by the Respondent from an Order of the Magistrate's Court of the First Class at Lautoka in the Colony of Fiji : that the Petitioner is the duly appointed valuer for the purpose of determining the unimproved value of rateable land within the Town of Lautoka pursuant to the Local Government (Towns) Ordinance 1947 : that by its Order dated the 3rd October 1953 the Magistrate's Court reduced from £161,297 to £110,493 the valuation made by the Petitioner of the unimproved value of the land of the Respondent within the said town : that the Respondent appealed to the Supreme Court which on the 27th May 1954 allowed the Appeal and set aside the valuation of £110,493 and remitted the proceedings to the Magistrate's Court to direct the Petitioner to make a fresh valuation : that the Appeal raises a single question of principle regarding the construction and application of the Local Government (Towns) Ordinance 1947 : And humbly praying Your Majesty in Council to grant the Petitioner special leave to appeal from the Order of the Supreme Court of Fiji dated the 27th May 1954 and for such further or other Order as to Your Majesty may appear fit :

In the Privy Council.

No. 28. Order in Council granting Special Leave to Appeal dated 31st May, 1955— *continued.*

"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 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 enter and prosecute his Appeal against the Order of the Supreme Court of Fiji dated the 27th day of May 1954 upon depositing in the Registry of the Privy Council the sum of £400 as security for costs:

"AND THEIR LORDSHIPS do further report to Your Majesty that the proper officer of the said Supreme Court ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the Record proper to be laid before Your Majesty on the hearing of the Appeal upon payment by the Petitioner of the usual fees for the same."

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.

In the Privy Council

No. 6 of 1956.

ON APPEAL FROM THE SUPREME COURT OF FIJI.

BETWEEN

SERGIUS ALEXANDER TETZNER

AND

THE COLONIAL SUGAR REFINING COMPANY LIMITED.

Record of Proceedings

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