46/79

IN THE PRIVY COUNCIL

No. 19 of 1977

ON APPEAL

FROM THE COURT OF APPEAL OF FIJI

BETWEEN

MUKTA BEN (d/o Bhovan)
and SHANTA BEN (d/o Bhimji) — APPELLANTS

and

SUVA CITY COUNCIL — RESPONDENTS

RECORD OF PROCEEDINGS

Wray Smith & Co.,
1 King's Bench Walk
Temple
London
E.C.4

Solicitors for the Appellants

A.L. Philips & Co.
6 Holborn Viaduct
London
E.C.1

Solicitors for the Respondents

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IN THE PRIVY COUNCIL No. 19 of 1977

ON APPEAL

FROM THE COURT OF APPEAL OF FIJI

BETWEEN:

MUKTA BEN (D/O BHOVAN) and
SHANTA BEN (D/O BHIMJI) Appellants

- and -

SUVA CITY COUNCIL Respondents

RECORD OF PROCEEDINGS

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EXHIBITS SEPARATELY REPRODUCED

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IN THE PRIVY COUNCIL

BETWEEN: MUKTA BEN
SHANTA BEN

AND: SUVA CITY COUNCIL

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Ledger card	
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1. Exhibit "O" - Complaints cards of Mr. McFarlane

2. Exhibit "AQ" - Photographs of housing and power station

3. Exhibit "AR" - Photographs of Machinery; also of land development of American Investments Ltd.

4. Exhibit "AS" - Draft Rural Suva Planning Scheme

5. Exhibit "AT" - Plan of Areas referred to in Exhibit "A" pages 70 and following.

6. Exhibit "AZ" - Singh Qualifications and Experience

7. Exhibit "BA" - Sub List

8. Exhibit "BC2" - American Investments Brochure

9. Exhibit "BE" - Plan of Morris Hedstrom Land

10. Exhibit "D1" - Deposited Plan 3265

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11. Exhibit "D5" - Engineering Plan of Road and Site Development

12. Exhibit "DA" - East Plan

13. Exhibit "D7" - Tetzner Plan

IN THE PRIVY COUNCIL

No. 19 of 1977

ON APPEAL

FROM THE COURT OF APPEAL OF FIJI

BETWEEN

MUKTA BEN (d/o Bhovan)
and SHANTA BEN (d/o Bhimji) — APPELLANTS

AND

SUVA CITY COUNCIL — RESPONDENTS

RECORD OF PROCEEDINGS

In the Supreme Court of Fiji

No. 1A
Endorsed Writ dated 3rd October 1968

No. 1A

ENDORSED WRIT
Dated 3rd October 1968

IN THE SUPREME COURT OF FIJI — No. 213 of 1968

BETWEEN 1. MUKTA BEN daughter of Bhovan and
2. SHANTA BEN daughter of Bhimji — Plaintiffs

and SUVA CITY COUNCIL — Defendant

ELIZABETH II, by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and of Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith.

To SUVA CITY COUNCIL a City Council established under the Towns Ordinance Cap. 106, whose office is at Suva.

WE COMMAND you, That within Eight days after the service of this Writ on you inclusive of the day of such service you do

In the Supreme Court of Fiji

No. 1A Endorsed Writ dated 3rd October 1968

cause an appearance to be entered for you in an action at the suit of MUKTA BEN daughter of Bhovan of Suva, Married Woman and SHANTA BEN daughter of Bhinji of Suva, Married Woman and take notice that in default of your so doing the plaintiffs may proceed therein, and judgment may be given in your absence.

WITNESS the Honourable CLIFFORD JAMES HAMMETT

Chief Justice of our Supreme Court, at Suva, this 3rd day of OCTOBER, 1968

KOYA & CO.

Per: (Sgd)
Solicitors for the Plaintiff

GENERAL ENDORSEMENT OF CLAIM

The Plaintiffs claim :

(a) FOR a Declaration that the Defendant in or about the month of September or October, 1967 by its servants and agents entered upon and took possession of and attempted to acquire approximately Twenty (20) acres being part of the Plaintiffs' freehold land containing 90 acres and 2 roods known as "NAIVOCA" (part of) being Lot 2 on Deposited Plan No. 2957 situate in the Island of Vitilevu and in the District of Suva and now comprised in Certificate of Title No. 12381 in the purported exercise of its powers of compulsory acquisition under the Crown Acquisition of Lands Ordinance Cap. 119 and the Towns Cordinance Cap. 106 for the purpose of constructing an Electric Power Station was unlawful at Law.

(b) FOR an injunction restraining the Defendant by its servants or agents from entering the said land, or from carrying out any improvements thereon or from registering any Notice of Acquisition against Certificate of Title No. 12381 hereinbefore mentioned :

(a) Damages for Trespass

(b) Further or other relief as this Honourable Court thinks fit.

(c) Costs of this action.

No. 1B

STATEMENT OF CLAIM

Dated 13th November 1968

In the Supreme Court of Fiji

No. 1B

Statement of Claim dated 13th November 1968

IN THE SUPREME COURT OF FIJI No. 213 of 1968

BETWEEN: 1. MUKTA BEN daughter of Bhovan and

2. SHANTA BEN daughter of Bhimji PLAINTIFFS

AND SUVA CITY COUNCIL DEFENDANT

STATEMENT OF CLAIM

The Plaintiffs say :-

1. THAT at all material times they were the owners of the freehold land known as "NAIVOCA (PART OF)" being Lot 2 on Deposited Plan No. 12381 containing 90 acres and 2 roods formerly comprised in Certificate of Title No. 8316 (hereinafter called "the said land") and now comprised in Certificate of Title No. 12381 situate in the district of Suva in the Island of Viti Levu.

2. THAT the said land is situate outside the boundaries of the City of Suva.

3. THAT at all material times the Defendant was and still is a Town Council for the City of Suva duly established under the Towns Ordinance Cap. 106.

4. THAT in the purported exercise of its powers contained in Section 136 of the Towns Ordinance Cap. 106, the Defendant gave to the Plaintiffs a Notice in writing dated the 27th day of July, 1967 (hereinafter called "the said Notice") whereby it notified :

(a) that it required Twenty acres of land (hereinafter called "the said piece of Land") described in the Schedule to the said Notice and being part of the said land for public purposes absolutely, namely, for the construction of an Electrical Power Station thereon.

(b) that it required that any person claiming to have any right or interest in the said piece of land

In the Supreme Court of Fiji

No. 1B Statement of Claim dated 13th November 1968

should forward a statement of his right and interest and of the evidence thereof and of any claim made by him in respect of such right or interest.

(c) that it intended to enter into possession of the said piece of land at the expiration of eight (8) weeks from the date of the said Notice.

5. THAT on the 24th day of October, 1967 the Plaintiffs lodged a Notice of Claim in writing whereby they notified the Defendant that they were the owners of the said piece of land and claimed compensation for the intended acquisition thereof at the rate of FOUR HUNDRED POUNDS (£400. 0. 0) per acre. This amount was claimed because :

(a) the Defendant at all material times led the Plaintiffs to believe and it expressly and or by implication undertook that it would construct an access road from the King's Road to the said piece of land by means of a Public Road ;

(b) that such Public Road would be constructed at the Defendant's own expense.

6. THAT at the time of lodging the said Notice of Claim the Plaintiffs were unaware :

(a) whether or not the said Notice was valid at law;

(b) whether or not the Defendant under Section 136 of the Towns Ordinance Cap. 106 could lawfully exercise its powers of compulsory acquisition in respect of land situate outside the boundaries of the City of Suva.

(c) whether or not the purpose for which the said piece of land was being acquired by the Defendant was a public purpose within the meaning of the words as defined in Section (2) of the Crown Acquisition of Lands Ordinance Cap. 119.

(d) whether or not the purported acquisition of the said piece of land was lawful.

7. THAT the purported acquisition of the said piece of land is unlawful and void at law because :

(a) the Defendant could have purchased by agreement and on reasonable terms land other than the said piece of land as a suitable site for the purpose of constructing an Electrical Power Station thereon

and it did not do so and therefore the authority obtained by the Defendant from the Governor-in-Council to compulsorily acquire the said piece of land is bad in law.

(b) the area acquired by the Defendant is unreasonable having regard to the declared purpose for which it was being acquired.

(c) the Defendant failed to insert the said Notice once at least in the Gazette and in a news-paper circulating in Fiji as required by Section 7 (4) of the Crown Acquisition of Lands Ordinance Cap. 119.

(d) the Defendant declared its intention in the said Notice to take possession of the said piece of land at the expiration of eight (8) weeks from the date thereof in breach of Section (6) of the Crown Acquisition of Lands Ordinance Cap. 119.

(e) the purpose for which the said piece of land was acquired was and still is not a purpose within the meaning of the word defined in Section (2) of the Crown Acquisition of Lands Ordinance Cap. 119.

(f) the Defendant had no power in law to acquire any land compulsorily outside the boundaries of the City of Suva.

8. THAT the Defendant has not so far paid any compensation or damages for acquiring the said piece of land and has rejected the Plaintiff's Notice of Claim referred to in paragraph (5) hereof.

9. THAT sometime in the month of September, or October, 1967 the Defendant by its servants and agents entered the said piece of land and took possession thereof and thereafter the Defendant commenced construction of an Electrical Power Station thereon.

10. THAT by reason of the foregoing the Plaintiffs have suffered damages.

WHEREFORE the Plaintiffs claim :

(a) FOR a declaration that the Defendant's purported acquisition of Twenty (20) acres of land being part of the Plaintiffs' freehold land containing 90 acres and 2 roods known as "NAIVOCA"(part of) being Lot 2 on Deposited Plan No. 2957 situate in the

In the Supreme Court of Fiji

No. 1B Statement of Claim dated 13th November 1968

Island of Vitilevu and in the District of Suva and now comprised in Certificate of Title No. 12381 under the Crown Acquisition of Lands Ordinance Cap. 119 and the Towns Ordinance Cap. 106 for the purpose of constructing an Electrical Power Station thereon was unlawful at law and the Defendant by its servants or agents has committed trespass thereon.

(b) FOR an injunction restraining the Defendant by its servants or agents from entering the said land, or from carrying out any improvements thereon and from registering any Notice of Acquisition against Certificate of Title No. 12381 hereinbefore mentioned :

(c) Damages

(d) Further or other relief as this Honourable Court thinks fit

(e) Costs of this action.

DELIVERED this 13th day of November, 1968

KOYA & CO.

per: (Sgd) V PARMANANDAU

Solicitors for the Plaintiffs

No. 1C Amended Statement of Claim dated 28th May 1974

No. 1C

AMENDED STATEMENT OF CLAIM
Dated 28th May 1974

IN THE SUPREME COURT OF FIJI No. 213 of 1968

BETWEEN : 1. MUKTA BEN (daughter of Bhovan) and
2. SHANTA BEN (daughter of Bhimji)

Plaintiffs

A N D : SUVA CITY COUNCIL

Defendant

AMENDED STATEMENT OF CLAIM

The Plaintiffs say :-

1. THAT at all material times they were the owners of the freehold land known as "NAIVOCA (PART OF)" being Lot 2 on Deposited Plan No. 2957 containing 90 acres and 2 roods formerly comprised in Certificate of Title No. 8316 (hereinafter called "the said land") and now comprised in Certificate of Title No. 12381 situate in the district of Suva in the Island of Viti Levu.

2. THAT the said land is situate outside the boundaries of the City of Suva.

3. THAT at all material times the Defendant was and still is a Town Council for the City of Suva duly established under the Towns Ordinance Cap. 106.

4. THAT in the purported exercise of its powers contained in Section 136 of the Towns Ordinance Cap. 106, the Defendant gave to the Plaintiffs a Notice in writing dated the 27th day of July, 1967 (hereinafter called "the said Notice") whereby it notified :

(a) that it required an area of land (hereinafter called "the said piece of Land") purportedly described in the Schedule to the said Notice and being part of the said land for public purposes absolutely, namely, for the construction of an Electrical Power Station thereon.

(b) that it required that any person claiming to have any right or interest in the said piece of land should forward a statement of his right and interest and of the evidence thereof and of any claim made by him in respect of such right or interest.

(c) that it intended to enter into possession of the said piece of land at the expiration of eight (8) weeks from the date of the said Notice.

5. THAT on the 25th day of October, 1967 the Plaintiffs lodged a Notice of Claim in writing whereby they notified the Defendant that they were the owners and registered proprietors of the said piece of land and claimed compensation for the intended acquisition thereof at the rate of FOUR HUNDRED POUNDS (£400. 0. 0) per acre. This amount was claimed because :

(a) the Defendant at all material times led the Plaintiffs to believe and it expressly and or by implication undertook that it would construct an access road from the King's Road to the said land by means of a Public Road;

In the Supreme Court of Fiji

No. 1C Amended Statement of Claim dated 28th May 1974

(b) that such Public Road would be constructed at the Defendant's own expense.

6. THAT at the time of lodging the said Notice of Claim the Plaintiffs were unaware :

(a) whether or not the said Notice was valid at law;

(b) whether or not the Defendant under Section 136 of the Towns Ordinance Cap. 106 could lawfully exercise its powers of compulsory acquisition in respect of land situate outside the boundaries of the City of Suva;

(c) whether or not the purpose for which the said piece of land was being acquired by the Defendant was a public purpose within the meaning of the words as defined in Section (2) of the Crown Acquisition of Lands Ordinance Cap. 119;

(d) whether or not the purported acquisition of the said piece of land was lawful.

7. THAT the Defendant in or about the month of September 1968 wrongfully and without lawful authority entered upon and took possession of a part of the said land.

8. THAT the said entry into and the said taking of possession referred to in paragraph (7) hereof were for the purpose of constructing and operating a power station for the supply of electricity as a trading operation and for the purpose of providing housing for persons to be employed in the said Power Station.

9. THAT the Defendant has wrongfully and without lawful authority continued in possession of the said piece of land and wrongfully and without lawful authority contends that it is entitled to continue in possession thereof.

10. THAT the purported acquisition of the said piece of land is unlawful and void at law

P A R T I C U L A R S

(a) the Defendant could have purchased by agreement and on reasonable terms land other than the said piece of land as a suitable site for the purpose of constructing an Electrical Power Station thereon and it did not do so and therefore the authority obtained by the Defendant from the Governor-in-Council to compulsorily acquire the said piece

of land is bad in law.

(b) the area acquired by the Defendant is unreasonable having regard to the declared purpose for which it was being acquired.

(c) the Defendant failed to insert the said Notice once at least in the Gazette and in a newspaper circulating in Fiji as required by Section 7 (4) of the Crown Acquisition of Lands Ordinance Cap.119.

(d) the Defendant declared its intention in the said Notice to take possession of the said piece of land at the expiration of eight (8) weeks from the date thereof in breach of Section (6) of the Crown Acquisition of Lands Ordinance Cap. 119.

(e) the purpose for which the said piece of land was acquired was and still is not a purpose within the meaning of the word defined in Section (2) of the Crown Acquisition of Lands Ordinance Cap. 119.

(f) the Defendant had no power in law to acquire any land compulsorily outside the boundaries of the City of Suva.

(g) the application made by the Defendant for Authority to acquire compulsorily did not define the land to which it related.

(h) the application made by the Defendant for authority to acquire compulsorily did not afford a valid or effective basis upon which The Governor in Council could validly authorise compulsory acquisition of the said piece of land.

(i) the purported authorisation by the Governor in Council of compulsory acquisition of the said piece of land was null and void.

(j) the purported authorisation by the Governor in Council of compulsory acquisition of the said piece of land was ultra vires.

(k) the purported authorisation by the Governor in Council of compulsory acquisition did not authorise compulsory acquisition of the said piece of land.

(l) the purported authorisation by the Governor in Council of compulsory acquisition did not authorise

In the Supreme Court of Fiji

No. 1C Amended Statement of Claim dated 28th May 1974

compulsory acquisition of the said piece of land for the purposes for which the Defendant took possession of and purported to compulsorily acquire it.

(m) the Defendant took possession of and purported to compulsorily acquire more land than was purportedly authorised by the Governor in Council to be compulsorily acquired.

(n) the notices required by Section 7 (4) of the Crown Acquisition of Lands Ordinance Cap. 119 were not given.

(o) the Defendant failed to comply with and acted in breach of the sub-division of Land Ordinance Cap. 118.

(p) the Defendant in purportedly compulsorily acquiring the said piece of land acted in breach of its undertaking to the Plaintiffs referred to in paragraph 5 hereof.

(q) neither the said application nor the said purported compulsory acquisition was duly authorised by resolution of the defendant.

(r) the Plaintiffs refer and repeat paragraphs 12 to 19 hereof (both inclusive).

11. THAT the Defendant is carrying on the trade or business of the manufacture and supply of electricity as a trading function and the Defendant has no power or authority to do so. The carrying on thereof is ultra vires the Defendant.

12. THAT prior to its entering into and taking possession of the said part of the said land the Defendant failed to comply with the conditions precedent prescribed by the Towns Ordinance Cap. 106 Section 136 (1).

13. THAT prior to its entering into and taking possession of the said part of the said land the Defendant failed to offer reasonable terms to the Plaintiffs for the said part of the said land.

14. THAT the Defendant wrongly or erroneously represented its case to the Governor in Council under the Towns Ordinance Cap. 106 Section 136 (1).

15. THAT the Defendant wrongfully failed to inform the Plaintiffs when representing the case to the Governor in

Council under the Towns Ordinance Cap. 106 Section 136 (1) or at all that it was making such representations.

16. THAT the Plaintiffs were not informed by the Governor in Council or at all of the making of the said representations as aforesaid and the Governor in Council made his decision on the said representations without affording the Plaintiffs the opportunity to submit relevant material to him against those representations and against the forming of the opinion by the Governor in Council that he should accede to those representations.

17. THAT the Defendant wrongfully represented to the Governor in Council that it had offered reasonable terms to the Plaintiffs for the said part of the said land.

18. THAT the said notice did not describe the land or lands to which it was intended to refer as required by the Crown Acquisition of Lands Ordinance or at all.

19. THAT the said notice did not define the boundaries of the land to which it purported to relate and related to more land than was purportedly authorised by the Governor in Council to be acquired.

20. THAT by reason of the matters aforesaid the said notice was and is null and void and of no effect.

21. THAT by reason of the matters aforesaid the purported entry into and taking possession of the said piece of land was ultra vires the defendant and was wrongfully and without lawful authority.

22. THAT the Defendant has not so far paid any compensation or damages for acquiring the said piece of land and has rejected the Plaintiffs Notice of Claim referred to in paragraph (5) hereof.

23. THAT in or about the month of September 1968 the Defendant by its servants and agents entered the said piece of land and took possession thereof and thereafter the Defendant commenced construction of an Electrical Power Station thereon.

24. THAT by reason of the foregoing the Plaintiffs have suffered damages.

WHEREFORE the Plaintiffs claim :

(a) FOR a declaration that the Defendant's purported acquisition of land being part of the Plaintiffs'

In the Supreme Court of Fiji

No. 1C
Amended Statement of Claim dated 28th May 1974

freehold land containing 90 acres and 2 roods known as "NAIVOCA" (part of) being Lot 2 on Deposited Plan No. 2957 situate in the Island of Vitilevu and in the District of Suva and now comprised in Certificate of Title No. 12381 under the Crown Acquisition of Lands Ordinance Cap. 119 and the Towns Ordinance Cap. 106 for the purpose of constructing an Electrical Power Station thereon was unlawful at law and the Defendant by its servants or agents has committed trespass thereon.

(b) FOR a declaration that the Defendant's entry into and taking of possession of the said piece of land is ultra vires the Defendant and is wrongful and without lawful authority.

(c) FOR a declaration that the Defendant is trespassing upon the said piece of land.

(d) FOR an injunction restraining the Defendant by its servants or agents from entering the said piece of land, or from carrying out any improvements thereon and from registering any Notice of Acquisition against Certificate of Title No. 12381 hereinbefore mentioned.

(e) Damages.

PARTICULARS OF SPECIAL DAMAGE

(i) loss of use and occupation of the said piece of land from the date of the said Notice;

(ii) loss of rent of the said piece of land and of the building thereon.

(f) Further or other relief as this Honourable Court thinks fit.

(g) Costs of this action.

DELIVERED this 28th day of May, 1974

KOYA AND CO.
per (Sgd) S M KOYA
Solicitors for the Plaintiffs

To: The Defendant or its Solicitors,
Messrs. Grahame & Co., of Suva.

No. 2

In the Supreme Court of Fiji

No. 2
Re-Amended Defence dated 10th September 1974

RE-AMENDED DEFENCE

Dated 10th September 1974

IN THE SUPREME COURT OF FIJI No. 213 of 1968

Between: 1. MUKTA BEN (daughter of Bhovan) and
2. SHANTA BEN (daughter of Bhimji) Plaintiffs

and SUVA CITY COUNCIL Defendant

RE-AMENDED DEFENCE

1. In answer to paragraph 1 of the amended Statement of Claim, the defendant :

(a) While admitting that at material times, including the time of the giving of the Notice of Acquisition referred to in paragraph 4 of the amended Statement of Claim, the plaintiffs had an equitable interest in the land described in paragraph 1 of the amended Statement of Claim ("the said land") as purchasers from one Sukichand of an estate in fee simple in the said land (together with other land) under a binding Sale and Purchase Agreement dated 22nd July, 1964, denies that the plaintiffs were at any material time the legal owners of the said land or the registered proprietors of any estate or interest therein ;

(b) Says that all material times prior to 16th October, 1967 the said Sukichand was the sole registered proprietor of the said land for an estate in fee simple.

2. The defendant admits the allegations contained in paragraphs 2 and 3 of the amended Statement of Claim.

3. In answer to paragraph 4 of the amended Statement of Claim the defendant :

(a) Admits that it gave to the plaintiffs the notice in writing (hereinafter called "the Notice of Acquisition") referred to in the said paragraph but says that as a matter of law the giving of the Notice of Acquisition was authorised by section 15 of the Suva Electricity Ordinance (Cap. 78)

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alternatively to Section 136 (1) of the Towns Ordinance;

(b) Says that at the time of giving the Notice of Acquisition the plaintiffs neither were the registered proprietors of any estate nor had any legal interest in the said land and were not mortgagees encumbrancees or lessees thereof;

(c) Says that the Notice of Acquisition was given to the said Sukichand as well as to the plaintiffs and that at the time when such notice was given to him no person other than the said Sukichand had in the said land any of the interests referred to in section 5 of the Crown Acquisition of Lands Ordinance (Cap. 119);

(d) Will argue as a matter of law that by reason of the facts and matters alleged in paragraphs 1, 3 (b) and 3 (c) hereof the defendant was under no obligation to give to the plaintiffs the Notice of Acquisition and was under no obligation to give such Notice to anyone but the said Sukichand.

4. In answer to paragraph 5 of the amended Statement of Claim the defendant, while admitting that on 25th October, 1967 the plaintiffs lodged a Notice of Claim in writing whereby they notified the defendant that they were the owners and registered proprietors of the said land and claimed compensation for the intended acquisition thereof at the rate of £400 per acre, denies that the defendant at any material time led the plaintiffs to believe or expressly or by implication undertook that it would construct an access road from the Kings Road to the said piece of land by means of a public road or that such public road would be constructed at the defendant's own expense.

5. The defendant does not know and cannot admit any of the facts or matters alleged in paragraph 6 of the amended Statement of Claim.

6. In answer to paragraph 7 of the amended Statement of Claim the defendant says that on or about 30th September, 1967 it entered into possession and took possession of the said land, but denies that such acts were wrongful or without lawful authority.

7. In answer to paragraph 8 of the amended Statement of Claim the defendant while admitting that it entered into and took possession of the said land for the purpose of constructing

and operating a Power Station for the supply of electricity as a trading operation and for the purpose of providing housing for persons employed in the Power Station will argue in point of law that each of such purpose was a lawful purpose.

8. In answer to paragraph 9 of the amended Statement of Claim the defendant, while admitting that it has continued in possession of the said land and that it contends that that it is entitled so to continue, says that such continuation is lawful and not wrongful.

9. In answer to paragraph 10 of the amended Statement of Claim the defendant denies that the acquisition therein referred to was unlawful or void at law. The defendant further denies each and every one of the facts and matters alleged in the particulars appended to such paragraph except the facts and matters alleged in sub-paragraph (c).

10. In answer to paragraph 11 of the amended Statement of Claim the defendant, while admitting that it is carrying on a trade or business on the said land of manufacturing and supplying electricity as a trading function, will argue as matters of law :

(a) That it has power so to do under the terms of the Suva Electricity Ordinance (Cap. 87);

(b) That the plaintiffs have no standing to assert that the carrying on of the trade or business is ultra vires the defendant.

11. In answer to paragraph 12 of the amended Statement of Claim the defendant denies that prior to its entering into and taking possession of the said land it failed to comply with any conditions prescribed by the Towns Ordinance (Cap. 106) Section 136 (1).

12. In answer to paragraph 13 of the amended Statement of Claim the defendant denies that prior to its entering into and taking possession of the said land it failed to offer reasonable terms to the plaintiffs for the said land.

13. The defendant admits the allegation contained in paragraph 14 of the amended Statement of Claim that it represented its case to the Governor in Council in support of the proposal for compulsory acquisition of the said land but denies that such representation was erroneous or wrongful.

14. In answer to paragraph 15 of the amended Statement of

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Claim the defendant admits that it did not inform the plaintiffs when representing the case to the Governor in Council that it was making such representations, but denies that its omission to inform the plaintiffs was wrongful.

15. Further and in the alternative to paragraph 14 hereof, the defendant will argue as a matter of law that the representations to the Governor in Council referred to in paragraph 15 of the amended Statement of Claim were referable either to the provisions of section 15 of the Suva Electricity Ordinance (Cap. 87) or to the provisions of section 136 (1) of the Towns Ordinance (Cap. 106).

16. In answer to paragraph 16 of the amended Statement of Claim the defendant admits that it did not inform the plaintiffs of the making of the representations referred to in such paragraph but does not know and cannot admit that the Governor in Council made his decision on the said representations without affording the plaintiffs an opportunity to submit relevant material to him against the representations or against the forming of the opinion by the Governor in Council that he should accede to those representations.

17. In further answer to paragraph 16 of the amended Statement of Claim the defendant will argue as a matter of law that neither the Governor in Council nor the defendant were under any obligation to afford the plaintiffs any opportunity to submit relevant material to the Governor in Council against the said representations or against forming of the opinion by the Governor in Council that he should accede to such representations.

18. In answer to paragraph 17 of the amended Statement of Claim the defendant, while admitting that it represented to the Governor in Council that it had offered reasonable terms to the plaintiffs for the said land, denies that the said representation was wrongful.

19. In answer to paragraph 18 of the amended Statement of Claim the defendant :

(a) Says that the Notice of Acquisition sufficiently described the said land ;

(b) Argues as a matter of law that if the Notice of Acquisition contained an insufficient description of the said land such insufficiency did not render the said notice invalid.

20. In answer to paragraph 19 of the amended Statement of Claim the defendant :

(a) Denies the Notice of Acquisition did not define the boundaries of the land to which it purported to relate;

(b) Will argue as a matter of law that if the Notice of Acquisition omitted to define such boundaries such omission did not render the said notice invalid;

(c) Denies that the Notice of Acquisition related to more land than the Governor in Council authorised to be acquired.

21. In answer to paragraph 20 of the amended Statement of Claim the defendant denies that by reason of any of the matters therein referred to the Notice of Acquisition was or is null and void and of no effect.

22. In answer to paragraph 21 of the amended Statement of Claim the defendant denies that its entry into and taking possession of the said land was ultra vires the defendant or was wrongful or without lawful authority.

23. In answer to paragraph 23 of the amended Statement of Claim the defendant says that it by its servants and agents entered the said land and took possession thereof on or about 30th September, 1967.

24. In answer to paragraph 24 of the amended Statement of Claim the defendant denies that the plaintiffs have suffered damage.

25. In answer to the whole of the amended Statement of Claim the defendant says that the plaintiffs have no standing to maintain this action or to assert that the Notice of Acquisition was invalid or null and void, by reason of the following facts and matters :

(a) the facts and matters alleged in paragraphs 1, 3(b), 3(c) and 3(d) hereof;

(b) the said Sukichand accepted and acted upon the Notice of Acquisition by relinquishing possession of the said land in compliance with its terms and by claiming and receiving compensation from the defendant in an amount agreed between himself and the Defendant pursuant to the Crown Acquisition of Lands Ordinance (Cap. 119).

26. In answer to the whole of the Statement of Claim the defendant says that the plaintiffs were not entitled to

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immediate possession of the said land either at the time of the giving of the Notice of Acquisition or at the time of the issue of the Writ in this action.

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27. In answer to the whole of the amended Statement of Claim the defendant says that the plaintiffs are by their conduct estopped from asserting that the Notice of Acquisition or any acts done in pursuance of it or the entry by the defendant into possession of the said land or the defendant's continuance in possession of the said land are unlawful.

PARTICULARS

(a) Between the giving of the Notice of Acquisition and the 19th September, 1968 the plaintiffs :

(i) claimed compensation and negotiated with the defendant on the question of compensation for the acquisition referred to in the said notice;

(ii) knew, as was the fact, that the defendant was incurring expense in connection with such negotiations and in connection with surveying the said land;

(iii) knew, as was the fact, that the defendant had entered into possession of the land referred to in the said Notice;

(iv) knew, as was the fact, that the defendant was continuing in possession of the said land;

(v) knew, as the facts were, that the defendant was incurring expense in connection with the planning and construction of, and was in fact constructing works and buildings on the said land and facilities for access to the said land;

(vi) knew, as was the fact, that the defendant was negotiating with Sukichand for possession of the said land and on the question of the compensation payable to him for his interest in the said land;

(vii) knew, as was the fact, that the defendant was incurring expense in connection with the negotiations referred to in (vi);

(viii) despite the knowledge referred to in (i) to (vii) inclusive, raised no objection to the acts of the defendant referred to in (iii), (iv) and (v)

hereof and in fact expressed their consent to the definition and delineation of the area of the boundaries of the area intended to be embraced in the Notice of Acquisition by appending their respective signatures to a survey plan of the said land dated 5th October, 1967;

(b) By their conduct and knowledge as referred to in (a) hereof, the plaintiffs represented to the defendant that they did not dispute the validity of the said Notice of Acquisition and the defendant acted accordingly.

(c) If the plaintiffs are allowed to depart from such representation the defendant would suffer detriment.

(Sgd) GRAHAME & CO.

DELIVERED the 10th day of September, 1974.

This Re-amended Defence is filed by Grahame & Co. of Mansfield Chambers, 165 Victoria Parade, Suva Solicitors for the above named defendant whose address for service is at the office of the said Grahame & Co., Suva.

To the plaintiffs and/or their Solicitors
Messrs. Koya & Co. of Suva.

No. 3

AMENDED REPLY TO RE-AMENDED DEFENCE

Dated 10th September 1974

IN THE SUPREME COURT OF FIJI No. 213 of 1968

BETWEEN : MUKTA BEN (daughter of Bhovan) and SHANTA BEN (daughter of Bhimji) PLAINTIFFS

A N D : SUVA CITY COUNCIL DEFENDANT

AMENDED REPLY OF THE PLAINTIFFS TO THE RE-AMENDED DEFENCE OF THE DEFENDANT SUVA CITY COUNCIL DELIVERED THE 10TH DAY OF SEPTEMBER, 1974

As to the Re-Amended Defence of the Defendant Suva City

In the Supreme Court of Fiji

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Amended Reply to Re-Amended Defence dated 10th September 1974

Council the plaintiffs say :

1. As to paragraph 1 thereof :

(a) they became the registered proprietors of the fee simple of the said land on the 16th day of October 1967.

(b) at no time on or subsequent to the said 16th day of October 1967 has the defendant served any Notice to Treat or Notice of Acquisition pursuant to the Towns Ordinance or at all upon them in respect of the said land.

(c) by virtue of the Land (Transfer and Registration) Ordinance and by virtue of the Land Transfer Act 1971 the title of the plaintiffs to the said land is an indefeasible title.

(d) it is irrelevant to any issue between the plaintiffs and defendant that the plaintiffs were not prior to the said 16th day of October 1967 the registered proprietors of the said land.

2. Save as to the admissions therein contained the plaintiffs join issue with the defendant upon paragraphs 2 and 3 (both inclusive) of its Re-Amended Defence.

3. As to paragraph 4 thereof :

(a) Save as to the admissions therein contained the plaintiffs join issue with the defendant thereon.

(b) the said undertaking referred to in paragraph 5 of the Statement of Claim herein was at all material times and is binding upon the defendant.

(c) the defendant is estopped from denying that it gave and was bound by the said undertaking.

4. Save as to the admissions therein contained the plaintiffs join issue with the defendant upon paragraph 5 to 24 (both inclusive) of its Re-Amended Defence.

5. As to paragraph 25 thereof the plaintiffs say :

(a) Save as to the admissions therein contained they join issue with the defendant thereon.

(b) Insofar if at all as a Notice of Acquisition was served upon the said Sukichand and acted upon by the said Sukichand (neither of which is admitted)

such service or act or acts are irrelevant to any issue between the plaintiffs and the defendant.

6. Save as to the admissions therein contained the plaintiffs join issue with the defendant upon paragraphs 26 and 27 (both inclusive) of its Re-Amended Defence.

7. As to paragraph 27 thereof the plaintiffs further say that insofar as the defendant has done any acts and incurred any expense as therein alleged the said acts and the said incurring of expense were ultra vires the defendant and illegal.

PARTICULARS

(a) The defendant was not lawfully authorised to compulsorily acquire the said land.

(b) The purported compulsory acquisition of the said land by the defendant was ultra vires and was null and void and of no effect.

(c) The defendant did not hold all necessary permits for the said work prior to commencing the same and in particular did not hold a building permit from the Suva Rural Local Authority.

(d) The defendant did not fifteen days at least before commencing the execution of any works serve upon the Director of Public Works the Notice and Plan required by the Suva Electricity Ordinance (Cap. 87) Section 6(1).

(e) No Plan of such works and buildings has been approved or is to be deemed to be approved pursuant to the Suva Electricity Ordinance (Cap. 87) Section 6.

(f) The defendant did not obtain the approval of the Sub-division of Land Board to the sub-division of the said land into two parts prior to taking part of the said land.

(g) Insofar as the defendant obtained the approval of the Sub-division of Land Board to the sub-division of the said land it did not comply with the conditions imposed by the said Board and by virtue thereof is to be treated as not having and as not having acted upon the said approval.

Amended pursuant to Order of the Court made on the 9th day of September 1974.

In the Supreme Court of Fiji

DELIVERED this 10th day of September, 1974.

KOYA & CO.

Per:(Sgd) S M KOYA
Solicitors for the Plaintiffs

No. 3
Amended Reply to Re-Amended Defence dated 10th September 1974

This AMENDED REPLY to RE-AMENDED DEFENCE is filed by MESSRS. KOYA & CO., of Suva, Solicitors for the above-named Plaintiffs whose address for service is at the Chambers of the said Solicitors at 23 Cumming Street, Suva.

To the Defendant and/or its Solicitors
MESSRS. GRAHAME & CO., of Suva.

No. 4
Warren under Examination by Co. for Plaintiff dated 11th September 1974

No. 4

WARREN UNDER EXAMINATION
BY CO. FOR PLAINTIFF
Dated 11th September 1974

IN THE SUPREME COURT OF FIJI

Civil Jurisdiction

Action No. 213 of 1968

IN COURT

Before the Honourable Mr. Justice Stuart, Judge
Wednesday the 11th day of September, 1974 at 9.30 a.m.

Between: 1. MUKTA BEN d/o Bhovan
2. SHANTA BEN d/o Bhimji Plaintiffs

and SUVA CITY COUNCIL Defendant

Mr. K.H. Gifford, Q.C. and Mr. V. Parmanandam for the Plaintiffs.

Mr. T.E.F. Hughes, Q.C. and Mr. R. Lateef for the Defendant.

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DONALD JOHN WARREN, residing at N.S.W. Australia

XM by Mr. Gifford:

Q. Mr. Warren, your full name is Donald John Warren?

A. Yes.

Q. And you reside at No. 1 Marsden Crescent, Port Macquarie, New South Wales, Australia?

A. Yes.

Q. You are a duly qualified barrister and solicitor of Supreme Court of Fiji?

A. Yes, Sir.

Q. And you served in Suva as a member of the firm of Munro, Warren, Leys and Kermode?

A. Yes, Sir.

Q. Which is now the firm of Munro, Leys and Kermode?

A. Yes, Sir.

Q. Were you responsible for handling the affairs of the plaintiffs in this action.

A. Yes, Sir, I was.

Q. Anddid you act for them both in relation to their dealings with the vendor and in relation to Suva City Council?

A. Yes, Sir.

Q. From whom did the plaintiffs purchase the land which is in issue in this action?

A. One Sukhi Chand, son of Sita Ram.

Q. Would you have a look at that copy of certificate of title No. 8316. To what does that certificate of title relate?

A. It comprises a piece of land containing 94 acres 1 rood 8 perches. The lower portion shows a diagram of the

In the Supreme Court of Fiji

No. 4
Warren under Examination by Co. for Plaintiff dated 11th September 1974

land which the plaintiffs bought from Sukhi Chand.

Gifford: I tender that copy of certificate of title No.8316.

Court: Exhibit B: certificate of title No. 8316.

Hughes: I object. The document speaks for itself.

Gifford: My Lord, it becomes necessary at a certain stage to relate this to two other certificate of titles. There is a discrepancy between the two certificates of title. That discrepancy is explained if only this witness identified the intercourse shown on that diagram.

Q. You refer to an easement boundary. Would you hold that up.

(Witness explains on the diagram)

Q. What is that irregular line going more or less south?

A. The easement.

Q. Is part of the land sold by Sukhi Chand to the plaintiffs west of that line?

A. The western most portion is a very small portion.

Q. And what does that western most area have as a boundary?

A. Mainly a high water mark.

Q. And that high water mark is a high water mark of what?

Hughes: I object to that, My Lord. The document would speak itself. The witness has not qualified himself to say what the high water mark is and where it is.

Court: That is a part of the document.

(Document tendered by Mr. Gifford and marked Exhibit "B").

Gifford: Mr. Warren, you will see that the western boundary on that land has the words water mark. Are you able to identify of your own knowledge what the water is that is referred to as "water mark" - what it is?

A. Yes, Sir.

Court: What is that?

A. It is Wainivula Creek.

Q Are you familiar with the present situation in respect of the land formerly comprised in certificate of title 8316?

A. Yes, Sir.

Q. Is that land in one title or more than one title?

A. In two separate titles.

Q Would you have a look at those two copy documents and say whether they relate to the same or different land to that comprised in certificate of title 8316?

A. These two titles together make up the whole of the land which was comprised in certificate of title 8316 - certificate of title 12381 and 12382.

Gifford: I tender those two documents, My Lord.

Court: Exhibit C is certificate of title 12381 and Exhibit D is certificate of title 12382.

Q. Can you tell me when certificate of title 12381 was issued?

A. On the 16th October, 1967, the same date as on the other title.

Q And certificate of title 12381, how many acres does that comprise of?

A. 90 acres 2 roods.

Q. And certificate of title 12382, does that show it comprised of 3 acres 2 roods and 16 perches?

A. Yes, Sir.

Q. If you add those two areas together you get 94 acres 16 perches?

A. Yes, Sir.

Q. And that differs does it not from the area of 94 acres

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No. 4 Warren under Examination from Co. for Plaintiff dated 11th September 1974

1 rood 8 perches shown on certificate of title 8316, Exhibit "B".

A. Yes, Sir.

Q. You, yourself, have practised in Fiji for many years?

A. Yes, Sir.

Q. And had practised here in the city of Suva?

A. Yes, Sir.

Q. In the light of the knowledge you gained during those years can you tell us why, in your opinion, there is a discrepancy of area of 94 acres and 16 perches on the one hand and 94 acres 1 rood 8 perches on the other.

Hughes: I object to that. It does not go to any issue.

Gifford: I would respectfully submit that a solicitor who has practised here for many years can speak as to variations in areas in the locality. It can be a matter of professional experience as to why a discrepancy occurred and we submit that the reason for that is directly material.

Hughes: My submission is that he has not qualified himself to give expert evidence.

Gifford: I will reframe the question. Mr. Warren how does the discrepancy between 94 acres and 16 perches in the two new titles on the one hand and 94 acres 1 rood 8 perches on the other arise?

A. I do not know.

Q. How many years have you practised as a solicitor in Suva?

A. In Suva about 36 years.

Q. During that 36 years did you have cause to examine any discrepancy in areas in the locality of Suva.

A. Yes, frequently.

Q. And does that include the type of area where the land had a high water mark boundary?

A. This would be a very common cause for a discrepancy in area.

Q. In your experience what was that common cause of discrepancy of titles with a high water mark boundary?

Hughes: I object My Lord. It is general experience and irrelevant.

Court: I think it would be admissible. It relates to his experience.

Gifford: I repeat the question. In your experience what was that common cause of discrepancy of titles with a high water mark boundary?

A. An alteration in the position of the surveyed high water mark - due to erosion and accretion.

Q. In the light of your experience what is your belief as to the cause of the discrepancy in this case?

Hughes: I object on the ground that it is irrelevant.

Gifford: I would submit that while he is not a surveyor he can still answer to that.

Q. Mr. Warren, what do you say is the cause of discrepancy in this particular case?

A. What I believe is that the discrepancy arose from an alteration in the position of the high water mark boundary of Wainivula Creek between the two surveys.

Q. Mr. Warren, you have said that there was a purchase of the eastern part of the land by the parties from Sukhi Chand?

A. Yes.

Q. Was that land bought pursuant to any agreement between the plaintiffs and Sukhi Chand?

A. Yes, Sir.

Q. Who prepared the agreement?

A. I prepared that document.

Q. Would you look at this document, Mr. Warren.

A. This is the photostat copy of the document I prepared.

Q. That may be tendered, My Lord. Would you tell us the

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parties to it?

A. The vendor is Sukhi Chand and the purchasers are the plaintiffs in this action. The document is dated 22nd July, 1964.

Gifford: I tender that, My Lord.

Hughes: No objection.

(Document marked Exhibit "E").

The Court adjourned at 4.33 p.m.

IN THE SUPREME COURT OF FIJI

Civil Jurisdiction — Action No. 213 of 1968 — 10

IN COURT

Before the Honourable Mr. Justice Stuart, Judge

Thursday the 12th day of September, 1974 at 9.30 a.m.

Between: 1. MUKTA BEN d/o Bhovan
2. SHANTA BEN d/o Bhimji — Plaintiffs

and SUVA CITY COUNCIL — Defendant

Mr. K.H. Gifford, Q.C. and Mr. V. Parmanandam for the plaintiffs.

Mr. T.E.F. Hughes, Q.C. and Mr. R. Lateef for the Defendant.

MR. WARREN Resworn — 20

XM (Contd.)

Gifford: Mr. Warren have you with you a copy of Exhibit "E" the contract of sale between Mr. Sukhi Chand and the plaintiffs?

A. No.

Q. I pass it to you. Mr. Warren, under paragraph 3 of that contract of sale, the vendor is under an obligation to give possession?

A. Yes, Sir.

Q. Did the vendor in fact give possession to the plaintiffs on the date specified in Clause 3 in the contract of sale?

A. No.

Q. Do you of your own knowledge know why?

A. Yes. The completion of the sale and purchase by transfer and delivery of possession was delayed because the vendor Sukhi Chand was unable to comply with an undertaking to give right of way over a property owned by himself and his brother Chanik Prasad. Difficulty was found in getting Chanik Prasad's signature to the necessary document. By agreement between the parties the date for giving possession was simply delayed.

Court: Delayed?

A. Indefinitely, pending the completion of the transaction by registration of that easement.

Q. Do you know of your own knowledge what was the cause of the delay in getting Prasad's signature?

A. The firm of Grahame & Co., were acting for Chanik Prasad. I was seeking execution of the document through them and I only know what they informed me.

Q. And that was?

Hughes: I object to this. It has been established by the evidence given that there was a delay indefinitely. The reason for the delay which took place is immaterial.

Court: It may have relevance. It should be relevant for the witness to say why.

Gifford: Could you tell us what Grahame & Co. told you was the reason for the delay in obtaining the execution of the document.

A. My recollection is that it was due to Mr. Chanik Prasad's insobriety and frame of mind.

Q. Was the document ultimately executed?

A. Yes, Sir, it was.

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Q. Did the plaintiffs ever release the vendor from the obligation to give possession?

Hughes: I object to that. That is a question of law. If something was done the evidence should be given as to what was done. It is asking the witness to put a legal transaction.

Court: I think the question is admissible.

A. I was not aware of any such release.

Q. You said "was". Do you know of any at all?

A. I don't know of any release of that obligation.

Court: Do you know of any action by the purchasers that would tend to release?

A. I do not know of any such act, My Lord.

Gifford: Do you produce a copy of an item which appeared in the "Fiji Times" headed "New Suva Power Station Site" and published on the 9th October, 1964?

A. I do.

Hughes: Objected.

Court: Objection overruled.

Gifford: I tender that item.

Court: Exhibit "F".

Q. Mr. Warren, after that was published did Mr. Jethalal Naranji consult you?

A. Yes, My Lord.

Q. Who is Mr. Jethalal Naranji?

A. He was at that time an attorney of the plaintiffs and the husband of firstnamed plaintiff. The firstnamed purchaser, Mukta Ben.

Q. You say at that time. Has he ceased to be the attorney of both the plaintiffs?

Hughes: I object to that, My Lord.

Court: Yes, I see that. Objection upheld.

Gifford: When in relation to the publication of Exhibit "F" did Mr. Jethalal Naranji consult you?

A. As far as I recall it was on the same day, 9th October, 1964 when he brought that exhibit to me.

Q. And did he when he consulted you bring to you any document which he placed before you?

A. Yes.

Q. Would you have a look and say that is a true copy of what Mr. Jethalal Naranji produced to you?

A. It is, My Lord.

Gifford: I tender that, My Lord.

Hughes: At this stage I presume further evidence will be called. It is a copy of a letter which was handed by Mr. Jethalal Naranji to Mr. Warren and Mr. Warren has identified just a copy. If the matter rests there, that does not make the document admissible.

Gifford: The document is admissible showing what happened thereafter.

Hughes: On that basis I withdraw that objection. I thought the matter rested there.

Court: Very well. That's marked Exhibit "G".

Gifford: If you take a copy of Exhibit "G" - that bears certain handwriting on it?

A. Yes.

Q. Whose handwriting is it?

A. It is mine apart from the signature at the bottom.

Q. And whose is that?

A. That is the signature of Jethalal Naranji.

Q. What did you do after receipt of that letter and after conferring with Mr. Jethalal Naranji?

A. I spoke to Mr. McFarlane, the Suva City Council's Solicitor of the firm of Grahame & Co.

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Q. Can you tell us approximately when that was?

A. It would have been either on the 9th of October, 1964 within a day or two after that.

Q. And what was the substance of the conversation?

A. I explained the nature of Mr. Jethalal Naranji's proposal as set out in his draft letter and Mr. McFarlane and I appointed a conference to be held with the Town Clerk and the Electrical Engineer.

Q. When you say Town Clerk and Electrical Engineer, the Town Clerk and Electrical Engineer of whom?

A. The Suva City Council Town Clerk and Suva City Council Electrical Engineer.

Q. Did that conference take place?

A. It took place on the 13th October, 1964.

Q. And who was present?

A. My handwritten note made immediately after the conference mentioned only Mr. Balfour (the Town Clerk) and Mr. Smith the Electrical Engineer. I can't say whether anyone else was present from my recollection. I was present also.

Q. I do not understand that. Do you mean the conference solely consisted of the Town Clerk and Mr. Smith?

A. Mr. Jethalal Naranji was not there. It did not notice anyone else.

Q. Refreshing your memory from your note, what was said?

A. I explained the proposal contained in that draft letter namely that the plaintiffs would make a gift to the City Council for a powerhouse site of up to five acres of their land at Kinoya. The land they were buying from Mr. Sukhi Chand provided that the Council did certain things. Those were things mentioned in the draft letter of Mr. Jethalal Naranji.

Q. (That is Exhibit "G"). And what was their answer?

A. It was explained to me that the Council had been very interested in various pieces of land in that locality, firstly land to the south of that property - two properties immediately to the south.

These properties had been found to be too close to the Vatuwaqa cable station. The powerhouse could have caused interference to the operation of the cable station. A clear distance of 1½ miles from the cable station was required to avoid interference. The Council had also been interested in buying Mr. Sukhi Chand's property. The Council had in fact had under offer to it from Mr. Sukhi Chand of this same piece of land but the offer had been withdrawn by him. The Council was interested in buying it as it was their intention to establish the powerhouse in that locality. The Council was still interested in buying that same piece of land that Sukhi Chand was selling to the plaintiffs. They would have liked to have from 50 to 70 acres of it.

The Council had planned to transport its fuel by water from Suva harbour to the water frontage of that property.

Court: Fuel?

A. Fuel for its engines. Diesel fuel. The Council preferred that land to other land at a place called Namadi. That is my record of the discussion I made immediately afterwards.

Court: The land at Namadi is the subject of what I noticed in the paper?

A. Yes, My Lord.

Q. Now, subsequent to that conference did you confer further with Mr. Jethalal Naranji?

A. I did.

Q. And did you receive certain instructions?

A. I did.

Q. As a result of those instructions did you write a letter dated the 14th October, 1964 to the Town Clerk?

A. I did write to the Town Clerk. I don't know the date, haven't got a copy of the letter in front of me. It could have been that day, the next day after the conference.

Q. My Lord, it is page 36 of Exhibit "A".

Would you have a look Mr. Warren at that and say is that the letter?

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A. Yes, My Lord.

Q. In the month of April 1966 did you receive a telephone call from Mr. McFarlane of Grahame & Co.?

A. I did.

Q. And what was said then?

A. Mr. McFarlane said he had instructions from the Council relating to the proposed purchase of land from the plaintiffs.

Q. Was that conversation followed by a letter of 19th April, 1966 from the Council's solicitors?

A. Yes, My Lord.

Q. (That, My Lord, is page 50 of Exhibit "A"). Would you look at page 50 of Exhibit "A". Is that the letter?

A. Yes, My Lord.

Q. Did you confer with Jethalal Naranji after receiving that letter?

A. One of my clerks conferred with him as I know from a note which he made and put on my file.

Q. And as a result of the instructions which your clerk took did you send a letter dated 22nd of April, 1966 to the Council's solicitors?

A. Yes, My Lord.

Q. Would you have a look at page 51 of Exhibit "A". Is that the letter?

A. Yes, Sir.

Q. On the 25th of April, 1966 did you have a telephone conversation with Mr. McFarlane?

A. Yes, Sir, I know that from my notes.

Q. Were those notes made at the time?

A. Yes, Sir.

Q. From your notes can you tell us what was said?

A. Mr. McFarlane and I arranged a conference for the same day.

Q. Did that conference take place?

A. Yes.

Q. Who was present?

A. My note indicates that only Mr. McFarlane and myself were present.

Q. What was said?

A. My note indicates that we discussed my letter of the 22nd April with the relevant property plans and we also discussed numerous alternatives - plans of land in the district - and we agreed to have a conference including the Town Clerk and the Electrical Engineer of Suva City Council.

Q. What were the alternatives you discussed?

A. I cannot recall at this distance in time, Sir.

Q. Can you recollect whether they were alternatives as to size of land to be taken from the plaintiffs or alternatives as to other lands elsewhere?

A. I cannot recollect, Sir.

Q. Did that conference you appointed take place?

A. Yes, Sir.

Q. When?

A. My note shows that it was on 27th of April, 1966.

Q. Who was present?

A. Mr. Jethalal Naranji, myself, Mr. McFarlane and the City Council's Electrical Engineer.

Q. That is Mr. Smith?

A. It was Mr. Smith then.

Q. And what was said?

A. My note shows that the proposal was discussed at length.

Q. What proposal?

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A. The proposal for the City Council to buy land and for the plaintiffs to sell land. The Council representatives indicated a preference for an area of 40 to 50 acres of the land Sukhi Chand was selling to the plaintiffs, that area to be immediately adjoining that land that Sukhi Chand was retaining which was his house site. It was told that the matter would then be referred to the Council.

Q. In that conference was anything said about an access road?

A. The question of access was at all times very important and was discussed fully. The plaintiffs were very intent on obtaining formed public road access through any land which they might sell to the Council up to the boundary of the residue of their land so that they might have free road access to Kings Road. They would have cut off their access had they not required this.

Q. What was said by the Council offers in relation to this question?

A. I have no note of that, My Lord.

Q. On the 12th May, 1966 did you receive a telephone call from Mr. McFarlane?

A. I did.

Q. What was said?

A. My note is that Mr. McFarlane said the Council would prefer an area of about 40 acres to the west of the Y-shaped bend in the northern boundary of Sukhi Chand's land - the land that Sukhi Chand was selling to the plaintiffs. The Council considered other properties unsuitable. The Council recognised it would have to acquire road access from Chanik Prasad and Sukhi Chand from Wainivula Creek to Kings Road.

Court: Wainivula Creek is the one on the left-hand side of the plan?

A. Yes and that road is the one in respect of which Sukhi Chand, in the terms of sale, had agreed he would procure a right of way for the purchasers. It is the land comprised in a certificate of title which has already been mentioned.

Q. At that time certificate of title 8316, Exhibit "B"?

A. No Sir. It is the land referred to in clause 8 in the memorandum of terms of sale and purchase - Exhibit "E".

Court: Over land north of Certificate of title 8316?

Q. No My Lord. It is to the west on the other side of Wainivula Creek - there is a bridge across the creek at that point.

The Council also recognised it would have to give access through the land it proposed to buy to the residue of the plaintiffs' land by means of a public road which the Council would also be able to use in its operations on the land it intended to buy. It was invited to submit an offer along those lines from the plaintiffs.

Q. Did you then confer with Mr. Jethalal Naranji?

A. I did.

Q. And did you receive instructions from him?

A. Yes.

Q. What were those instructions?

A. They were to submit an offer at a price of £300 per acre with stipulations relating to access, offering payment of terms if the Council so desired and stipulating that the Council arrange planning approval for the use of the balance of the plaintiffs' land for heavy industrial use.

Q. What was the stipulations as to access?

A. I set them out in a letter which I wrote to Grahame & Co.

Q. Was that the letter of 13th May, 1966?,

A. Yes, Sir.

Q. That is page 53, My Lord, Exhibit "A". Is that the letter, Mr. Warren?

A. Yes, Sir.

Gifford: My Lord, I would like to interpose at this stage. I would like to refer to something I overlooked and which I should have done this morning. I apologise for that, My Lord. This is about Mr. Warren's practice as a barrister in Suva.

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Q. Mr. Warren, yesterday I asked you about how long you had practised in Suva?

A. I practiced law in Fiji for 35 years and in Suva at that time for 26 years.

Q. And that is the correction you wanted to make?

A. That is so.

Q. Going back now - did you subsequently receive a letter dated 12th August, 1966 from Grahame & Co?

A. Yes, Sir.

Q. Would you look at page 61 of Exhibit "A" and say if that is the letter?

A. Yes, Sir.

Q. After receiving that letter did you confer with Mr. Jethalal Naranji?

A. My file indicates that the contents of that letter were discussed with him by my clerk.

Q. Pursuant to the instructions received by your clerk, did you write a letter dated 17th August 1966 to Grahame & Co?

A. Yes.

Q. Would you look at page 63 of Exhibit "A" and say if that is the letter?

A. Yes, Sir.

Q. Would you look at the last paragraph of that letter. Why did you write what is set out in that paragraph?

A. Those were my instructions.

Q. What did you understand to be the Council's attitude if the plaintiffs did not accept its price of £110 an acre?

A. I understand that the Council left no room for further negotiation; it simply threatened acquisition and that was that.

Q. From the date of agreement to sell to the plaintiffs had you acted both for Mr. Sukhi Chand and for the plaintiffs?

A. Yes, Sir.

Q. Was a transfer of the land to the plaintiffs signed by Mr. Sukhi Chand?

A. Yes, Sir.

Q. Would you have a look at that document and say is that document a true copy of the transfer.

A. Yes.

Gifford: I tender that, My Lord.

Court: Exhibit "H". Transfer from Sukhi Chand to the plaintiffs.

Q. What happened to the transfer after it was executed?

A. It was stamped and held in escrow by me pending execution by Chanik Prasad of an easement of right-of-way in terms of clause 8 of the sale note (Exhibit "E") I also held in escrow the mortgage back securing the balance of purchase money.

Q. Have you a note on the file about something that occurred on the 15th July, 1966?

A. Yes.

Q. What was that?

A. My note indicates that on that day Mr. McFarlane telephoned me and said he had instructions from Suva City Council to resume negotiations for the acquisition of land for the powerhouse site, such land including the eastern end of our clients' land, the end fronting of the seaboard up to the V-shaped dent in the northern boundary of our clients' land together with the Crown land comprised in that V-shaped dent, and some of Prasad's land immediately to the south of the plaintiffs' land. He informed me that he would seek execution of the right-of-way easement by his client Chanik Prasad shortly. I asked him, for the Council, to accept our clients' offer to sell or state its counter proposals. I suggested to him that the Council might get protection from the danger of nuisance claims against the operation of the power station by having an industrial zone constructed around the powerhouse site.

Q. Why did you suggest that?

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A. I was aware from my knowledge of the existing powerhouse in Suva City that noise and air polluting were the subject, of protest from neighbouring properties.

Court: Air pollution?

A. Air pollution from diesel fumes. I knew that protection from possible claims was one of the reasons for the Council acquiring so much land.

Court: I will adjourn for 20 minutes.

The Court adjourned at 11.00 a.m.

Gifford:

Q. You did give evidence of a conversation of 12 May, 1966 from your notes, did you not?

A. Yes, Sir.

Q. Would you have a look at this and say is it a true photostat of your notes?

A. Yes, Sir.

Gifford: I tender that photostat.

Court: Exhibit "J".

Q. You referred to a mortgage from the plaintiffs to Sukhi Chand which you said you held in escrow. Would you have a look at this document and say if it is a true copy of that mortgage?

A. Yes, My Lord, it is.

Gifford: I tender that.

Court: Exhibit "K".

Q. Ex. "E" bears date 24th July, 1964?

A. Yes, sir.

Q. Subsequent to the signing of Ex. "E" did you lodge a caveat?

A. I believe that one was filed. I have not refreshed my memory by reference to the title (Witness does so).

Yes, sir. On 7 August, 1964 a caveat was lodged by the

plaintiffs against certificate of title 8316. That would have been to protect their interest as purchasers.

Q. Will you have a look at the underlying document of those two and say what it is?

A. That is a copy of the caveat.

Q. What is the front document?

A. It is a copy of the Registrar of Titles notice of such caveat given to the registered proprietor Sukhi Chand.

Gifford: I tender the caveat and notice of caveat.

Court: Exhibit "L".

Q. What was the practice of the Registrar of Titles in 1964 as to giving notice when a caveat was lodged?

A. The Registrar posted the notice by registered mail to the caveatee at the address given in the caveat.

Q. Did that continue to be the practice until the time that you ceased to practice in Suva?

A. Yes, Sir.

Q. When was that?

A. Early in 1971.

Q. And it was still the practice when you left?

A. Yes, Sir.

Q. Would you look at this document which I believe to relate to 15 July, 1966. Is that the beginning of your note of that date to which you have referred in evidence?

A. Yes, Sir.

Gifford: I tender that document.

Court: Exhibit "M".

Q. You have referred to the fact that you were acting both for Sukhi Chand and for the plaintiffs?

A. I was, sir.

Gifford: As to the particulars dated 6 September, 1964, and

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in particular "paragraph 2" on the second page, I call for an admission that p. 106 of Exhibit "A" is the document referred to.

Hughes: The document at p. 106 Exhibit "A" is a copy of the document referred to in the particulars, My Lord.

Q. I regret having to put this question which might well be offensive, but I have to ask you first to look at that document which you see is headed with the name of a specific client, Sukhi Chand.

A. Yes, Sir.

Q. Was it your practice to communicate to one client information received for another.

Hughes: I object to the question. There is no suggestion that he did so disclose. The evidence is completely devoid of any allegation that he communicated knowledge to the plaintiffs.

Court: Objections overruled.

Gifford: I repeat the question.

A. No, Sir.

Q. Did you communicate to the plaintiffs any knowledge gained in acting for Sukhi Chand?

A. No, Sir.

Q. Did you, in acting for the plaintiffs, use on their behalf knowledge gained in acting for Sukhi Chand?

A. No, Sir. Sir, might I explain that? I was not personally aware of the nature or otherwise of any occupation. I merely said in my letter what I had been informed by Sukhi Chand.

Q. Before I go to the notice to treat is there something else to deal with?

A. My file indicates that the next thing that occurred was a telephone communication from Mr. McFarlane in July, 1967, after which I received his letter dated 25th July, 1967, with which was handed to me formal notice of acquisition as service on the plaintiffs.

Q. Would you have a look at Ex. "A", p. 86 and say is that a copy of that letter?

A. Yes.

Q. After receipt of that letter did you have a further conversation with Mr. McFarlane in relation to the registration of the plaintiffs as proprietors?

A. My file indicates that at some later time, probably in October, 1967, that it was our intention to register the transfer and mortgage in order to put the purchasers on title as registered proprietors and Sukhi Chand in his capacity as mortgagee, the purpose being to enable those parties to make their claims against the Council in their true capacities as owner and mortgagee.

Q. Did you discuss that course of action with Mr. McFarlane?

A. I have no particular reference. I believe from the contents of a letter which I wrote to Grahame & Co. that the matter was discussed between myself and Mr. McFarlane.

Q. What is the date of that letter?

A. 25 October, 1967.

Q. Look at Ex. "A", p. 99. Is that the letter?

A. It is, My Lord.

Q. On 24 October, 1967, did Mr. McFarlane leave a survey plan with you? Will you look at your letter of 26 October, 1967 to Grahame & Co.?

A. Yes, sir. That letter refreshes my memory. He did.

Q. To what did that plan relate?

A. It was a survey plan of approximately - I think it was 20½ acres - being the easternmost portion of the plaintiffs' land and being the land in respect of which the acquisition proceedings were in train.

Q. What did he ask in respect of that plan?

A. He wished it to be signed by the registered proprietors of the land as required by the Land Transfer and Registration Ordinance in order that the plan might be registered.

Q. Did you consult Jethalal Naranji about that?

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A. I did.

Q. What instructions did you receive?

A. I was instructed to ask Mr. McFarlane to lend me from his records a locality map which had been the subject of a discussion between Mr. McFarlane and myself concerning access to the 20 acres. On that locality map I saw Mr. McFarlane make some markings in red showing the position of the intended road access to the 20 acres. Jethalal Naranji instructed me to ask him to lend me that locality map, which he did.

Q. When did that discussion with Mr. McFarlane occur?

A. I have no note of the date, sir. It was subsequent to the service of acquisition, and I believe not long thereafter.

Q. Would you look at the plan produced by my learned friend Mr. Hughes and say whether that is the locality plan to which you have been referring.

A. I believe that that is the one. It resembled that. It contains the red marking to which I referred. I would like to reconsider my statement concerning Mr. McFarlane making markings on it. At this distance in time my recollection is that he and I looked at the plan, the important feature of it being a marked red access to the property. It may have had that marking on it when Mr. McFarlane showed it to me, and we had our discussion concerning access to the 20 acres. It could have been another copy of the same map that Mr. McFarlane lent me.

Q. Is the red lines and the words "suggested access road" the red marking to which you have referred?

A. It is.

Gifford: I tender that plan.

Court: Exhibit "N".

Q. If a road had been constructed on the line so shown in red on that locality plan, Ex. "N", would it have served the balance area of the plaintiffs' land?

A. Yes, sir.

Q. You see on that locality plan some words in black on grey, namely "possible future acquisition" and words

following them. Were they on the locality plan when you saw it?

A. I am unable to say so from memory from this distance.

Q. Did you borrow that locality plan from Grahame & Co.?

A. Yes, sir. Either that one or a similar map.

Q. If it were a similar map, did it show the suggested access road in the same position?

A. It did, sir.

Q. When you had borrowed it, what did you do with it? Did you show it to anyone?

A. I cannot recall whether I showed it to anyone or gave it to my clerk to show to Jethalal Naranji.

Q. Did you procure Jethalal Naranji's signature to the survey plan?

A. I believe that that was done through my clerk. I know that the plan was signed by Jethalal Naranji. I don't know who did. I think it was done by my clerk. I saw the survey plan after it had been signed by Jethalal Naranji.

Q. Did you then send to Grahame & Co. the letter Ex. "A", p. 100?

A. I did, sir.

Q. In that letter you refer to "the map returned herewith". What map was that?

A. That was the locality map which I had borrowed from Mr. McFarlane and was either the exhibited map or a similar map with the same red marking.

Q. And by exhibited map you refer to Ex. "N"?

A. Yes, sir.

Q. At any time prior to the signing of the survey plan by Jethalal Naranji was there any suggestion by the Council or by anyone acting on its behalf that the access road would not be constructed as shown on Ex. "N"?

A. I received no such communication.

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Q. On 24 September, 1968 did you receive a letter from the plaintiffs' present solicitors?

A. I did, sir.

Q. At that time your firm had ceased to act for the plaintiffs?

A. In respect of this matter.

Court: As from that letter?

A. No, sir. As from 13 September, 1968.

Q. Have you the original of that letter from Koya & Co.?

A. No, sir.

Q. Have you a copy of it?

A. No, sir.

Q. Look at the green document. Did you receive that at some time?

A. Yes, sir. I received that according to the date stamp which I put on it on 26 March, 1968 when I borrowed the locality plan at that time from Mr. McFarlane for the purpose of making a copy, and I returned it to him on the next day, according to my note on it.

Q. Is that plan referred to in that document, Ex. "N"?

A. Yes, sir.

Gifford: I tender that.

Court: Exhibit "O"

12.40 p.m. adjourn to 2.15 p.m.

2.15 p.m. On resumption.

Q. You mentioned in your evidence that there has been difficulty in obtaining execution of a right-of-way easement?

A. Yes, sir.

Q. Was that easement ever created?

A. Yes, sir.

Q. Would you have a look at that document and say is that the grant of easement?

A. Yes, sir, that is a copy.

Gifford: I tender that copy of the creation of easement.

Court: Exhibit "P".

Q. Were you asked by Koya & Co. on 24th September 1968, whether you had ever given possession of the plaintiffs' land to the City Electrical Engineer?

A. Yes, My Lord. I did receive such a request.

Court: What sort of a request?

A. By letter from Koya & Co. to my firm.

Q. When you received that request did you apply your mind to the question as to whether you had ever given possession of the plaintiffs' land to the Council's Electrical Engineer or to anyone on behalf of the Council?

A. I did so apply my mind, sir.

Q. Without looking at the letter, are you able to say what your state of mind was in September, 1968 in relation to whether you ever gave possession of the plaintiffs' land to the City Electrical Engineer, or anyone else on behalf of the Council?

A. Yes, sir I am.

Q. What was your state of mind on that on 24 September, 1968?

Hughes: I object to the question.

Court: Objection overruled.

A. I was quite certain that I have never given anyone any authority to take possession of the plaintiffs' land.

Q. And what is your state of mind today?

A. I am equally certain now, sir.

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Q. Did you on 24 September, 1968 answer by letter the letter from Koya & Co.?

A. I did, sir.

Q. Will you look at this document and say whether that is your reply?

A. Yes, sir.

Gifford: I tender that letter.

Court: Exhibit "Q".

Q. Did Grahame & Co. or anyone on behalf of the Council inform you that the Council had applied to the Governor-in-Council for approval to compulsorily acquire the plaintiffs' land?

A. No, sir.

Q. From you knowledge of Suva, can you say as to whether or not, in July, 1967, there was a shortage of industrial land in or around Suva?

A. From my personal knowledge gained in the course of my practice as a solicitor, and from my service as a member of the Town Planning Board for many years, I know that there was a considerable shortage of land in industrial use in and around Suva.

Cross-examination by Mr. Hughes:

Hughes: Can I invite your attention to Ex. "E"?
May I invite your attention to the description of the purchasers as "agents"?
Was that document prepared by you?

A. Yes, sir.

Q. On instructions?

A. Yes, sir.

Q. On the instructions of whom?

A. That would have been on the instructions of Jethalal Naranji.

Q. For whom were the two persons described as purchasers, as agents, in fact the agents?

A. I do not recall. I believe that those words were inserted to allow the purchasers either to take up the land themselves or for someone else - a company or other persons - to come in and complete the purchase as principals.

Q. But, Mr. Warren, do you think I am being critical if you, as an experienced solicitor, described two persons as purchasers and went on to say in the contract of purchase that they were agents. You would not have done so, would you, without ascertaining that they had an existing principal?

A. Quite probably.

Q. And of course the existing principal, according to your recollection, was Jethalal Naranji, was he not?

A. I cannot say. It might have been. It might have been an intended company to be incorporated. I do not recollect.

Q. You will not deny, will you Mr. Warren, that Jethalal Naranji described himself to you as the real principal in this purchase and sale transaction?

A. I would deny such a clear statement.

Q. Did you enquire of him for whom these ladies, Mukta Ben and Shanta Ben, were agents?

A. I cannot recall.

Q. Will you agree with me, sir, that in accordance with your practice as a careful solicitor that you would not describes these ladies as agents unless you satisfied yourself from your instructions that they were agents for an existing principal?

A. I may not have done so if there had been no decision as to who might be the ultimate nominee purchaser.

Q. But will you not agree that the very description of two persons as agents necessarily implies the existence at the time the description was given of a principal?

A. That would normally be inferred from the words.

Q. Had Jethalal Naranji been your client in relation to matters prior to the purchase and sale agreement?

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A. Yes.

Q. He was a regular client of your firm?

A. Yes, sir.

Q. Just by the way, so as to ascertain the position, would you see the gentleman in Court? Is that Jethalal Naranji?

A. Yes, sir.

Q. Mr. Warren, is it the fact that Jethalal Naranji himself paid your costs in connection with Ex. "E"?

A. I have no knowledge of who paid the costs but that would be most unlikely, because these ladies had funds in a current account with my firm at the time in connection with other properties of theirs.

Q. Mr. Warren, would you have a look at this document please? Is that the plan of subdivision to which you referred earlier in your evidence, containing the signature of Jethalal Naranji?

A. It is.

Hughes: I tender that.

Court: Exhibit "D1"

Q. Just to have the matter clearcut, will you agree that that is the survey plan or plan of subdivision you forwarded to Mr. McFarlane under cover of your letter of 26 October, 1967?

A. That is the plan, but it is not precisely the same. It is not in the same condition.

Q. Was the signature of Jethalal Naranji on the document when you sent it back?

A. Yes.

Q. And you say the plan now in front of you, Ex. "D1", is not in precisely the same condition when you sent it back? Would you be good enough to indicate wherein the differences lie?

A. When I last saw it it did not have on it that marking here - "Kinoya Road 40 feet wide".

Q. Mr. Warren, do you remember having a conversation with Mr. McFarlane on 9 September, 1968 on the telephone?

A. I have a note of a conversation with Mr. McFarlane at about that time - 7th or 9th.

Q. And will you agree that in that conversation you said to Mr. McFarlane words, in substance, as follows: "The road does not come along the northern boundary as suggested" - referring to the subject land?

A. Yes.

Q. And was that statement based on information you had obtained from someone?

A. Yes.

Q. Was that statement made by you to Mr. McFarlane based on information that had been given to you by Jethalal Naranji?

A. Yes.

Q. When, if you can tell his Lordship, did Jethalal Naranji give you that information?

A. My note shows it was on 7 September, 1968, and he was reporting to me the actual position of the road as constructed and complaining that it did not touch the plaintiffs' land.

Q. In that conversation that you had with Mr. McFarlane on or about 9 September, 1968 did you say to Mr. McFarlane, after telling him that the road did not come along the northern boundary as suggested, words, in substance, like this: "If access suitable to my clients is not provided, then they will increase their claim for compensation by 50%?

A. I have no note of any such statement. I have no recollection of 50%.

Q. Do you have a recollection of having told Mr. McFarlane words, in substance, like this: "If no suitable access, then the owners will increase claim by 50%?

A. I have no recollection of that.

Q. While you have no recollection of those words, you will not deny, will you that you did use them, or words to that effect?

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A. I do not admit using them.

Q. Nor do you deny?

A. There might have been some suggestion that the claim would have been increased. The claim was based on the provision of a formed legal road access.

Q. Would you be good enough to look at this document? You are familiar with Mr. McFarlane's handwriting?

A. Approximately.

Q. Would you be good enough to read this to yourself and then I will ask you a question.

(Witness reads document)

Hughes: I tender that document for identification.

Court: Exhibit "MFI 1".

Q. Having looked at that document will you agree on 9 September, 1968, you said, in substance, to Mr. McFarlane in that telephone conversation that if no suitable access road were provided, the owners would increase their claim by 50%?

A. I do not think Mr. McFarlane would have written anything down that was not mentioned in the conversation.

Q. Will you now agree that you very probably said to Mr. McFarlane words to this effect - that if no suitable access were provided the owners would increase their claim by 50%?

A. That probably was said.

Q. You received the notice of acquisition that was served on Sukhi Chand did you not, or did you accept service of it?

A. I did not accept service on Sukhi Chand. I did not receive that notice. Sukhi Chand brought it to me.

Q. So that from 27 July, 1967 or very shortly thereafter you were acting for Sukhi Chand and for the present plaintiffs or Jethalal Naranji in relation to their respective claims?

A. That is correct.

Q. Now, during 1968 prior to the withdrawal of your retainer for the plaintiffs, did Jethalal Naranji visit you in your office from time to time?

A. Yes, he did.

Q. And did he inform you from time to time as to what he had observed going on on the subject land, the land the subject of the compulsory acquisition?

A. I do not think he informed me from time to time of what he saw going on.

Q. Did you want to consult your notes?

A. Yes. (Witness does so). There is one file note of written instructions from Jethalal Naranji given on 13 May, 1968.

Q. What were the instructions so given?

A. Jethalal Naranji said he had been informed by Carter Rees & Associates that the road access to the powerhouse site is no longer to be as was originally anticipated. It is to be a shortcut road adjoining to the Kinoya settlement road. By amending the original plan the new road which the Council is going to take to the powerhouse site will give no access to our land.

Q. Is that all in the note?

A. No. Our claim was based on the assumption that we will get road access to the north of our land. Our claim was £400 per acre. If the Council's road will not be as it was shown to us on the photocopy of the plan, our claim for the area must increase to £600 per acre, and the Council should give us some access if not what is shown on the plan. Perhaps a copy of the new road access plan could be obtained from the Council's solicitors before lodging an amending claim.

Q. And what you have read from your office note represented the instructions that Jethalal Naranji gave you at the time?

A. That is so. It is more of a report rather than instructions. It was what Jethalal Naranji and my clerk recorded and he signed it.

Q. What you mean is that the note incorporates Jethalal

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Naranji's instructions to your firm as well as other material connected with subject matter?

A. Yes.

Gifford: In that event, I object to the evidence. It should be struck from the record.

Court: I think the objection should succeed unless you can show some basis for getting it in.

Hughes: Very well, My Lord.

Q. Who was the clerk whose notes you read?

A. I can tell from the initials at the bottom that it was a clerk named Bipin Chandra.

Q. To your knowledge is he still an employee and in Suva?

A. Yes.

Q. That note from which you read was made by Bipin Chandra in the course of his duties as an employee?

A. Yes.

Q. That was on 13 May, 1968?

A. Yes.

Q. My next question is this. Carter Rees & Associates, who are mentioned in the note that you read, were a firm of surveyors then carrying on practice in Suva, and were, to your knowledge, the surveyors retained by the Council to survey the access road, do the plan of subdivision and survey the site of the subject land?

A. I cannot go that far. All that I can say is that they were the firm of surveyors who did the survey on behalf of Suva City Council. I have no further knowledge beyond that.

Q. Now, subsequent to the 13th May, 1968 did Jethalal Naranji ever tell you that excavation work or building work had begun on the land the subject of the compensation claim?

A. I have no recollection of any such statement to me.

Q. When was your retainer withdrawn for the plaintiffs?

A. On 13 September, 1968. That was when I received written

instructions to hand over the papers to Koya & Co.

Q. What I wanted to ascertain was prior to receiving the written instructions to hand over the file to Koya & Co. had Jethalal Naranji told you verbally he wished you no longer to act for the plaintiffs?

A. I do not recall so.

Q. Mr. Warren, you were good enough to read to the Court as part of your evidence the office minute of the interview between Jethalal Naranji and Bipin Chandra, your clerk, on 13 May, 1968. Was the note from which you read in fact signed by Jethalal Naranji himself?

A. It was. I referred to it as signed instructions. The footnote is there in my handwriting.

Q. You have a footnote. Your footnote reads: "July, new road and powerhouse sites inspected. Not clear where our clients' boundaries are"?

A. Yes.

Q. Is that a note that you wrote following or in the course of an interview with Jethalal Naranji?

A. No, sir. I went there alone. I made an inspection and that was my note after I got back to the office.

Q. Did you make that inspection in the course of performing the duties under your retainer?

A. Yes. I did it as a matter of personal interest in the matter, but without instructions to do so.

Q. Do you recall whether or not on the occasion of this inspection any excavation work had been done on the subject land?

A. There must have been otherwise I would not have known where the powerhouse site was.

Q. On the occasion of that inspection did you obtain access to the powerhouse site along the access road that has been provided by the Council for its purposes?

A. I did.

Q. Would it be correct to say that on the occasion of

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that business visit excavation work preparatory to the construction of the powerhouse building itself was in evidence?

A. There must have been something on the land, otherwise I would not have been able to identify something as the proposed powerhouse site.

Q. You may have covered this by a previous answer. Did you go to the site unaccompanied?

A. Unaccompanied.

Q. After you had made that inspection, did you communicate with Jethalal Naranji?

A. I have no recollection of reporting to him what I saw there immediately as a consequence of that visit.

Q. Did you pay any other visits to the subject land between that date and the end of your retainer?

A. I cannot say, but I do not recall having done so. Had I done so I am sure I would probably have made a file note.

Q. Between July, 1968 and the end of your retainer did Jethalal Naranji ever tell you that he had himself been to the site of the powerhouse.

A. That I could not say, but he might well have done so. My recollection of the chronology is very vague without reference to my file.

Q. You told us that you attended Jethalal Naranji on 7 September, 1968. Your note says "at length"?

A. Yes, that is correct.

Q. Did Jethalal Naranji tell you that occasion that there had been considerable progress with the powerhouse building, or words to that effect?

A. He might have done so. I would not deny it. My concern was in relation to roads and access to the residue of the land.

Q. But would you agree when he very probably told you when he was discussing access that the Council had, to his observations, begun building?

A. He might have done so.

Q. Did Jethalal Naranji inform you in writing at some stage while you were acting for him that the survey firm of Carter Rees & Associates was then engaged by the Council for the survey both of the access road and also of the subdivision for the transfer of the land to the Council? Look at the first page.

A. I have no recollection of that, and it was not something that comprised part of my file as a matter relating to myself and Jethalal Naranji. I cannot explain its presence in these papers.

Q. It is not a document prepared by you?

A. No.

Q. Can you identify it as a document handed by Jethalal Naranji to your firm?

A. I have no personal recollection or knowledge of it whatever.

Q. Was it your belief as at the 19th March, 1968 that Sukhi Chand had ceased using the land the subject of the intended acquisition by the end of September, 1967?

A. I believe that statement is made in a letter and is recorded as something which Sukhi Chand told me. I had no knowledge beyond that as to whether it was correct or not. The question arose in connection with the computation of compensation to be paid by the Council to Sukhi Chand, and that was the only - I simply relied on what he said.

Q. The way the question of the date on which Sukhi Chand vacated the subject land arose was this, was it not, that on his behalf you made a claim for compensation which, in part, consisted of a claim for the loss of the use of the land for a period of fifteen months? That was the first step?

A. I do not recall the period, but there was a claim for the loss of use of the land. The period would have been from the time when the Council, in its notice of acquisition, said it intended to go into possession, and the balance of the period that Sukhi Chand was entitled to occupy the land free.

Q. Look at Ex. "A", p. 96, Part of Sukhi Chand's claim was for the loss of the use of the land for one year and three months to 31 December?

A. Yes.

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Q. And that reference to 31 December was intended, was it not, by you to refer to 31 December, 1968?

A. Without referring to something to let me know when the Council said it would go into occupation, I cannot answer.

Q. They said eight weeks from 27 July?

A. That would be so.

Court: It would be December, 1968?

A. Yes.

Q. Do you remember getting Ex. "A", p. 104 dated 14 March, 1968?

A. I do.

Q. When you got that letter it became necessary for you to ascertain from Sukhi Chand when he had vacated the subject land?

A. It was.

Q. Having ascertained from Sukhi Chand, you wrote to Mr. McFarlane the letter of 19 March, 1968, the letter which is p. 106 of Exhibit "A"?

A. Yes.

Q. I invite your attention to a photostat copy of Ex. "M". The note at the bottom is that in the handwriting of your clerk, Bipin Chandra, and his note says: "Referred to Jethalal Naranji".

(Mr. Hughes read the note to the witness).

That was a note written - did you give us a date?

A. 15 July, 1966.

Q. So is that the position, to summarise it on the basis of your personal knowledge at the time, that there had been a negotiation between a representative of the Council, a representative of Jethalal Naranji, and the parties had both dug their toes in?

A. Only over the price. Otherwise, they had agreed on access and that was, of course, in relation to the land other than that site to be acquired. Various negotiations covered various portions of the property.

Q. The particular negotiations which that note in Ex. "N" referred to were negotiations for land towards the western end of Certificate of Title 8316, were they not?

A. Whatever is referred to in my note above in Ex. "N". My note says the eastern end. The negotiations jumped from one end to the other from time to time.

Q. But that related up to the agreement on the boundary?

A. Yes.

Q. You referred in your earlier evidence to having borrowed the plan showing the suggested access road from Mr. McFarlane on 26 March, 1968, and returning it the following day?

A. Yes.

Q. Was it borrowed on the second occasion on the instructions of Jethalal Naranji?

A. Yes, for the purpose of taking a copy.

Q. When he came to give you the instructions to borrow the plan for the second time, did he give you any information as to what was going on on the subject land?

A. I would have to refer to any note that I made. I just simply cannot recall. I do not recall the substance of any instructions other than to borrow the plan to enable a copy to be made.

Re-examination - Mr. Gifford:

Q. You were asked questions as to whether Jethalal Naranji was the client, or whether the plaintiffs were the client. Who was the client?

A. The client was undoubtedly the plaintiffs.

Q. Have you previously acted for the plaintiffs?

A. Yes, sir.

Q. Was that in connection with the purchase and subdivision of land?

A. Yes, sir.

Q. You were shown a plan, Ex. "D", one which bears the

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words "Kinoya Road 40 feet wide". Would you look at that plan, please. You said when you last saw it it did not have that marking?

A. Yes, Sir.

Q. Was it a surprise to you to see that marking on that plan today?

Hughes: I object.

Court: Objection overruled.

Q. Was the marking there when you last saw the plan?

A. It was not there when I last saw the plan.

Q. Was it there when Jethalal Naranji signed the plan?

A. No, sir.

Q. Would you look at Ex. "MFI 1" for identification. Have you a recollection yourself of a conversation of 9 September, 1968 with Mr. McFarlane?

A. I have.

Q. What is your recollection?

A. I have a longhand note made after the conversation.

Gifford: I tender that note.

Court: Exhibit "R".

A. At the head of the page there is a date - 7 September, 1968. The conversation is of 9 September, 1968. It refers to the same conversation.

Hughes: I omitted to tender the note of 13 May, 1968, from which Mr. Warren read. I do that.

Q. You were asked about a file note of instructions on 13 May, 1968. What steps did you take pursuant to those instructions?

Hughes: I object.

Court: Objection overruled.

A. I think I ought to say I accepted that as a report on a state of affairs and not as an instruction. The thing I did was to drive out to the powerhouse site,

and have a look round of my own accord. The other stemming from that must have been when I was talking to Mr. McFarlane and mentioned the increase in the price from £400 per acre to £600 per acre. I do not recall anything else that I did.

Q. You were asked as between July, 1968 and the time when your firm's retainer was terminated did Jethalal Naranji ever tell you that he had himself been to the site of the powerhouse, and you replied that you could not say without reference to your file. Would you look at the file. Is there anything on it that shows that Jethalal Naranji did tell you that?

A. There is nothing here which indicates that I received any communication.

Q. If Mr. Jethalal Naranji had told you that would you expect to find a note of it on your file?

A. I might have made a note - I might not. It would depend on the importance of the information to me.

Q. You were asked about negotiations. So far as the land at the eastern end of the plaintiffs' land was concerned, was the Council prepared to negotiate the price or was it a case of £110 per acre on the one hand, or compulsory acquisition on the other?

Hughes: I object.

Court: Objection overruled.

A. I have no clear recollection that would be of use.

Court: That note signed "Jethalal Naranji". I understood you to say July?

A. Simply July. It was a reference to July, 1968.

Court: Ex. "D2" will be the note of 13 May, 1968 from Mr. Warren's file.

Adjourned to Friday, 13 September, 1974 at 9.30 a.m.

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No. 5

KNUCKEY UNDER EXAMINATION BY GIFFORD CO. TO PLAINTIFFS Dated 13th September 1974

RONALD GORDON KNUCKEY, QAUYA STREET, LAMI, SURVEYOR
EXAMINATION-IN-CHIEF - GIFFORD:

Q. Are you a registered surveyor in Fiji?

A. I am.

Q. Are you a director of Knuckey Surveyors Partnership Limited?

A. I am.

Q. Are you a member of the Institution of Surveyors Australia?

A. I am.

Q. In 1966 did you pass the Surveyors' Board examinations for the State of Victoria, Australia, and thereby qualify as and become a licensed surveyor?

A. I did.

Q. Did you first commence survey work in 1953 with the State Rivers and Water Supply Commission, Victoria?

A. I did.

Q. And did you continue with that Commission until 1958 your work with it, including the investigation of reservoir sites, dam construction surveys, surveys for compulsory acquisition of lands, surveys for pipelines and hydrographic surveys?

A. I did.

Q. From 1958 to 1963 were you employed by Angus McIsaac, a bachelor of Civil Engineering and licensed surveyor in Victoria, Australia, working on residential subdivisions, check surveys, surveys to redefine boundaries and detailed topographic surveys?

A. I was.

Q. From 1963 to 1964 were you employed by the Shire of Croydon, being a Local Government authority for an outer suburb of Melbourne, the capital city of Victoria, Australia?

A. I was.

Q. At that time was Croydon a rapidly expanding area which was developing towards city status and is now a city?

A. It was.

Q. Was your work with the Shire of Croydon concerned with road investigations, surveys and engineering design?

A. It was.

Q. From 1964 to 1966 were you employed by the British Government in the British Solomon Islands?

A. I was.

Q. And was that on survey work?

A. It was.

Q. In 1966 did you return to Australia and commence employment with the State Electricity Commission of Victoria on power line survey?

A. I did.

Q. Later in 1966 did you work for a short time with K.A. Reed & Associates, a firm of engineers and surveyors, in the surveying of land for subdivision?

A. I did.

Court: Mr. Gifford, where were those surveyors?

Gifford: Melbourne surveyors, My Lord.

Q. Later in 1966, and until the middle of 1967, were you employed by J.S. Watson & Associates on similar work in connection with the subdivision of land for residential subdivision and also check surveys and rural subdivisions?

A. I was.

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Q. Were J.S. Watson & Associates a firm of engineers and surveyors with a very extensive practice in Melbourne?

A. They were.

Q. In particular in seaside areas?

A. That is correct.

Q. In 1967 did you commence employment with the firm of Cater Rees & Associates, Surveyors, of Suva?

A. I did.

Q. For that firm did you carry out engineering survey and design work at Nasinu?

A. I did.

Q. On 6 November, 1968 did you become a registered surveyor, Fiji?

A. I did.

Q. In November, 1968 did you commence practice on your own account as a surveyor in Suva, practising throughout Fiji?

A. I did.

Q. And have you been in private practice ever since?

A. I have.

Gifford: I tender the original notice to treat served on the plaintiffs.

Court: Exhibit "X".

10.55 a.m. Adjourn for 15 minutes.
11.15 a.m. On resumption.

(Court: Would it be more convenient, in view of the difficulties of hearing in this room, to move the case to Lautoka?

Gifford: It is very difficult indeed to hear. We would support a hearing in Lautoka, but are in the Court's hands.

Hughes: We submit the case should continue to be heard in Suva. The witnesses we shall call are Mr. Brabham, an ex-officer who lives within an hour's travelling distance of Suva, the electrical engineer, Mr. Smith, Sukhi Chand, the City Treasurer and the valuer, Mr. Tetzner, from New Zealand.

Court: On balance of convenience, I consider this case would be better heard at Lautoka)

Q. I want you to look at Ex. "X". Have you prepared various data relating to the sketch plan which appears on Ex. "X"?

A. I have.

Q. I want you to look at pp. 88 and 91 of Ex. "A". Looking at those two sketch plans, have you a scale with you available to you?

A. I have.

Q. I would like you to tell me whether the southern boundary of the so-called 20 acre area is the same or different on those two sketch plans. Would you measure the southern boundary from the western end of the so-called 20 acre area to the western boundary of that area in each case? Are the two measurements the same, or different?

A. They are different.

Q. I now want you to look at the two eastern boundaries and tell me are they the same, or different?

A. They are different.

Q. Does the Lands Department issue an official series of maps at the scale of 8 chains to the inch?

A. It does.

Q. What is that series known as?

A. It is known as the 8 chain series.

Q. Does the sketch plan at p.88 of Ex. "A" accord exactly with any official plan or deposited plan?

Hughes: I object. This pair of plans respectively attached to the notice of acquisition - neither purports to be to scale.

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Court: Is this not a matter for argument?

Hughes: It seems to me that to compare this with a Lands Department map is really to set up a comparison that is irrelevant. The description of the land in the notice is all that piece of land containing 20 acres at the eastern end.

Court: The objection is overruled.

Q. Does the sketch plan at p.88 of Ex. "A" accord exactly with any official plan or deposited plan?

A. Not to any of which I have knowledge.

Q. Is there a scale on either of those copies of sketch plan, pp.88 and 91 of Ex. "A"?

A. No, there is not.

Q. To you, as a surveyor, what scale do you believe those sketch plans to be drawn to?

A. I believe they purport to be drawn to 8 chains to the inch.

Q. Is that so as to both sketch plans?

A. That is so.

Q. Would you, on the scale of 8 chains to the inch, tell me the length of the southern boundary of the so-called 20 acre area on the sketch plan, p.88 of Ex. "A"

A. On the particular copy I have in front of me, the western boundary of the so-called 20 acre area - that line does not on this copy quite reach the southern boundary.

Q. I want you to treat that line as meeting the southern boundary by a direct prolongation.

A. If that is done, the distance along the southern boundary of the so-called 20 acres scales 1790 links.

Q. And what does it scale on the sketch plan on p.91 of Exhibit "A"?

A. 1710 links.

Q. What distance is that 80 link difference in feet?

A. 52.8 feet.

Q. On the same basis, what is the length scaled in that way from the northern boundary on the sketch plan on p.88 of Ex. "A"?

A. 2.250 links.

Q. And the northern boundary on the sketch plan on p.91 of Ex. "A"?

A. 2,190 links.

Q. What distance is that 60 link difference in feet?

A. 39.6 feet.

Q. Will you explain to the Court what the differences are in the eastern boundary of the two sketch plans at pp.88 and 91 of Ex. "A" respectively?

A. That would be rather difficult without tracing the two and superimposing one of the other. However, there are obvious differences in the shape of the eastern boundary.

Q. Where?

A. The first noticeable difference working down from the northern boundary is that the first more or less westerly portion of the boundary tends to the south on p.88 more so than on p.91. There appears to be on the next section on p.88 a line veering more easterly than that shown on p.91. That appears to alter the curve back to the west, which now occurs. There is then a small inlet protruding into the land in a more or less westerly direction. The inlet on p.88 appears to run deeper into the land and is more pointed in shape than on p.91. Running from that inlet, the eastern boundary on p.88 appears to lie easterly of that shown on p.91, and have small indentations which p.91 does not appear to have.

Q. Now I want you to assume for the purpose of this next question that the eastern boundaries were the same instead of different in the two sketch plans, and, making that assumption, tell me what difference in acreage is made by the differences in length of

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the southern and northern boundaries of the so-called 20 acre areas in the two sketch plans.

A. As there is a difference in the southern boundary in the two measurements of 80 links and a difference in the northern boundary of 60 links, a difference in the area could be ascertained by adopting a mean difference of 70 links and multiplying that by the length of the eastern boundary. As that is a curved line, any scaling of that length would be slightly inaccurate.

Q. Have you made a tracing of the sketch plan - from here on I refer only to the sketch plan served on the plaintiffs - and also a tracing of the relevant part of the 8 chain sheet from the official series?

A. I have.

Q. Do you produce the two tracings?

A. I do.

Gifford: I tender those two transparencies.

Court: Exhibits "Y1" and "Y2".

Q. I want you to take Ex. "Y", Mr. Knuckey, and tell me what happens if the north-eastern and north-western corners of land in the certificate of title are made to agree on those two sheets.

A. If those two corners, the northwestern and the northeastern, are made to agree commencing from the Wainivula Creek boundary and running towards the "V", the line on the sketch diverges some 30 links - that, My Lord, is taking the northern boundary proceeding east from the Wainivula Creek - diverges 30 links over its length to the western side of the "V". Then, proceeding in a southerly direction along the western side of the "V" there is in fact, on the sketch, two lines, one of which ends about half way down the "V", but taking the full line that line ends some 30 links north of the apex of the "V" as shown on the 8 chain series. Proceeding along the east side of the "V", the line on the sketch plan crosses the line on the 8 chain series to end some 20 links east of the corner at the northeast corner of the "V". The line then is coincident with the 8 chain series up to the northeast corner of the supposed 20 acre area. Proceeding to the south along the east boundary the sketch

differs from that boundary as shown on the 8 chain series by varying amounts. At the southeastern corner of the supposed 20 acres the sketch lies 50 links to the south of the 8 chain series. Proceeding to the west along the southern boundary, the line on the sketch plan converges with the line on the 8 chain series, having an offset at the western boundary of the supposed 20 acres of 30 links to the south, and meeting southern boundary on certificate of title 8316 as shown on the 8 chain series. The sketch then has a break in its line at that angle commencing again some 30 links north of the eastern section of the line, and that line continued to the west converges with the line on the 8 chain series to a point of coincidence at the western boundary.

(Court: That I take it means the line going along there? (Demonstrates).

A. Yes, My Lord, that is following the line to the southern boundary.

The sketch plan then proceeds more or less northerly along the eastern bank of the Wainivula Creek and on that boundary the two lines differ by various amount. That brings us to the point of commencement again at the northwest corner.

Q. You have told us, Mr. Knuckey, that the north east corner of the "V" on that basis commences further east on the sketch plan than on the 8 chain series?

A. I did.

Q. What would be the effect if someone were to scale from the sketch plan on the assumption it was intended to be 8 chains to the inch, but taking as the commencing point the northeast corner of the "V" on the 8 chain series in order to ascertain where the western boundary of the so-called 20 acre area commences at its northern end?

A. There would be a difference in measurement of that 20 links.

Court: 20 links?

A. Yes, My Lord.

Q. And how much is 20 links in feet?

A. 13.2 feet.

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Q. Does the sketch plan show a greater length or a shorter length for the north/south line, being the western boundary of the so-called 20 acres, than is justified by the 8 chain series?

A. A greater length.

Q. You told us that that difference is 30 links making a difference of 50 links at the eastern boundary, did you not?

A. I did.

Q. Now, I want you to assume for the moment that there was no error on the sketch plan for the eastern boundary, and confine yourself solely to the difference in the length north/south at the western boundary as shown on the sketch plan for the so-called 20 acres. How much excess would the errors in the sketch plan create?

A. That is a difference of .72 of an acre.

Court: 20.72 or 19.28?

A. That, My Lord, is purely a difference between the two lines. It is an area on its own of .72 of an acre.

Q. You have said there is a difference of .72 of an acre. Do you mean that the sketch plan indicates .72 of an acre more or .72 of an acre less than is justified by the 8 chain series?

A. .72 of an acre more.

12.40 p.m. Adjourn to 2.15 p.m.

2.15 p.m. On resumption.

Gifford: My Lord, by consent of our learned friends but subject to any contention as to relevance, we tender statements of evidence by Mr. Biggs and Mr. Wheeler.

Court: Exhibit "Z" - Mr. Biggs' statement of evidence
Exhibit "AA" - Mr. Wheeler's statement of evidence.

Hughes: My Lord, I tender an agreed photostat of the electricity fund expenditure ledger of Suva City Council for the period commencing 14 February, 1968 to 29 October, 1968.

Court: Ex. "D3".

Hughes: I tender two summary sheets showing capital expenditure of Kinoya power station for the years 1967-73 inclusive, and a summary sheet attached to them.

Court: Exhibit "D4".

Gifford: My Lord, I tender the bill of costs rendered by Mr. Warren to the plaintiffs.

Court: Exhibit "AB"

Gifford: I apply for leave to amend the reply.

Hughes: I do not oppose the amendment subject to reservation of costs.

Court: Leave to amend. Question of costs reserved.

Gifford: I tender the sketch plan submitted by Suva City Council to the Governor-in-Council on 7th June, 1967.

Court: Exhibit "AC".

Q. Mr. Knuckey, at the luncheon adjournment you undertook to make a measurement in respect of the difference between the two sketch plans appearing at pp. 88 and 91 of Ex. "A". Have you made that measurement?

A. I have.

Q. What is the difference?

A. The difference is .15 of an acre.

Q. Which is the larger?

A. The sketch on p. 88 of Ex. "A".

Q. Is that on the assumption that both sketch plans are to the same scale, and that that scale is 8 chains to the inch?

A. It is.

Q. What is .15 of an acre expressed in square feet?

A. 6,534 square feet.

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Q. What, in 1967, was the size of a residential allotment being created with sewerage in Suva?

A. Of the order of 20 perches.

Q. What is that in square feet?

A. 5,445 square feet.

Court: What you are telling me is that the difference between these two plans would be more than 20 perches?

A. That is correct, sir.

Q. You have been dealing with the difference between the sketch plan and Ex. "X", the 8 chain series map. You have got to the stage where, excluding variations in the eastern boundary, there was a difference of .72 of an acre more in the sketch plan than was justified by the 8 chain series. Can you now tell us what the total difference becomes when I have regard to the differences in the two eastern boundary delineations, assuming that a western boundary were placed on the 8 chain series map in the location derived by scale from Ex. "X"?

A. There is a decrease of .32 of an acre from the 8 chain series to the sketch on the eastern boundary, so that the total excess of the sketch over the 8 chain series becomes .4 of an acre.

Q. Which in square feet is a net excess of what?

A. 17,424 square feet.

Court: Which is approximately 1½ roods?

A. That would be approximately correct.

Q. Have you measured the area indicated by the sketch plan, Ex. "X"?

A. I have.

Q. That is on the assumption that it is intended to be at 8 chains to the inch?

A. That is correct.

Q. What is the area so indicated by the sketch plan?

A. 23.27 acres.

Q. Which in acres, roods and perches is?

A. 23 acres 1 rood 3.2 perches.

Q. Is the sketch plan therefore indicating an area greater or less than 20 acres?

A. It indicates a greater area than 20 acres.

Q. How much more?

A. 3 acres 1 rood 3.2 perches.

Q. You have made the comparison of the sketch plan and the 8 chain series may by means of those two transparencies, Exh. "Y"?

A. I have.

Q. Does that mean that you would be able, from the sketch plan, as a surveyor, to define the boundaries of the land to which it relates on the ground?

A. No.

Q. Why not?

A. The area is shown as being 20 acres to be acquired, and although no measurements are shown on the sketch plan, scaling on that sketch plan gives an area in excess of the 20 acres.

Q. That is scaling on the assumption of 8 chains to the inch?

A. That is scaling on that assumption, as a scale does not appear on that plan.

Q. Would you, as a surveyor, expect to see a scale on a plan?

A. Yes, I would.

Q. Does the complete lack of bearings and dimensions on the sketch plan affect the possibility of defining the land to which it relates on the ground? If you, as a surveyor, were asked to attempt to define the land to which the sketch plan relates, what is the first thing you would have to do - you have told us the attempt would be useless, but if a client insisted what is the first thing you would have to do?

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A. One would need to be told initially whether the area to be surveyed was in fact 20 acres.

Q. Why would you have to be told that?

A. Because on the sketch plan there exists two alternatives.

(1) An area as written of 20 acres, and
(2) An area by scale in excess of 23 acres.

Q. If you were told it had to be exactly 20 acres, would you be able to define the western boundary from the sketch plan without doing a high watermark traverse?

A. No, I would not.

Q. What is a high watermark traverse?

A. A high watermark traverse is a series of traverse lines run usually as close as practicable to the high watermark and from which offsets are measured to that high watermark.

Court: What is an offset?

A. A distance, My Lord, measured at right angles to the traverse line to the object which is being located.

Q. What sort of equipment do you need for that?

A. The traverse itself would be run usually by the conventional theodolite and chain survey and the offsets measured with the chain.

Q. Is that skilled work or could a layman do it?

A. To the layman it would be skilled work.

Q. What about the northern boundary of the land? Would you be able to see that on the ground or how would you locate it?

A. The northern boundary itself would not be visible on the ground although there could be fencing approximating the line of it.

Q. In your experience as a surveyor, is fencing generally accurately on boundaries?

A. No, not accurately.

Q. So that you, as a surveyor, would not use any fencing for that purpose?

A. No, certainly not.

Q. Well, how would you establish the location of the northern boundary?

A. The northern boundary would have originally been located by previous survey.

Q. Yes?

A. And it would be necessary to redefine this survey to ascertain the position on the northern boundary.

Q. How would you do that?

A. That would be done, hopefully, by finding old pegs of the previous survey.

Q. Would they be readily visible?

A. No, they would not.

Court: They may or may not be there?

A. In Fiji it is usual that they are not usually visible due to the ground cover and the usual practice of knocking the pegs in flush with the ground.

Q. Is it also true to say that they are often missing?

A. It is.

Q. What is used for a peg in Fiji?

A. The most common form of survey peg is a ½ inch, three quarter inch or sometimes 1" waterpipe.

Court: The most common type in Suva?

A. That is true.

Q. And does that look just the same as any other waterpipe?

A. It does.

Q. I want to turn next to a comparison of the sketch plan, Ex. "X" with deposited plan 1941. Have you, to facilitate comparison reproduced the sketch plan

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to the larger scale of 2 chains to the inch?

A. I have.

Q. Have you also done that with deposited plan 1941?

A. I have.

Q. Is deposited plan 1941 the deposited plan from which certificate of title 8316 was derived?

A. It is.

Gifford: My Lord, I tender the sketch plan reproduced at the scale of 2 chains to the inch.

Court: Exhibit "AD".

Q. Do you produce the deposited plan 1941 at 2 chains to the inch?

A. I do.

Gifford: My Lord, I tender that.

Court: Exhibit "AE".

Q. Have you prepared a composite of the sketch plan and deposited plan 1941 at two chains to the inch?

A. I have.

Q. And do you produce it?

A. I do.

Gifford: My Lord, I tender that.

Court: Exhibit "AF"

Q. Looking at Ex. "AF" that comparison shows, does it not, that the northern and southern boundaries of the sketch do not agree with the northern and southern boundaries of the plaintiffs' land on deposited plan 1941, or if the northern boundary is made to agree, then the southern boundary of the sketch plan is substantially to the south of the southern boundary of deposited plan 1941?

A. It does.

Q. Can you tell us what the western boundary of the so-called 20 acre area scales if one places it on deposited plan 1941 by locating it from the sketch plan?

The measurement on deposited plan 1941 at that point is 1,230 links. Let me come at it another way. Are the northern and southern boundaries on deposited plan 1941 parallel?

A. No, they are not.

Q. So you have to assume some point at which you measure?

A. That is correct.

Q. What is the length of that western boundary on the sketch plan?

A. 1,530 links.

Q. So that the sketch plan gives a north/south measurement 30 links greater than deposited plan 1941 at that point?

A. That is correct.

Q. What is that in feet?

A. 19.8 feet.

Q. Does the discrepancy between the sketch plan and deposited plan 1941 remain constant along the length of the northern or southern boundary?

A. It appears to diverge slightly to the east.

Q. What is the difference in the north/south measurement of deposited plan 1941 and the sketch plan measured by running a perpendicular line from the point at which the eastern boundary on deposited plan 1941 crosses the eastern boundary of the sketch plan first to the northern from the southern boundary of deposited plan 1941?

A. There is a difference of 45 links.

Q. Which is the greater?

A. The sketch is the greater.

Q. I want you now to assume contrary to the fact that the eastern boundary of the sketch plan was the same as the eastern boundary on deposited plan 1941. What is the effect in acres of the discrepancy in the northern and southern boundaries of the two plans?

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A. There is a difference of .67 of an acre.

Q. What is that in square feet?

A. 29,185.2 square feet.

Q. Which is the greater, the sketch plan or the deposited plan?

A. The sketch plan.

Q. By how much is that reduced because of the inaccuracy of the eastern boundary on the sketch plan as compared with deposited plan 1941?

A. That is reduced by .52 of an acre.

Q. Giving a net excess in the sketch plan as against the deposited plan?

A. .15 of an acre.

Q. Which is, in square feet?

A. 6,534 square feet.

Q. Have you prepared a reproduction of the plan in certificate of title 8316 to the scale of two chains to the inch?

A. I have.

Gifford: My Lord, I tender that.

Court: Exhibit "AG"

Q. Have you compared the sketch plan with the plan on certificate of title 8316?

A. Yes, I have.

Q. Have you made a composite of the plan on certificate of title 8316 and the sketch plan at the scale of two chains to the inch?

A. I have.

Gifford: My Lord, I tender that.

Court: Exhibit "AH".

Q. Do the northern and southern boundaries of the plan on certificate of title 8316 and the sketch plan agree?

A. No.

Q. Using the northern boundary as a constant by how much is the sketch plan greater in a north/south dimension at the western end of the so-called 20 acres than the certificate of title plan?

A. 70 links.

Q. How much is that in feet?

A. 46.2 feet.

Q. Is there a constant variation between the northern and southern boundaries of the sketch plan and the plan on certificate of title 8316?

A. There is not.

Q. Assuming - wrongly, as Ex. "AH" shows - that the eastern boundary was the same on the sketch plan and on the certificate of title plan, what is the acreage by which the sketch plan exceeds the plan on the certificate of title?

A. 1.24 acres.

Q. By how much is that reduced by the discrepancy on the eastern boundary?

A. It is actually increased by .01 of an acre.

Q. What is that 1.25 acre excess in square feet?

A. 54,450 square feet.

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IN THE SUPREME COURT OF FIJI

Civil Jurisdiction — Action No. 213 of 1968

IN COURT

Before the Honourable Mr. Justice Stuart, Judge
Monday, the 16th September, 1974 at 9.30 a.m.

Between: 1. MUKTA BEN d/o Bhovan
2. SHANTA BEN d/o Bhimji — Plaintiffs

- and -

SUVA CITY COUNCIL — Defendant

Mr. K.H. Gifford, Q.C. and Mr. V. Parmanandam for the Plaintiffs.

Mr. T.E.F. Hughes, Q.C. and Mr. R. Lateef for the Defendant.

Court Stenographer - Mrs. Singh
3rd W/P - Sworn on Bible in English
RONALD GORDON KNUCKEY
Qauya Street,
Lami.
Land Surveyor.

EXAMINATION-IN-CHIEF CONTD. BY MR. GIFFORD, Q.C.

Q. Before I take you through the remainder of your evidence there are just a couple of minor matters I wish to clear up while they are in my mind. You are familiar with the town boundaries of the city of Suva?

A. To an extent, yes.

Q. You are familiar with town boundary of the city of Suva in the Kinoya area?

A. I am, yes.

Q. Mr. Knuckey it is admitted that the land in question is beyond the town boundaries of the city of Suva. Can you tell us how far the plaintiff's land is from the town boundary - nearest point to nearest point?

A. It is approximately three-quarters of a mile from the plaintiffs' land to the town boundaries.

Court: From the nearest point to the nearest point?

A. Yes.

Q. And have you in front of you a plan from which you can scale off the distance of that so-called 20 acre area to the nearest part of the town boundary of the city of Suva?

A. The previous distance given - that is three-quarters of a mile is the nearest part of the subject land to the town boundary. I misheard the previous question.

Court: What do you call the subject land?

A. The so-called 20 acre area, My Lord.

Q. The other day in court the question arose as to what is the land comprised in certificate of title 7243. Have you a plan in front of you from which you can show us what is the land comprised in that certificate of title?

A. I have. (Witness demonstrated) That is the land although Certificate of Title 7243 is not written thereon.

Q. All I want you is to identify it.

A. It is the more southerly portion of the land abutting the Samabula River and Laucala Bay.

Q. Have you a plan that shows the title boundaries.

A. I have.

(Shown to counsel)

Gifford: My Lord, it is probably better that I return to this subject later on. It is more logical to prove this particular plan at a later stage. I am sorry, sir.

Q. I want at this stage Mr. Knuckey to take up your comparison of the sketch plan on the notice to treat served on the plaintiffs with other plans and documents and whenever I refer to the sketch plan from here on I will be referring to the sketch plan as served upon the plaintiffs. We have copies of them at pages 88 and 91 of Exhibit A and there is also the original - the one served on us in an exhibit: which is exhibit X.

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Court: Refer to it as Exhibit X

Q. Mr. Knuckey you have dealt with deposited plan 1941 and its comparison with the sketch plan exhibit X. What was the relevant deposited plan at the time the notice to treat was served in July 1967?

A. In July 1967 the relevant plan would be deposited plan 1941.

Q. Subsequently was a new deposited plan prepared?

A. It was.

Q. Are you able to say who caused that new deposited plan to be prepared?

A. It was prepared by a registered surveyor, Mr. J.F. Carter.

Q. For whom did he prepare it?

A. It was prepared on instructions of the Suva City Council.

Hughes: Objects. If my learned friend could tell me what plans he wants I am willing to give them to him. (Both counsel sort out the plans).

Gifford: My Lord there is Exhibit D.1 that my learned friend is prepared to admit is the deposited plan prepared for Suva City Council. Deposited plan 3265. My Lord that of course is the deposited plan as lodged with the Registrar of Titles and inadvertently my learned friends have removed certain documents from them.

Q. Have you made a reproduction of deposited plan 2365 at the same scale as the other reproductions you have produced?

A. I have.

Q. At two chains to an inch?

A. Yes.

Q. Do you produce it?

A. I do.

Gifford: I tender that My Lord.

Court: Exhibit AJ.

Q. Have you also prepared a plan which is a composite of the sketch plan exhibit X but at two chains to the inch and deposited plan 3265 also at two chains to the inch?

Court: What exhibit?

Gifford: A composite of exhibit AD and exhibit AJ, My Lord.

A. May I have the question again, sir.

(Question repeated)=

A. I have.

Q. Do you produce that?

A. I do.

Gifford: I tender that, My Lord.
Court: Exhibit AK.

Q. I want you first of all to compare the northern and southern boundaries of the deposited plan and the sketch plan Exhibit X and tell me by how much the land indicated on exhibit X exceeds the land in deposited plan 3265 at the western boundary of the sketch plan. Give me the excess length.

A. 40 links.

Q. Is that excess constant throughout the east-west length of the land in the sketch plan exhibit X or does it vary?

A. It is constant.

Court: Constant variance from east to west?

A. Yes, My Lord.

Q. Then I want you for the moment to assume contrary to the fact that the eastern boundary of the sketch plan exhibit X and the eastern boundary of the deposited plan 3265 coincided. On that assumption how much excess area is there in the sketch plan exhibit X as compared with deposited plan 3265?

A. .71 of an acre.

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10.00 a.m. - Court Stenographer - Miss R. Kunaqoro
RONALD GORDON KNUCKEY - 3rd Plaintiff witness
EXAMINATION-IN-CHIEF CONTINUED BY MR. GIFFORD, Q.C.

Q. Is that excess area increased or decreased when regard is had to the variations in the eastern boundary?

A. That area is decreased.

Q. What is the amount of the decrease?

A. .34 of an acre.

Q. What is the net excess to that stage of the sketch plan over the deposited plan 3265?

A. .37 of an acre.

Q. What is that in square feet?

A. 16,117-2 sq. feet.

Q. Are the discrepancies between the sketch plan eastern boundary, and the eastern boundary of deposited plan 3265 the same as or different to the discrepancies between the sketch plan Exhibit X and the other plans you have considered earlier in your evidence?

A. They are different.

Q. By how much does the northern boundary of the sketch plan exceed the length of the northern boundary of deposited plan 3265?

A. 290 links.

Q. What is that in feet?

A. 191.4 feet.

Q. By how much does the southern boundary of the sketch plan exceed the length of the southern boundary of the deposited plan 3265?

A. 160 links

Q. What is that in feet?

A. 105.6 feet.

Q. So far I have asked you to take into account the difference in a north-south direction and on the

eastern boundary. What is the effect of taking into account the difference in an east-west direction? Does that add to the excess of the sketch plan over the deposited plan?

A. It does.

Q. By how much?

A. By 2.9 acres.

Q. What does that make the total excess of the sketch plan over the deposited plan 3265?

A. 3.27 acres.

Q. And what is that in acres, rood and perches?

A. 3 acres, 1 rood, 3.2 perches.

Q. What is that in square feet?

A. 142,441.2 square feet.

Q. May the witness be shown Ex. R?

(Witness examines Ex.R)

Who placed the red and yellow lines on that exhibit?

Q. The yellow lines were placed by myself to identify the land. The red lines were placed by Mr. Winston Yee of the Lands Department.

Q. What do the red lines indicate?

A. The red lines indicate the area which Mr. Yee was instructed to enlarge to a larger scale for me and also note on the side the instructions as to what the enlargement should be and how many copies.

Q. And what do the yellow lines indicate?

A. The yellow lines indicate the perimeter of Certificate of Title 12381.

Q. Is that the plaintiffs' land?

A. It is.

Q. Have you an enlargement of part of that aerial photograph Ex. R?

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A. Yes. (Counsel shown enlargement of Ex. R)

Q. To what scale?

A. 1": 13 chains approximately.

Q. My Lord, I have now identified the various markings on Ex. 5 which were not earlier identified and I now turn to Ex. S. Who placed the red markings on Ex.S?

A. I did.

Q. Now, Ex.S has on it 12 chains to the inch approximately.

A. Yes.

Q. Which is correct, 12 or 13?

A. 12 chains is correct as regards Ex. S.

Q. Have you made a reproduction of the 1967 aerial photograph Ex. R or exhibit S to the same scale of 2 chains to the inch so far as the plaintiffs' land is concered?

A. I have.

Q. And do you produce that?

A. I do.

Gifford: My Lord, I tender that.

Court: Mark as Ex. AL.

Q. That is an enlargement showing the high water mark, is it not?

A. It is.

Q. Have you made a composite of Ex. AL and Ex. X?

A. I have.

Q. And you produce that?

A. I do. Scale - 1": 2 chains.

Gifford: My Lord, I tender that.

Court: Marked as Ex. AM.

Q. Does the black line on Ex. AM show the high watermark boundary as ascertained by you from the aerial photograph Ex. R or its enlargement Ex.S?

A. It does.

Q. Have you been faced with any difficulty in preparing Ex. AM in relation to the commencing point of the eastern boundary?

A. I have.

Q. What is that difficulty?

A. The difficulty of ascertaining a common point of the two plans.

Q. Can you explain that more fully?

A. There is a sketch plan which purports to define the highwater mark as existing in 1967 and the aerial photo which does show that high watermark and it is difficult to bring these lines into conjunction.

Court: You would not expect to if one is a sketch plan?

A. To determine a comparison of the sketch plan and the aerial photo one must be able to assume some point of conjunction to enable this to be done.

Q. Does the sketch plan in fact say its eastern boundary is the high watermark?

Hughes: It is the sketch plan with eastern boundary as the high water mark. The plan will speak for itself.

Q. Perhaps if the witness can have the sketch plan which is Ex. S, My Lord.

(Witness shown Ex. S)

10.30 a.m. Mrs. Vakayadra takes over the notes.

Monday 16th September, 1974 at 10.30 a.m.
Court Stenographer - Mrs. Vakayadra.

3RDW/PLAINTIFF RONALD GORDON KNUCKEY - EXAMINATION-IN-CHIEF CONTINUED BY MR. GIFFORD.

Q. Will you look at Ex. X and say is there anything on that sketch plan exhibit X which says that the eastern boundary is the highwater mark?

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A. Only the word 'tiri' written on the plan.

Q. What does the word 'tiri' mean?

A. This is a type of mangrove. It is a Fijian word for a type of mangrove.

Q. And the word 'tiri' in fact appears some considerable distance to the south of the Plaintiffs' land as indicated by the sketch plan?

A. It does.

Q. Do the words "highwater mark" or anything like them appear on the sketch plan?

A. No, they don't.

Q. Have you therefore had to make an assumption for purposes of comparison that the eastern boundary is meant to represent the highwater mark on the sketch plan?

A. I have.

Q. You were saying you have to try to achieve a point of conjunction between the sketch plan and the aerial photograph. How did you do that?

A. By positioning the two plans and achieving a position of best-fit between the two.

Court: Is that another name for guess work?

A. No, not at all, My Lord.

Q. What is a position of best-fit? What do you mean by that?

A. A position of best-fit would be such that the differences between the two lines is a minimum. That is not very well put, I am sorry.

Court: So that you get the smallest difference?

A. The smallest total difference.

Q. Having regard to the defects of the sketch plan, can you say whether there is in fact a point of conjunction between the sketch plan and the aerial photograph?

A. No, I can't.

Court: You can't what?

A. I cannot say whether there is a point of conjunction.

Q. If there is a point of conjunction, and it is not the point of best mean fit, what would the effect be on the discrepancies between the sketch plan and the aerial photograph as shown on Ex. AM?

A. The effect would be to increase those discrepancies.

Q. Is taking the best mean fit taking the view most favourable to the Suva City Council?

A. It would be.

Q Taking the best mean fit overall, what effect has the adoption of the highwater mark boundary from the aerial photograph as compared with that on the sketch plan?

A. It has the effect of decreasing the area of the sketch plan.

Q. What is the excess area of the sketch plan using the sketch plan boundary instead of the highwater mark boundary as revealed by the aerial photograph?

A. An excess of .18 of an acre.

Q. And what is that in square feet?

A. 7840.8 sq. feet.

Q. And in roods and perches?

A. 28.8 perches.

Q. Now I want to turn to a comparison of Deposited Plan 3265 with the 1967 aerial photograph, ex. AL. Have you a composite of exhibits D.1 and AL?

A. I have.

Gifford: I tender that, My Lord.

Court: Ex. AN.

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Q. Does the highwater mark boundary on Deposited Plan 3265 agree with the high water mark as revealed by the aerial photograph?

A. No.

Q. Is the Deposited Plan 3265 boundary accurate as to the highwater mark?

A. It does not appear to be so.

Q. Taking the discrepancies between the eastern boundary of Deposited Plan 3265 and the high water mark boundary as revealed by the aerial photograph, what is the increase in the area taken by the Suva City Council if the actual highwater mark as revealed by the aerial photograph is taken?

A. .07 of an acre.

Court: That is the area on the aerial photograph exceeds the area shown on Deposited Plan 3265?

A. That is correct, Sir.

Q. What is .07 acres in square feet?

A. 3049.2 sq. feet.

Q. And what is that in perches?

A. 11.2 perches.

Gifford: Can the witness be shown Ex. D1?

(Ex. D.1 shown to witness)

Gifford: My Lord, my learned friend has kindly handed me a calculation form in respect of Deposited Plan 3265 which I also wish to tender.

Court: That came out of the possession of your surveyor, Mr. Hughes?

Hughes: Yes, My Lord. That calculation was annexed to the Deposited Plan when it was submitted to Registrar of Titles.

Court: You are going to use that are you?

A. Yes, My Lord.

Court: Ex. AO

Gifford: Could you have a look at that please?

(Ex. AO given to witness)

Q. Does that Ex. AO show by calculation that the eastern lot on Deposited Plan 3265 is in excess of 20 acres?

A. It does.

Q. What are the calculations of Ex. AO?

A. This is a calculation form of the type of which is submitted with every Deposited Plan. It shows a mathematical closure of each of the two lots plus a computation of the area of each lot.

Q. If the surveyor had been instructed to create a lot of exactly 20 acres, what should he have done when he found by his computations that it was in excess of 20 acres?

A. The western boundary of the subject land could have been moved to the east to decrease the area.

Court: In other words, he could have made an area of precisely 20 acres had he wished to do so?

A. Yes, My Lord.

Q. What is that excess of 2.57 perches in square feet?

A. An excess of 2.57 perches in 699.7 sq.feet.

11.02 a.m. - Court adjourned for morning break

11.20 a.m. on Monday 16th September, 1974

On resumption
Court Stenographer - Mrs. Singh
3rd W/P - Recalled and Resworn on Bible
RONALD GORDON KNUCKEY
EXAMINATION-IN-CHIEF BY MR. GIFFORD CONTINUED

Q. Mr. Knuckey exhibit S shows us the actual development in the locality of the plaintiffs' land at the date at which it was taken, namely 2nd September, 1967. Have you an aerial photograph showing the plaintiffs' land and the land around it in 1968).

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A. I have.

Q. Do you produce that?

A. I do.

Court: At what date?

A. 17th February, 1968.

Q. Could you mark on that plan the plaintiffs' land?

A. If I can have a felt pen.
(A pen was produced).

(Witness marks the plaintiffs' land on the aerial photograph dated 17 February, 1968).

Gifford: I tender that, My Lord.

Court: Exhibit AP.

Q. Now Mr. Knuckey using exhibit AP to see if any work had been done, does exhibit AP show any change on the plaintiffs' land from exhibit AL?

A. No, it does not.

Q. Does it show any commencement of the road leading to the power station by comparison with exhibit AL?

A. No.

Q. If there had been any construction commenced on the plaintiffs' land would that have shown up on the aerial photograph exhibit AP?

A. It would.

Q. If there had been any construction commenced in respect of the road leading to the power station would that show up on the aerial photograph exhibit AP?

A. It would have.

Q. Mr. Knuckey looking at the road which was later extended to give access to the power station does exhibit AP show that there had been no work by way of extension towards power house site from the time of exhibit S?

A. It does.

Q. Does exhibit AP show that other work had been done in the locality since the time of exhibit S?

A. It does.

Court: That does not affect the road that subsequently led to the power house?

A. That is right, My Lord.

Q. What is that other work shown on exhibit AP?

A. They are roads constructed for the Housing Authority as part of a Housing Authority sub-division.

Q. Was that Housing Authority sub-division anything to do with the power house?

A. No.

Q. Would you have a further look please at exhibit AP comparing it with exhibit S - is it correct to say that in the Housing Authority sub-division there had been between the time of exhibit S and that of exhibit AP a further development of the large oblong building by the addition of a wing?

A. I am not aware of a large oblong building.

(Counsel point it out to the witness)

A. Yes.

(Shown to His Lordship)

Q. Can you recall what that building is?

A. No, I cannot.

Q. Could it be on interpretation of the aerial photograph, a school?

A. I think it would be most likely to be a school, yes.

Q. Is there a teachers' college in that area?

A. There is.

Q. Do you know whether that building is part of the teachers' college or not?

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A. I do not think it is part of the teachers' college. It is further on the east along King's Road.

Court: There is the Assemblies of God School close by, is it part of that?

A. I think it is that, my Lord.

Q. I want you now to compare exhibit T which is the aerial photograph of 16th September, 1969 with exhibit S which is an enlargement of the one of the 2nd September, 1967. Does that show development has occurred between the two dates of those photographs? First of all does that show any change in respect of the land to the south of the plaintiffs' land?

A. No, it does not. Yes, there appears to be some extra buildings on the land.

11.50 a.m. - Miss R. Kunaqoro continues.

11.50 a.m. - Monday 16th September, 1974

Court Stenographer - Miss R. Kunaqoro
3rd W/P - RONALD GORDON KNUCKEY
EXAMINATION-IN-CHIEF BY GIFFORD, Q.C. CONTINUED

Q. Does it show any change on the plaintiffs' land?

A. It does.

Q. What?

A. It shows roadworks and building works carried out on the subject land.

Q. Is the large white rectangular building on the plaintiffs' land, the power station?

A. It is.

Q. Does Ex. T show reclamation work beyond the high watermark boundary of the plaintiffs' land?

A. It does.

Q. Where is that?

A. There appears to be reclamation running across the 'Tiri' to the Fijian village.

Q. Is the Fijian village the area of houses to the right of the plaintiffs' land, if the Ex. T is placed as an upright rectangle?

A. Yes, it is.

Q. Is the white extending from the plaintiffs' land what you are indicating as reclamation work?

A. It is.

Q. Had the road at this stage, been extended to the power house site?

A. Kinoya Road had been extended to the power house site.

Q. In comparing Ex. S and T what other development had occurred in the locality between the dates of the two aerial photographs?

A. There is a considerable further Housing Authority development west of Kinoya Road. There has also been an access road constructed to the east of Kinoya Road but it appears to be serving only one house, though.

Q. Other development occurring?

A. That appears to be all the development occurring which I can see.

Q. Do you know of your own knowledge whether other development had occurred in the locality in that period, but which is beyond the extent of Ex. T?

A. There is a development north east of the subject land on the north side of Kings' Road which appears on Ex. S - that was a Housing Authority sub-division. To the south of Kings Road and formerly the same title as the piece to the north of King's Road is an area on which can be seen a roading pattern which is the commencement of Nasinu Co-operative sub-division.

Court: Is this the top right hand corner of Ex. S?

A. In the centre of Ex. S My Lord.

Court: Where you have an inverted "Y"?

A. That is correct.

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Court: And is there further development there?

A. Yes, My Lord. Residential development.

Q. Did that rate of development continue or accelerate or become less after 1969 in the locality?

A. I would say the development rate has accelerated.

Court: Since 1969?

A. Yes, My Lord.

Court: What do you mean by locality?

A. By Locality I mean the general locality, My Lord.

Q. Now, I want you to look at Ex. U. I think you have a copy of the aerial photograph taken on 6/8/71. (Witness looks at Ex. U) I am going to ask the witness to compare Ex. U and T. First of all, what is the large white area of Ex. U?

A. Cloud.

Q. Comparing those two photographs, can you tell us, first of all had development occurred on the land to the south of the plaintiffs' land during that period?

A. I had.

Q. What had happened?

A. There are sub-divisional roads in the course of construction.

Q. Yes, and do those roads lead up to the plaintiffs' land in three places?

A. They do.

Q. Do they actually cross into the plaintiffs' land?

A. No, they would end at the boundary although there may be spillover from construction work on the plaintiffs' land.

Q. I want you to look at the second of those three roads; (the central one) and tell me, does the construction appear to go on to the plaintiffs' land there?

A. It does appear to do so.

Q. Is the wide road that has appeared on the 1971 photo (Ex. U) known to you?

A. It is.

Q. What is that road?

A. It is a main road, link road, which is intended to form a loop from King's Road to serve the whole of the Kinoya and Nasinu areas.

Q. Is that a planned road?

A. It is.

Q. Planned by whom?

A. By the Town Planning Department of the Lands Department.

Q. How long has the location of that road been fixed by that department?

A. A tentative positioning of that road was decided on in 1968, I believe.

Q. Early or late 1968?

A. My knowledge of it in this particular area, would have been in late 1968. My knowledge of it further to the east through what was the Nasinu Co-operative Sub-division would have been early 1968.

Q. In respect of the Nasinu Co-operative sub-division, did you find it was then a fixed location; the loop road, was it then a fixed location?

A. To my knowledge, it was a fixed location in as much as a road had to be provided from near the southern end of the Nasinu Co-operative land, and travel through that land to the King's Road.

Court: Where is the Co-operative land?

A. As it would be the top section of the land and there is actual road pattern there, My Lord. (Points to plan) If you just find the white cloud. Yes, it is about 3" wide and you can see actual bulldoze works.

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Court: What you are telling me as I understand you is that that road comes from Nasinu over the cloud and through into Kinoya Road and thus joins the power house road?

A. That is correct.

Q. Now, can you tell us what other changes had occurred in the locality in the nearly two years between Ex. T and Ex. U?

A. There is considerable further Housing Authority development to the north east of the subject land. There is further development both to the east and west of Kinoya Road which, in fact, appears to abut the balance of the subject land. There are earthworks on the coast, just to the north of the subject land, which is earthworks relating to the sewage treatment plant and there are many more houses built on the Housing Authority sub-division to the west of Kinoya Road. There is further housing development on the subject land.

Q. Is there development on the Nasinu Co-operative land between the two photographs?

A. No, there does not appear to be.

Q. Looking at Ex. U there is the large area covered by white cloud and immediately to the north, there is a road pattern, is there not?

A. There is.

Q. Did that appear on Ex. T?

A. I cannot find the development to the north west referred to. The Nasinu development is just to the right of that very white road pattern.

Court: What is that very white road pattern?

A. That is a Housing Authority sub-division.

Q. And there is another Housing Authority sub-division just above the plaintiffs' land?

A. That is correct, My Lord.

Q. Is the black area on the top right hand corner of Ex. U cloud shadow?

A. It is.

Court: Abutting on the Nasinu Co-operative land?

A. That is so, My Lord.

Q. If one looks at the lower portion of the cloud shadow and just below it is there development on Ex. U not shown on Ex. T?

A. I cannot see any development adjacent to the dark cloud on the Nasinu Co-operative land.

12.25 p.m. - Mrs. Vakayadra takes over the note taking of the evidence.

Monday 16th September, 1974 - 12.25 noon

Court Stenographer - Mrs. Vakayadra
3rd W/P MR. KNUCKEY - EXAMINATION-IN-CHIEF BY MR. GIFFORD CONTINUES

Q. I mean in that area (Points and shows to witness) - Do you say is that development or not?

A. There appears to be some marks on Ex. U which I think are in the processing of the photograph.

Q. Looking at Ex. U, at the very white road area which runs across to King's Road, above the white cloud area, did you see on the extreme left of Ex. U a rectangular field with some large buildings on the northern end of it?

A. The area My Lord is that one there (points and shown to Court). Have those buildings been extended in the period between the two photographs?

A. It does not appear so, Sir.

Q. Are the buildings on the two the same?

A. They do appear to be.

Gifford: The aerial photograph Ex. B is of the 31st December, 1973 My Lord.

Q. Now, I want you to compare Ex. V with Ex. U. Does that show further development in the locality? (Exhibits V & U shown to witness).

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A. It does.

Q. Canyou detail that?

A. There now appears development on the Nasinu Co-operative land.

Court: Which is north in that plan Mr. Knuckey?

A. My Lord, the subject land for these purposes is running more or less east and west.

Q. Yes, go on.

A. The roading development which showed adjacent to the Nasinu Co-operative land has now been extended and there are houses built along portions of those roads.

Court: The Nasinu housing land is in the top area of the land?

A. That's correct. My Lord, and has that devil's fork type configuration there. The main link road is now joined, along which there is considerable building development and off-take roads. The construction of the sewerage treatment plant has progressed considerably.

Court: That is immediately to the north of the power house?

A. That's correct, My Lord. Coming further to the west considerable housing development has taken place with also roading development continuing to the west and abutting the northern boundary of the plaintiffs' land. South of the plaintiffs' land the main ring road now has a bridge across the Wainivula Creek joining it with King's Road just above the white cloud in between the brown marks. The roading in the sub-division of the land south of the plaintiffs' land is well on and in some parts appears to be complete. There is also development on the north side of the King's Road. That area does not show on Ex. U. That is a Lands Department sub-division. There is further housing development on the subject land.

Q. Taking the 7 year period between Ex. S and Ex. V how to your knowledge has the rate of development in the general locality of the plaintiffs' land compared with the rate of development in other parts of Suva?

A. It would be greater.

Q. Greater in the locality of the plaintiffs' land?

A. Yes.

Q. In which direction has been the main thrust of development of Suva during that 7 year period?

A. To the east along King's Road with a possible lesser expansion to the north in the Tamavua area.

Q. You are familiar are you not with what the Suva City Council has constructed on the plaintiffs' land?

A. I am.

Q. Would you have a look at this photograph? (Ex. V shown to witness).

Q. The power station is the building in the centre?

A. That is correct.

Court: Where is the housing development if any, there?

A. There is housing to the west, that is to the left of the picture, a white building, there is a long thin rectangular shape with 5 houses, 5 units, to the south of that there are 2 units.

Court: Just below the power station?

A. No, to the left of the power station, My Lord.

Court: To the west of the road?

A. That's correct, My Lord. Going to the north of the power station, going to the boundary of the subject land, there is further housing.

Gifford: I wish also to tender these photographs and to save time I have already shown them to my learned friend who has no objections. I first tender 5 photographs of the housing and power station.

Court: Ex. AQ 1 - 5

Gifford: My Lord - I tender two photographs of the two-storey flats built by the defendant and on the right hand side behind the two-storey flats, which have a lady by the doorway, you see single-storey flats

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further behind. The development that you can see in the background of that photograph, do you know who carried out those developments?

Court: Ex. AQ1.

A. It is development by the Suva City Council.

Gifford: I tender a photograph of the single-storey housing and the same two-storey flats in the background further back.

Court: Ex. AQ2

Gifford: I tender a photograph of the other two-storey flats.

Court: Ex. AQ3

Gifford: I tender two photographs of the power station building. It shows to the left of the power station, the cooling power that is referred to in the statement of evidence of Mr. Wheeler Ex. AA. On the right of the power station is the oil tank referred to by Mr. Wheeler in Ex. AA.

It shows the power station from a different angle and you can see behind which the feeder tank on a stand referred to by Mr. Wheeler in Ex. AA and the water beyond the highwater mark can be seen more readily in AQ.5.

Court: Exhibits AQ4 and AQ5

Court: This is the feeder tank which looks like a steamer behind the oil tank?

A. That's correct, My Lord.

Q. Would you look at Ex. AQ1 and AQ3? (Shown)

Q. You see on Ex. AQ1 between the two blocks of two-storey flats, and in the distance, there is housing, you see that?

A. Yes, I see that.

Q. Do you know who constructed that?

A. Yes, this would be Housing Authority construction.

Q. And on Ex. AQ3, there is a large amount of housing in the background. Who constructed that?

A. That would also be Housing Authority.

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12.55 noon - Court adjourned to 2.15 p.m.

2.15 p.m. on Monday 16th September, 1974

Court Stenographer - Mrs. Singh
3rd W/P - Recalled and Re-sworn on Bible
RONALD GORDON KNUCKEY

EXAMINATION-IN-CHIEF BY MR. GIFFORD CONTINUED

Gifford: My Lord, I tender by consent five photographs relating to the machinery in the power house and to the development on the American Investments land immediately to the south.

Court: Ex. AR.

Gifford: I tender a photograph showing a road on American Investments land immediately to the south of the plaintiffs' land and with access to the plaintiffs' land, AR.2 a road on American Investment industrial land.

Court: Ex. AR.1

Gifford: I tender a photograph of a road on the industrially zoned land immediately to the south of the plaintiffs' land.

Court: Ex. AR.2

Gifford: I tender a photograph of a road on the land immediately to the south of the plaintiffs' land and showing the powerhouse behind.

Court: Ex. AR.3

Gifford: I tender two photographs of the machinery in the powerhouse.

Court: Ex. AR.4 and AR.5

Q. Mr. Knuckey what is the area actually covered by the power house building?

A. From memory 20,000 square feet.

Q. Have you noted this?

A. These are noted on the enlargement of the 1973 aerial photograph which is already before court.

Q. Would you look at Exhibit W and say who prepared the overlay which is on that exhibit?

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A. I did.

Q. And what does that overlay show?

A. The overlay shows different areas of the different types of development on the subject land.

Q. Looking at that overlay what is the area actually covered by the power house building?

A. 20,000 square feet.

Q. What is that in terms of an acre?

A. .46a.

Q. What is the area actually covered by the cooling tower? 10

A. 2,700 square feet.

Q. I want the area covered by the oil tank and its attendant installation and the feeder tank and its structure?

A. A total of 3,00 square feet.

Q. Now if you total the area actually covered by the power station, cooling tower, oil tank with attendant installation and the feeder tank and structure, what does that come to? 20

A. 27,500 square feet.

Q. And as a part of an acre what is it?

A. .59 of an acre.

Q. Has a fence been erected enclosing an area around the power station?

A. It has.

Q. Are the cooling tower, oil tank and feeder tank etc. within that fencing?

A. They are.

Q. What is the total area enclosed by that fencing? 30

A. 6.1 acres.

Q. What is the major part of that 6.1 acres used for if anything.

A. It appears to be open space.

Court: The majority of that 6.1 acres?

A. The majority of that 6.1 acres appears to be open space.

Q. Do you mean by that a playing area or just not used at all?

A. Much of it is not used at all. Other areas of it seem to have building materials or something placed on it.

Q. You in fact inspected the power house fenced area this year did you not?

A. I did.

Q. When did you last do so?

A. I viewed the subject land yesterday.

Q. Did there appear to be any more use of the land within the fence yesterday than appears from exhibit W?

A. From the various positions I was able to view the site it did not appear that there was any further development.

Q. Is it correct to say then that as at yesterday the majority of that 6.1 acres is un-used land?

A. Yes.

Q. Housing accommodation in the form of flats has been erected by Suva City Council and you have measured, have you not, from the aerial photograph exhibit W the area actually covered by the flats?

A. I have.

Q. What is that area?

A. 7,700 square feet.

Q. There is some garden development around the flats, is there not?

A. There is.

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Q. What is the total area occupied by the flats and the garden area around them in each case?

A. A total of 45,700 square feet.

Q. What is that in terms of acres?

A. 1.05 acres.

Court: How many square feet in one acre?

A. 43,560

Q. So that the total area occupied by the fenced area sround the power house and the flats with their gardens but excluding the land in between is 7.15 acres, is that correct?

A. Yes, My Lord.

Q. How much land is actually covered by the power house building, the cooling tower, the oil tank, with attendant installation, the feeder tank the three two-storey blocks of flats, the single storey flats and the gardens around the flats?

A. 71,400 square feet.

Q. And in terms of acres?

A. 1.64 acres.

Q. What is the area of land occupied by that part of the road to the power house, that is on the plaintiffs' land but outside the fencing around the power house?

A. There are two sections of road. The one on the west is .5 of an acre, the one on the north .3 of an acre giving a total of .8 of an acre.

Q. Are the two blocks of two-storey flats on the plaintiffs' land close together or not?

A. They are close together, yes.

Q. Is there a third block of two-storey flats on the plaintiffs' land but some distance from the other two?

A. There is.

Q. I have not asked you to measure that distance, but could you form an estimate?

A. I could scale it.

Q. Could you? Thank you.

A. That is 10½ chains.

Q. How far is that in feet?

A. By scale 690 feet.

Q. You have referred in dealing with the aerial photographs to reclamation in fact carried out adjoining the plaintiffs' land?

A. I have.

Gifford: It is common ground My Lord, that that was reclamation carried out by Suva City Council.

Q. From the aerial photographs can you estimate the area so far reclaimed by Suva City Council?

A. Yes, I can.

Q. How much is it?

A. One acre.

Q. Have you had to make enquiries from time to time as to the zoning of land under the Draft Suva Regional Planning Scheme?

A. I have.

Q. Did you in the course of those enquiries see the Draft Suva Regional Planning Scheme as it was in 1968?

A. I did.

Q. Did you later make a copy of the Draft Suva Regional Planning Scheme to facilitate your work as a surveyor?

A. I did.

Q. When did you actually make that copy?

A. I believe it was February 1970. I have the original in my file.

Q. And have you prepared copies of that document?

A. I have.

Q. Perhaps we can see them?

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A. Yes.

Gifford: I tender that, My Lord.

Court: Exhibit AS.

Hughes: When I say by consent some question may arise as to ultimate relevance in argument.

Q. Now is the black and white line that is a curved line on exhibit AS the loop road to which you referred this morning?

A. It is.

2.50 p.m. - Miss Kunaqoro continues.

2.50 p.m. - Monday 16th September, 1974

Court Stenographer - Miss Kunaqoro
3rd W/P - Ronald Gordon Knuckey

Examination-in-Chief by Mr. Gifford, Q.C. continued

Q. I want you to apply your mind to the Nasinu Co-operative Sub-division. First of all you have told us houses have been erected on that land, have you not?

A. Yes.

Q. Is the Nasinu Co-operative land been developed for housing or for industry or both?

A. It is being developed both for housing and for industry.

Q. Does the Nasinu Co-operative land appear on Ex. AS?

A. No, it does not.

Q. Anywhere or in one of these exhibits which have been identified.

A. Exhibit S. I believe, My Lord.

Q. Can you mark on Ex. S where Nasinu development land is?

A. I can.

Q. Would you have a look on that exhibit? Do you see that black cross?

A. I do.

Q. What is the black cross on Ex. S, Mr. Knuckey?

A. It is the centre of the original photograph.

Court: It has nothing to do with this case at all?

A. No, My Lord. It is part of the aerial photograph. It is determined by a black cross on the bottom also.

Q. Can you on Ex. S identify the Nasinu Co-operative land?

A. The boundary of the Nasinu Co-operative land is in fact approximately 1/4 of an inch from the said black cross and can be seen from the fencing and vegetation along that fence.

Q. Can you mark it on Exhibit S please? (Done)

Q. When was survey work commenced for the Nasinu Co-operative sub-division?

A. It would be some time prior to my arrival in August, 1967.

Q. When were any plans for the roads in that sub-division prepared - the Nasinu sub-division?

A. Those were prepared during 1967 and early part of 1968.

Q. When was the Nasinu Co-operative sub-division approved by the Sub-division of Land Board?

A. That was also sometime prior to my arrival.

Q. You have referred to Nasinu Co-operative sub-division being in part for housing. Was that housing for sale or was it only for Nasinu Co-operative members?

A. It was as I remember, for both. Any sections in excess of the numbers wanted by the Co-operative members would be sold on the open market.

Q. My Lord, I ask for the plan of the Industrial areas be shown to the defendant's counsel. Now, there is a letter, My Lord, from the Town Clerk dated 4th October, 1966 which is p.70 of Ex. A. Mr. Knuckey, have you prepared a plan showing the location of the lands referred to in the letter starting at p.70 of Ex. A a letter of 4th October, 1966?

A. I have.

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Q. Would you produce that please?

Hughes: I consent.

Gifford: I tender that, My Lord.

Court: Ex. AT

Q. Now that plan Ex. AT goes from Nasinu on the east to Kalekana, on the west, does it not?

A. It does.

Gifford: The numbers in red are the same numbers as in paragraph 1 of the letter at page 70 of exhibit A.

Q. I want you to turn first to the land distinguished No. 1. Now as to the land with the red No. "1", where is that?

A. It is at the mouth of the Samabula river. It is south of the subject land and the distance from it - it is separated from it by one lot.

Q. Is that the land in Certificate of Title 7243?

A. That was the land in Certificate of Title 7243.

Court: It is separated from the plaintiffs' land by the American Investments land?

A. As of now, My Lord, both that and the land to the north are owned by American Investments.

Q. How many acres in the land with red "1"?

A. 72 3/4 acres.

Q. Topographically, how does it compare with the plaintiffs' land?

A. It would be very similar possibly, a little less undulating than the subject land.

3.20 p.m. - Mrs. Vakayadra continues.

3.15 p.m. - Monday 16th September, 1974
Court Stenographer - Mrs. Vakayadra
3rd W/P KNUCKEY - EXAMINATION IN CHIEF BY MR. GIFFORD CONTINUES -

Q. Does it have a sea frontage?

A. It does.

Q. How much of that land designated "1" was zoned industrial under the Draft Suva Regional Planning Scheme?

A. It would appear to be 12 acres.

Q. Mr. Knuckey, have you in fact calculated the areas of various of the pieces of land referred to in Ex. A pages 70 and following in that letter?

A. I have

Q. From what plan or other document or documents did you make the calculations?

A. The calculations were made on the reproduction of the Suva Regional Scheme.

Q. Did you make them personally?

A. I did.

Court: Mr. Knuckey, the 72 acres encloses the land coloured purple, the land coloured red but not the land purple hatched or green below those two?

A. That is correct, My Lord.

Court: All the land coloured green and red below the boundary is lowlying land?

A. Yes, and covered at high water.

Q. How much of the land with the distinguishing No. "1" could have been used for a power house site in your opinion?

A. The whole of the land referred to.

Gifford: My Lord by consent and to save time I inform Your Lordship that adjoining the area with the distinguishing No. "1" and bearing the distinguishing No. "12" is land that is not referred to in the Town Clerk's letter of the 4th of October 1966. This land with the distinguishing No. "12" lies between the subject land and the area with the distinguishing No. "1". The land with the distinguishing No. "12" is the land comprised in Certificate of Title No. 8315. It has an area of 94 acres 1 rood 8 perches and of that, 45.6 acres is zoned industrial under the Draft Suva Regional Planning Scheme. There is also an area of potential accretion beyond the foreshore

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boundary of that land in the industrial reclamation zone. The land zoned industrial zone is less undulating than the subject land and an area of 20 acres or any lesser area could certainly have been used for a power house. In fact much more than 20 acres.

Hughes: If it only means physical adaptation I have no objection.

Gifford: Perhaps I should go back to the question and answer form, My Lord.

Court: Yes.

Q. Mr. Knuckey, in your opinion, how much of that land to which you have given the distinguishing No. "12" would be usable for a power station?

A. All of the land.

Q. All of the 94 acres?

A. All of the 94 acres.

Q. Having regard to the zoning of the industrial zone land designated "12" could it, in your opinion, have been so used?

A. Yes.

Q. Immediately north of the subject land is the land with the distinguishing No. "13", what is that?

A. That is native land.

Q. In 1967 and 1968, how was that native land zoned?

A. I believe it was zoned industrial.

Q. How much of the native land was zoned industrial?

A. The area so zoned industrial was 29.4 acres.

Q. And is that without considering the benefit of industrial reclamation zoning?

A. That is.

Q. How does the topography of that native land compare with the plaintiffs' land?

A. It would appear to be more undulating than the plaintiffs' land.

Q. Would ary and if so, how much, of that native land, in your opinion be useable for a power station site?

A. I believe all of that would have been useable.

Q. What has it since been used for?

A. It has been used in part for the sewerage treatment plant.

Q. Whose plant is that?

A. That is constructed for the Government.

Q. I want you to turn now to land distinguishing No. "2". That is just immediately north of Suva itself. Is that reclaimed land?

A. It is land which would need to be reclaimed.

Q. It is of the order of 43 acres?

A. It is.

Q. Would that land be suitable for a power house or has it a defect?

A. I would think there would be problems on that site with foundations.

Q. Where is the area with the distinguishing No. "3"?

A. That is the site of the present Suva City Council garbage dump.

Q. And is it on the north side of the Tamavua river?

A. It is.

Q. Is the area with the distinguishable No. "4" northwest of Suva?

A. It is.

Q. The area with the distinguishing No. "5" is on Queen's Road northwest of Suva?

A. It is.

Q. It is an area of 5 acres?

A. It is.

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Q. The area numbered "6" in the Town Clerk's letter is not shown on the plan, is it?

A. No, it is not.

Q. Where is it in point of fact?

A. It is referred to as Bulo Point and it is on the west of Suva Harbour.

Court: It is beyond "4" and "5"?

A. Yes, My Lord.

Q. Where is the area numbered "14"?

A. That is the Lami industrial sub-division.

Q. Was that developed in July 1967?

A. It was developed in part.

Q. Is the area numbered "7" next to the Brewery, Flour Mill and steel-rolling mill?

A. It is.

Q. How far is the area numbered "7" from the other power station of Suva City Council - the then existing power house?

A. Something less than a mile.

Q. The area numbered "8" is north-east of Suva and is stated in the Town Clerk's letter to be a 9 acre area. Have you in fact checked the area?

A. I have

Q. What is the area?

A. If I could refer to my notes.
(By consent the witness referred to his notes)

A. The area was 11 acres 3 roods 6.26 perches.

Q. The area designated "9", is at Namadi, north of Suva?

A. It is.

Q. How was it originally reached?

A. It was originally reached by a road known as Wales Road.

Q. What was the length of that road compared with the

length of Kinoya road constructed by the Council, approximately?

A. The length of that road was approximately 50 chains from Mead Road compared with approximately 26 chains constructed from the Kinoya road.

Court: What you mean is that 26 chains of roading had to be constructed from the then end of Kinoya road to the power station site?

A. That is correct, My Lord.

Q. Approximately how many acres in the land designated "9"?

A. 70 acres.

Q. How much of that, in your opinion, would have been usable for a power house?

A. Most of that land is traversed by very deep gullies.

Q. Could you have got a 20 acre site out of it for a power house in your opinion?

A. Yes, certainly.

Q. The Town Clerk's letter states it would have been difficult to supply with fuel. What is your opinion?

A. It would have been no more difficult to have transported fuel from Walu Bay along Prince's Road to that land. In fact it would probably have been easier to have transported it than out to the subject land.

3.45 p.m. (Mrs. Singh takes over).

3.45 p.m. on Monday 16th September, 1974

Court Stenographer - Mrs. Singh
3rd W/P - RONALD GORDON KNUCKEY
EXAMINATION IN CHIEF BY MR. GIFFORD CONTINUED

Q. The land designated "10" in the Town Clerk's letter gives a reference Certificate of Title 8895. Did the Town Clerk give the correct reference?

A. No.

Q. What should it have been?

A. It should have been 8995.

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Q. What is the area of Certificate of Title 8895, to take the Town Clerk's reference?

A. I cannot recall although I recall it was a small residential lot.

Q. What is the area of Certificate of Title 8995?

A. In the order of 18 1/4 acres.

Q. And how much of that would have been usable in your opinion for a power house site?

A. I believe all of that area could have been usable.

Q. The area with the distinguishing Number "11" is zoned industrial and is of 25 acres, is that right?

A This area I was not able to pin-point because of lack of information as to boundaries except its vicinity is in the vicinity of the Nasinu river.

Q. To your knowledge have the plaintiffs engaged in any other subdivision of land?

Hughes: I object on the ground of relevance and also on the way the question is framed; it would admit hearsay.

Court: It is relevant.

Hughes: The fact they have subdivided other land has no bearing on the compensable value of this land.

Court: It may be relevant.

Q. Mr. Knuckey, confining yourself to what you know from your own professional work, have the plaintiffs engaged in the subdivision of other land?

Hughes: I object. If Mr. Knuckey said, "Yes, I have subdivided land myself" my objection would go. The question still goes to hearsay. That would let in something which he has discovered from reading some other subdivision.

Q. Confining yourself to what you know from your own professional work that you have done for the plaintiffs have the plaintiffs engaged in the subdivision of other land?

A. They have.

Q. And where?

A. A subdivision in Rifle Range Road in which we acted as surveyors for the plaintiffs in pegging the subdivision and preparing the plan of the subdivision for the Titles Office.

Court: Which area in Rifle Range Road?

A. The road to the Golf Club at Vatuwaqa, or it could be referred to as Samabula also.

Q. And where else?

A. Another that I have knowledge of is in Kanavi Street, Samabula.

Q. Is land for residential subdivision easy to obtain in and around Suva?

A. No, it is not.

Q. Was it in 1967 and 1968?

A. Certainly easier to obtain then, yes.

Q. Was it in plentiful supply then - this is for residential subdivision?

A. Yes, I think there was sufficient to meet the demands of Suva in that year.

Q. How about industrial zone land, was it readily available to be brought by a subdivider in 1967?

A. Because of the very few zoned industrial areas it was quite a bit more difficult to obtain.

Q. What is the position today about the availability of industrially zoned land for purchase by a subdivider?

A. It is extremely limited.

Q. I turn now to another topic, My Lord. I want you to look at this copy of Exhibit D1, which is Deposited Plan 3265. Now, that plan shows and I read from it - "Kinoya Road 40 feet wide" - could those words have been on the plan on the 25th of October, 1967?

Hughes: Objects.

Q. Mr. Knuckey did you personally do any work upon the surveying of the extension of the Kinoya Road to the power house site?

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A. I did.

Q. When was that?

A. Sometime early in 1968.

Q. Can you fix the approximate month?

A. February, 1968.

Q. When you did that work by whom were you employed?

A. By Carter, Rees & Associates.

Q. For whom was the work done?

A. I believe it was done on instructions from the Suva City Council.

Q. Was anyone else working on the job with you?

A. There was.

Q. Who?

A. Mr. Carter himself for the first day and then later my present partner Mr. Handisides.

Q. What was the work on which you were then engaged in respect of that extension of Kinoya Road?

A. The work I was personally engaged in was the pegging of the centre line of the proposed road.

Q. What is the centre line?

A. The centre line is a line 20 feet from either boundary of the road reserve.

Q. Did you have a plan to work to in pegging out the centre line?

A. No, we did not.

Q. Who decided where the centre line would be?

A. Mr. Carter on that first day in the field.

Q. Did Mr. Carter have a plan with him from which to determine the centre line of the extension of the road?

A. No.

Q. Was the whole of the centre line of the road pegged out on the first day?

A. I do not recall but know it could not have been. Could I add that there are usually two operations in pegging a centre line. One, the pegging of the major points along that line - that is usually angles - and, two, the filling in between those major points with pegging every 50 or 100 feet.

Q. What was the length of the centre line to be pegged?

A. Approximately 26 chains to the northern boundary of the subject land.

Q. Were you given instructions by Mr. Carter as to the principles or the criteria you were to use in determining on the centre line?

A. I was.

Q. What were those instructions or criteria?

A. From memory they were criteria regarding minimum radius of curveture, I believe that was all.

Q. What do you mean by minimum radius curveture?

A. As this road was going to carry heavy low-loaders with equipment it was necessary that the bends in the road were not allowed to reduce below a certain radius otherwise those bends could be difficult to negotiate with low-loaders.

Q. You have told us you had no plan to work to. How did you determine the exact radius in each case?

A. The road had to start at the end of Kinoya Road and terminate at the subject land and the road to join those roads should theoretically have been the straightest route but having regard to the topography along that road.

Q. Was it left on you to make that choice having regard to the topography?

A. No, this was determined by Mr. Carter on his day in the field.

Q. You have told us he did not have a plan. How did he make that choice?

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A. By inspection on the ground of the point of commencement, the point where he wished the road to terminate and the intervening ground.

Q. Do you mean that he physically walked over the ground and made the decisions?

A. I do.

Q. Did you have even a sketch plan to work from?

A. No.

Q. Did Mr. Carter have even a sketch plan to work from?

A. Not that I recall.

Q. You have examined exhibit D.1 which is Deposited Plan 3265 have you not?

A. I have.

Q. Is the road shown on that as "Kinoya Road 40 feet wide" the same as or different to the road which you pegged out?

A. That is the same.

Q. In the light of those facts which you have given us could the route shown for Kinoya Road on exhibit D.1 - Deposited Plan 3265 - have been there on the plan on the 25th October, 1967?

A. No, it could not.

Q. Have you searched the file of the Lands Department relating to Deposited Plan 3265?

A. I have.

Q. Was that file so far as necessary for your evidence made available to you by Mr. Scott in his office or was it some other office?

A. Could I be made clear as to which file?

Q. We are talking of the file of the Lands Department relating to Deposited Plan 3265. Now having examined that file, when was Deposited Plan 3265 lodged in the Titles Office?

A. The stamp does not appear to show up on this copy.

Q. Have you notes that you made?

A. I have.

4.25 p.m. - Miss Kunaqoro takes over.

4.25 p.m. - Monday the 16th day of September, 1974

Court Stenographer - Miss R. Kunaqoro
3rd W/P - Ronald Gordon Knuckey
EXAMINATION IN CHIEF BY MR. GIFFORD, Q.C. CONTINUED -

Q. Would you have a look at those notes and say when Deposited Plan 3265 was lodged in the Titles Office?

A. It was lodged on 7/2/68.

Q. When was the first requisition on it?

A. 14th March, 1968.

Q. What was that requisition?

A. There were 11 requisitions in all .

Q. Did any relate to access?

A. Yes, requisition No. 6.

Q. What did that require?

A. In referring to Lot 1, which is subject land, it said "Access to that lot is not indicated".

Gifford: My Lord, may I go back and put one question as to the pegging out of the road I forgot to put?

Court: Yes.

Q. Did you receive any instructions from Mr. Carter as to where the extension of Kinoya Road was to finish in relation to the balance area of the plaintiffs' land?

A. I was.

Q. What instructions?

A. I was given instructions that on no account was that access road to cross over or to abut on the balance of the plaintiffs' land.

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Q. And by "balance of the land " do you mean that part of the land being taken by Suva City Council?

A. I do.

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Court adjourned till 9.30 a.m. on Tuesday, 17/9/74.

Q. Mr. Knuckey, at the close of the hearing yesterday you were considering the requisitions which were made when deposited plan 3265 was lodged in the Titles Office. You have said there were 11 requisitions in all and you go as far as dealing with one particular one. Was there a requisition relating to approval of the Subdivision of Land Board?

A. Yes.

Q. What was that requisition as to approval the Subdivision of Land Board?

A. Requisition No. 5 states "S.L.B. - that is, Subdivision of Land Board approval should be obtained".

Q. Were there also requisitions as to bearing?

A. There were.

Q. Have you notes of those?

A. There are about 4 requisitions of a mathematical nature on the requisition form.

Q. What do you mean by that?

A. For instance requisition 4 "Insert traverse bearing".

Court: In other words, they are requisitions about calculations?

A. Yes, My Lord. That is correct.

Q. Is the practice in Fiji for the plan to be transferred from the Titles Office to the Lands Department and to be removed from the Lands Department so as to comply with the requisitions?

A. That is correct.

Q. Who removes the plan from the Lands Department?

A. The plan is usually delivered by a Lands Department officer to the office of the surveyor.

Q. And that is the surveyor who prepared the plan?

A. That is correct.

Q. When was the deposited plan 3265 returned to the Lands Department?

A. This date I am not sure of. I have it in my notes. (Witness checks his notes)

I see the date is on the requisition - it was returned on the 29th March, 1968.

Court: It was returned by the surveyor - that is after compliance with the requisition?

A. Yes, My Lord. It was returned by the surveyor.

Q. Now in relation to the requirement as to access to lot one - what was lodged with the plan when it was so returned?

A. The wording under the surveyor's reply is "Access to be provided by a road now under survey north to Kinoya subdivision".

Q. In relation to the requirement as to Subdivision of Land Board approval what was stated in the answer of the surveyor?

A. "Suva City Council will do this".

Gifford: I tender a photostat of the requisitions of the 14th March, 1968 and replies.

Court: Exhibit "AU".

Q. Were further requisitions made on the 16th April,1968?

A. They were.

Q. Have you a photostat of those?

A. I have.

Gifford: I tender the photostat of the requisitions of 16th April, 1968, my Lord, and the replies.

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Court: Exhibit "AV"

Was it returned on 23rd July, 1968?

A. That is a note by a Lands Department officer. It does not appear on the requisition.

Court: So you cannot say when it was complied with?

A. I may have it in my notes.
(Witness checks his notes).
From the Lands Department records I found that it was returned on the 23rd July, 1968.

Court: Exhibit "AV"

Q. Was a further requisition made on the 6th August, 1968?

A. It was.

Q. Have you a photostat of that?

A. I have.

Gifford: I tender photostats of the requisitions of 6 August 1968 and the replies, my Lord.

Court: Exhibit "AW"

Q. Now one of the requisitions in Exhibit "AV", that is of 16th April, 1968, required the Subdivision of Land Board's approval? When the plan was relodged on 23rd July, 1968 did it bear the Subdivision of Land Board approval?

A. The reply to the requisition is that approval was obtained and in the S.L.B. reference number although from memory no note appears on the deposited plan that this approval had in fact been obtained.

Q. Would you have a look at exhibit "AV" and say does that tell us when Subdivision of Lands Board's approval was obtained?

A. No.

Q. Is it reasonable to infer from Exhibit "AV" that that approval was obtained between 16th April, 1968 and 23rd July, 1968?

A. It is.

Court; It came out on 16th April, 1968 and went back on 23rd July?

It goes back with a note "approval obtained". It is reasonable to assume that approval was obtained between those dates but that is not something for the witness.

Q. On the 12th of January, 1970 was another requisition made?

A. It was.

Q. Have you a photostat with you of that?

A. I have.

Hughes: That requisition and the reply are annexed to the plan, Ex. "D1".

(As this is the same document as the annexure to "D1" it was not put in).

Q. Can you tell us, Mr. Knuckey, who has the initials "D.G.R." that appear on the attachment to Ex. "D1"?

A. Mr. Rees, the partner in Carter, Rees & Associates.

10.00 a.m. - Court Stenographer - Miss R. Kunaqoro
3rd W/P - Ronald Gordon Knuckey.

Examination-in-Chief by Mr. Gifford, Continued:

Q. Now, have you a photostat of deposited plan 3265 which bears the signature of Mr. Jethalal Naranji but does not show the road to the power station?

A. I have.

Q. Do you produce it?

A. I do.

Court: May I inquire, was this document ever deposited in the office of Titles?

Q. Mr. Knuckey you heard His Lordship's question. Has deposited plan 3265 as we have been calling it, ever in fact been deposited as distinct from lodged?

A. No, if I could point out the usual term in Fiji is "registered", contrary to Australian practice where

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a deposited plan (called a lodged plan in Victoria I am speaking of) does not receive a LP number until approved. In Fiji, as soon as a plan is lodged with the Registrar of Titles, it is given a deposited plan number but it is not registered until examined and approved.

Court: And then I think the seal of the Registrar of Titles is placed on it, is it not?

A. Yes, My Lord, that is correct.

Q. Has deposited plan 3265 ever been approved?

A. No.

Q. Has deposited plan 3265 ever been registered?

A. No.

Gifford: My Lord, I now tender deposited plan 3265 with the signature of Mr. Naranji on it, but with no access road shown on it to the powerhouse.

Hughes: No objection.

Court: Exhibit "AX"

Q. Can you from Ex. "AX" or from any other document tell us where there is a signature of the Secretary of the Subdivision of Land Board in relation to deposited plan 3265 to your knowledge, Mr. Knuckey?

A. There is, in the file of the Subdivision of Land Board which I was permitted to study last week, an identical photostat to this one bearing the signature of the Secretary of the Subdivision of Land Board, with the date of approval and conditions of approval typed on the reverse side.

Q. And have you a note of the date?

A. I have. 18th July, 1968.

Court: That seems to do with the other evidence we have.

Gifford: Yes, my Lord.

Q. May the witness be shown ex. "N" My Lord?

Court: Yes.

Q. Would you look at Ex. "N" Mr. Knuckey. You see on it a marking in red of a road or rather a suggested road with the words "Suva City Council proposed access to Power House". Do you see that?

A. I see written "Suggested access road".

Q. Would that suggested access road have served the balance area of the plaintiffs' land?

A. Yes, it would.

Q. Have you prepared a plan showing the whole of the land in certificate of title 12381 and showing also that proposed access road, and the access road as in fact constructed?

A. I have.

Q. Do you produce it?

A. I do.

Gifford: I tender that My Lord.

Court: (Plan tendered and marked Ex. "AY")

Q. Did the road as surveyed serve the balance of the plaintiffs' Land?

A. No.

Q. Does the road as constructed serve that balance area of the plaintiffs' land?

A. No.

Q. Was the approval of the Subdivision of Land Board subject to conditions?

A. It was.

Q. From your search of the Subdivision of Land Board file, are you able to tell us what those conditions were?

A. I am.

Q. Have you a photostat?

A. No, I was not able to procure a photostat.

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Q. From your notes, can you tell us what these conditions were?

A. Condition (1) "Construction of the 40 feet road to the satisfaction of the Board";

(2) "Submission of engineering plans of the road for approval by the Board";

(3) "Valid for 2 years".

Court: That means the work has to be done within two years and deposited plan has to be registered within that two years also.

A. Yes. Yes My Lord it means the work had to be done within 2 years and the deposited plan had to be registered within 2 years also.

Q. And what date were engineering plans submitted to the Subdivision of Land Board?

A. 13th day of May, 1968.

Q. On what date were they approved?

A. 15th of August, 1968.

Q. Did you examine the specifications for that road as appearing on the Subdivision of Land Board file?

A. I did.

Q. Did those specifications provide for a sealed road?

A. They did.

Q. What is a sealed road?

A. A sealed road is one in which the over the top layer of crushed metal is put a bituminous solution with further crushed metal.

Q. Is a sealed road what is commonly known as a bitumen road?

A. It is.

Q. Was the road as constructed by the Suva City Council within two years from the date of the Subdivision of Land Board approval a sealed road?

A. No.

Q. Is that road fully sealed yet?

A. No.

Q. Did the plan of the road as approved by the Subdivision of Land Board provide for cut and fill?

A. It did.

Q. What is meant by cut and fill?

Q. When grading a road to eliminate the natural contours cutting is carried out in any high spots and filling of low spots is also done so that the road is constructed on a suitable gradient.

Q. Was the cut and fill as shown on the approved engineering plans in fact carried out in the construction of the road?

A. It would appear from a perusal of the road as constructed but whilst cutting and filling occurred along the carriageway in compliance with the approved engineering plans, cutting and filling to the side of the carriageway was not carried out in accordance with those plans.

Q. Can you explain that in relation to the batter where cutting has been carried out?

10.30 - Mrs. Vakayadra takes over the writing of notes.
Tuesday the 17th day of September, 1974 - 10.30 a.m.
Court Stenographer - Mrs. Vakayadra.

3RD W/P MR. KNUCKEY - EXAMINATION-IN-CHIEF BY GIFFORD CONTINUED:

Q. First of all, what is batter?

A. A batter is the sloping, usually sloping, face of either a cut, a road in cut or in fill, which results from the road level differing from the natural surface of the ground.

Q. As we drive along a road and see an embankment on one side, is the slope of that the batter you are referring to?

A. The slope and the fact itself would normally be considered to be the batter.

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Court: Similarly where you have to fill the slope and the face of that is the batter?

A. That is correct, My Lord.

Q. Was a culvert required by the approved plans?

A. There were a number of culverts required on the approved plans.

Q. Were all those culverts provided in the construction of the road?

A. It would appear so from an inspection of the area.

Court: Your question about the batter seems to be a non sequitur because you have told me what the batter was.

Q. In relation to that cut and fill that you told us was not carried out at the side of the carriage-way, can you explain that in terms of the batter?

A. Yes. The road as designed provided for extensive level areas to the side of the carriage-way by the cutting down of the batters which would have resulted from the road not being at ground level. Those site works were not carried out.

Q. Were those works part of the construction of the road as provided for by the engineering drawings approved by the Subdivision of Land Board?

A. Yes.

Q. Instead of using a mere sketch plan in the notice to treat, would it have been practicable to have produced a plan giving the measurements and bearings and showing the correct boundaries?

A. Yes, it would have.

Q. How would that have been done?

A. If the area to be acquired was to be 20 acres, the highwater mark would first need to be established, the lines of the northern and southern boundaries as set out on deposited plan 1941 would need to be re-established and then by calculation, the western boundary could have been placed and then pegged in the field to contain an area of 20 acres.

Q. How long would that work have taken?

A. I would estimate on the particular site in question, about 1 week.

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Gifford: That is all, My Lord.

10.45 - Adjourned for morning break.

11.05 a.m. Court resumes.

Appearances as before.

CROSS-EXAMINATION BY HUGHES:

Q. Mr. Knuckey, I think you told His Lordship on the first day you gave evidence that you commenced work with Carter, Rees & Associates sometime in 1967?

A. That is correct.

Q. I wonder if you could help me by indicating when it was in 1967 that you commenced work with that firm?

A. Yes, it was in fact the 14th of August, 1967.

Q. You told us you were doing survey work on the line of the access road in February, 1968, is that correct?

A. That is correct.

Q. Prior to doing that work, had you in connection with your duties been to the subject land at all?

A. No.

Q. Did you have no part in the preparation of the survey work or the doing of the survey work which led to the formulation of deposited plan 3265?

A. I did not do any field survey work pertaining to that deposited plan.

Q. Did you do any work pertaining to that deposited plan Exhibit "D1" other than field survey work?

A. I did.

Q. What was that work?

A. I recall helping out in a calculation problem with a field traverse which would not close mathematically.

Q. Whom were you helping?

A. I was helping a survey assistant.

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Q. And when did you give this assistance?

A. I would not be able to recall the date of that.

Q. At all events, such assistance as you did give was given prior to the date that deposited plan 3265 bears as the date of survey, would that be correct?

A. Yes.

Court: And what is that date Mr. Hughes?

A. 5th October, 1967 My Lord.

Q. And is the assistance that you have described as giving, the only assistance that you gave or work that you did in relation to the preparation of deposited plan 3265?

A. I believe so.

Q. As well as doing survey work on the line of the access road, did you assist in survey work in relation to the taking of levels on the subject land itself?

A. I did.

Q. And was that work field work?

A. I cannot exactly recall my involvement in the levelling. I do not recall that I was actually there when levels were being taken.

Q. Do you know who was there when levels were being taken?

A. From my memory, the levelling was done by a survey assistant.

Q. Was the work of taking of the levels preparatory to drawn plans for the powerhouse work that in its nature would take some considerable time to do in the field?

A. No.

Q. How long?

A. If we are talking about the levels purely at the powerhouse site?

Q. Yes.

A. This would have been a matter of a few days.

Q. Were levels taken on the subject land by somebody in the firm of Carter, Rees & Associates?

A. Levels were taken of a part of the subject land.

Q. You say, do you, that you gave some assistance although you cannot recall specifically whether it was assistance in the field in relation to the taking of the levels of part of the subject land?

A. That is correct.

Hughes to Court: May I ask the witness to have a look at this plan of which my learned friend has a copy? (Plan shown to witness)

Q. Is this the original road plan and building site development plan prepared by Carter, Rees & Associates?

A. It is a dieline copy of the original.

Hughes: I also tender as part of the same exhibit, My Lord, another dieline copy attached to the first plan described, the second plan being described as roading plan.

Court: "D5A" and "D5B"

Q. Now, that you have that copy of Ex. "D5A" and "B" in front of you, can you amplify at all in point of detail your description of what work you did in relation to the preparation of those plans including the taking of levels?

A. I can recall being at the site with Mr. Carter the first day of the survey and marking the intersecting points of the centre line traverse of the road. These points do not appear to show on this plan.

11.20 a.m. - Mrs. Singh took over.

Q. Perhaps I can show you the more distinct dieline copy. Do they appear on Exhibit "D5"?

A. No, they don't.

11.15 a.m. on Tuesday 17th September, 1974

Court Stenographer - Mrs. Singh
3rd P/W - RONALD GORDON KNUCKEY
CROSS-EXAMINATION BY MR. HUGHES -

Q. And in connection with that work were you actually on

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the subject land?

A. Yes, sir I was.

Q. Can you tell us for how many days the field work necessary to prepare Ex. "D5A" and Ex. "D5B" would have, in the ordinary course of things, taken?

Gifford: Objected to the question.

Q. I will preface what I am coming to with another question. How long in all did you spend in terms of numbers of days doing the work that you did in connection in the preparation of exhibit "D5A" and "D5B"?

A. I can only recall one day on the site with Mr. Carter.

Q. Do you know how long in terms of days the members of the firm for which you worked spent on the land doing work in connection with the preparation of the plans Ex. "D5A" and Ex. "D5B"?

A. No, I do not.

Q. Looking at those plans Exhibit "D5A" and "D5B" using your knowledge of the site and your experience as a surveyor would you please tell His Lordship how long in the ordinary course of things field work on the subject land would have taken for the purpose of doing that work?

Gifford: I object to the question. It does not relate to any issue.

Hughes: There is an issue as to possession. In the writ and amended statement of claim up to the re-amended statement of claim the plaintiffs asserted that the defendant entered into possession of the land in or about September, 1967. In the re-amended statement of claim that date was pushed forward to September, 1968.

Court: Objection overruled. It is admissible but may go to weight.

Q. Looking at those plans Ex. "D5A" and Ex. "D5B" using your knowledge of the site and your experience as a surveyor would you please tell His Lordship how long in the ordinary course of things field work on the subject land would have taken for the purpose of doing that work?

A. Two to three weeks.

Q. Now is Mr. Jethalal Naranji personally known to you?

A. Yes.

Q. For how long have you known him?

A. Known him personally since 1968?

Q. And when and where did you first meet him in 1968?

A. I met him originally when I was approached by him to undertake the lodging of a proposal plan on his land at Kinoya.

Q. Could you help by telling us what a proposal plan is?

A. A proposal plan in 1968 is a plan lodged with the Subdivision of Land Board setting out a proposed development of a site or subdivision.

Q. And was it early in 1968 that you met Mr. Jethalal Naranji in that connection?

A. No that would have been late 1968.

Q. What month?

A. Second half of the year I would imagine.

Q. Can you be more specific?

A. No, I cannot be as I have no records that I know of at that date.

Court: Were you still working for Carter, Rees and Associates at that date?

A. No, My Lord.

Q. May I try to excite your recollection in this way. You have told His Lordship that you were doing survey work on that line of road in February 1968 - remember that?

A. Yes.

Q. For your then employers, Carter, Rees & Associates?

A. Yes.

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Q. When did you leave Carter, Rees & Associates?

A. In November, 1968

Q. And you say you had not met Mr. Jethalal Naranji at all before you left Carter, Rees, do you?

A. I did not know him personally at that stage - I had seen him at Carter, Rees' office but cannot recollect I was ever introduced to him at that time.

Q. Well did you see Mr. Jethalal Naranji at Carter Rees office prior to your working in the field on the access road in February, 1968?

A. Yes.

Q. And did you take part in any discussion or hear any discussion that Mr. Jethalal Naranji had with anyone else in Carter Rees' office prior to February, 1968?

A. I cannot recall having any first hand, having been involved first hand, in any discussion with him.

Q. Can you recall hearing without yourself actually taking part in it any discussion that Mr. Jethalal Naranji had with anyone in Carter, Rees office prior to February, 1968 in which the subject land or the access road was mentioned?

A. No.

Q. Was Mr. Jethalal Naranji to your own observation a frequent visitor to the office of Messrs. Carter, Rees and Associates during 1968, prior to February and after?

A. Not that I can recall.

Q. Will you agree however that he was an occasional visitor to that office both before February 1968 and after February, 1968 until you left the firm?

A. I can recall his visits in late 1967 but I cannot bring to mind any visits in 1968.

Q. Did he pay many visits to the office in 1967?

A. I would not be able to recollect the number of visits.

Q. May I remind you that the notice to treat as my

learned friend calls it, or the notice of acquisition as I prefer to call it, was served on the plaintiffs on or about 27th July, 1967. Taking that date do you say that Mr. Jethalal Naranji was a fairly regular visitor to the office of Carter Rees and Associates during 1967 and after that date?

A. No, I could not say that.

Q. But in the second half of 1967 particularly after 27th July, 1967 did you see him in the office more than once?

A. I believe I would have seen him more than once.

Q. And on those occasions when you saw him during that period I have mentioned did you ever hear any discussion that he had with anybody in the office about his business?

A. No, not as I recall.

Q. Did you ever see the person you now know to be Mr. Jethalal Naranji on the subject land or in the vicinity of the subject land while you were out there doing survey work prior to September, 1968?

A. No.

Q. Do you know Mr. Sukhi Chand?

A. Not personally, no.

Q. Do you know him by sight?

A. No.

Q. You have identified a number of aerial photographs that came from the Lands Department and they are in evidence and I want to ask you just a few questions about aerial photographs. On each photograph the scale is described as an approximate scale, do you remember?

A. That is correct.

Q. Will you agree with me that in the nature of things there is a number of factors which go to produce a situation in relation to aerial photographs that any scale can be only an approximation?

A. Yes, I would.

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Q. Would you be good enough to indicate to His Lordship what are the factors that you have in mind as militating against precise accuracy of the scale in relation to aerial photographs.

A. The ones I can bring to mind at the moment is a difference in elevation occurring in the land will cause a difference in scale. A tilt in the aircraft and therefore in the camera at the time of the photography will produce a scale which is not universal throughout the photo.

Q. Before you go on to enumerate any other factors you have in mind, may I ask one question about the tilt of the aircraft from which the photograph is being taken. Will either a lateral of longitudinal tilt of the aircraft in relation to surface level affect accuracy of the scale?

A. Yes, it will.

Q. Will you now enumerate any other factors that would affect accuracy of scale of aerial photographs?

A. The only other one I can bring to mind is that of scale varying out from the centre of the photograph.

Q. How does that occur?

A. This occurs because of the nature of the construction of the camera and the optics involved in the lenses.

Q. All in all, taking into account the factors which you enumerated, will you agree that there is a considerable margin for error in the scaling of aerial photographs?

A. By someone unused to working with aerial photos that would be so.

Q. But even with an expert there is, although a reduced, still a distinct margin of error in scaling isn't there?

A. There is an error in scale on the photo which can be eliminated by certain procedures and checks.

Q. And so far as you are aware the description of the scale of aerial photographs that are in evidence as approximate has been given because it is not known that those checks that you have mentioned have been made, do you agree?

A. No. The checks I am referring to are not checks in the production of the photo but checks in scaling from those photos.

Q. Have you any understanding of the margin of approximation of scale in those aerial photographs?

A. The scale as shown as 12 chains approximately or whatever could probably be of the order of 11.8 to 12.2 of that description.

Q. Now the next matter about which I want to ask you is this. You referred to the steps that would need to be taken to reduce the area shown in exhibit "D1" from 20 acres 0 roods 2.57 perches down to an exact 20 acres. Do you remember?

A. I do.

Q. And the description of the procedure may be summarised this way, may it not. That you can make a mathematical calculation the result of which will tell you how far to the east the western boundary of the land will have to be shifted in order to obtain an exact 20 acres?

Gifford: Objected to the question.

Q. Mr. Knuckey, let me begin in this way. The area pegged out and shown on deposited plan 3265 is 20 acres, 0 roods, 2.57 perches according to the plan?

A. No, it is not.

Q. The area shown on deposited plan 3265 Exhibit "D1" is 20 acres 2 perches according to the plan, is it not?

A. That is correct.

Q. The calculations on the accompanying calculation sheet - part of exhibit "D1" show the area is 20 acres 0 roods 2.57 perches?

A. That is correct.

Q. Now would you agree that you could work off deposited plan 3265 as it is for the purpose of reducing the area shown on the calculation sheet shown as 20 acres, 0 roods, 2.57 perches to an exact 20 acres?

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A. Sorry, I cannot follow the question precisely.

Q. Will you agree that you can use the survey plan exhibit "D1" as it is for the purpose of producing another plan that would give you an exact 20 acres cutting off the 2.57 perches?

Court: In order to reduce the area to the 20 acres he does not have to go on the ground at all?

A. If I was to accept deposited plan 3265 as correct a calculation could be made.

Court: You could make a calculation to reduce the area to 20 acres precisely? 10

A. By a reduction of the area, yes My Lord.

Q. And the way you would do it would be to cut the 2.57 perches off the western end of the land, is that right?

A. If one was working from the deposited plan I would cut 2 perches off the western end of the land.

Q. If you were working off the calculation sheet accompanying the plan you would cut 2.57 perches off the western end of the land? 20

A. The deposited plan is, I believe, the accepted area and I think it would be this area which would have to be used.

Q. Just for the sake of example, would you attempt an exercise based on the deposited plan 3265 designed to cut off 2.57 perches from the western end of the land, you follow me?

A. Yes.

Q. Would you agree that the adjustment to the western boundary of the subject land that would have to be made would be to move it east at both its northern and southern ends to the extent of 1.25 links? Do you want to do the calculation? 30

A. I believe that without doing the calculation that would be very close to the figure.

12.00 - Miss Kunaqoro continues.

12.00 noon - Tuesday the 17th day of September, 1974

Court Stenographer - Miss Kunaqoro
3rd W/P - Ronald Gordon Knuckey
Cross-Examination by Mr. Hughes:

Q. And will you agree that 1.25 links is .825 of one foot?

A. That would appear to be about the right figure. That is correct.

Q. And will you agree that that is approximately 10"?

A. Yes, I would.

Q. And will you agree that a plan drawn to a scale of four chains to 1 inch, a length of 10 inches is probably less than the thickness of the black line on Ex. "D1" that marks the western boundary of the subject land?

A. I would agree.

Q. Now could you tell me please, whether you have seen any other aerial photograph or photographs of the subject land taken during 1968 but later than the 17th February, 1968?

A. No, I have not.

Q. Could you tell me please if you have made a calculation of what is the area on the subject land that is covered by roads inside the boundaries of the high fence that has been erected by Suva City Council employees?

A. I do not know the area of those roads.

Q. And correct me if I am wrong, but in giving evidence yesterday as to the areas occupied by various objects, you did not purport to give any evidence as to the area taken up by roading inside the perimeter of that fence?

Gifford: That is common ground, My Lord.

Hughes: And to your observation, they are roads that are in use in connection with the electricity undertaking, are they not?

A. Without studying the aerial photo, I would not be able to answer exactly.

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Q. Well, have you any particular aerial photograph in mind? What about the one in December 1973? Ex. "W" is better in that it is to a larger scale - 2 chains to 1 inch. Well, will you agree that the area taken up by roading inside the perimeter fence constructed by Suva City Council is an area that is in constant use?

Gifford: Objected to the question. (He has not said that he hasseen it in use).

Court: That is correct.

Q. The roading inside the perimeter fence is roading that gives access to the electricity works?

A. Yes.

Q. And you cannot give any estimate as to the area of that roading?

A. I could scale an approximate area.

Q. Now, may I have Ex. "A", My Lord?

Court: Yes.

Q. Exhibit "AS" is a plan which you say you coloured in during 1968, following an inspection of the draft Suva Regional Planning Scheme in the office where the draft scheme was kept?

A. No, I don't believe I said that.

Q. I want to establish the date if I can, the date when you took this copy?

A. These particular four copies were coloured two weeks ago.

Q. And they were coloured in by you, by way of copying what you understand to be a copy of the Suva draft regional planning scheme in your office, isn't that right?

A. I have a copy in my file of part of the scheme certified by the Secretary of Town Planning. I am just not clear on that. It is my file if you want to refer to it.

Q. What I want to find out is if you know if, when was this draft Suva Regional scheme first published? If you don't know, say so?

A. I don't know.

Q. You would not be able to say would you, whether it was published at any time during 1967?

A. No, I wouldn't be able to say that at all.

Court: Internal evidence on the plan itself seems to suggest it was published before any development took place on the subject land.

Hughes: Now, may I have Ex. "X", My Lord.

Q. You referred to the use of the word "tiri" on the sketch plan that forms part of Ex. "X", remember that?

A. I do.

Q. And when you looked at Ex. "X" yesterday, you noticed that the inshore edge of the "tiri" or mangrove swamp delineated the seaward boundary of the subject land as shown on the sketch plan Ex."X"?

Gifford: I submit My Lord, that was not the evidence of the witness.

Hughes: I am asking.

Witness: Could I have the question again, please?

Q. Repeats question.

A. It was noted that the word "tiri" was written to the south of the subject land.

Q. And you also noted that the inshore boundary of the tiri as shown on the sketch plan appeared to delineate the seaward boundary of the subject land, didn't you?

A. I think it would be a reasonable assumption that that was so.

Q. That would be the assumption that you, as a surveyor, would reasonably make looking at that sketch plan?

A. It is.

Q. So looking at that sketch plan you would assume would you not, on the basis of what you saw, including the legend "tiri" that the person publishing that plan intended to delineate the

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seaward boundary of the subject land as the inward line of tiri?

A. Yes.

Q. And of course, the mangrove grows, does it not, in an area covered by seawater from time to time, on the shore?

A. That's not a particularly accurate description as I understand mangrove. I believe there is a definite set of tidal circumstances which are necessary.

Q. But mangrove generally speaking grows in tidal water?

A. It will only grow in tidal water.

Q. Now a few more questions. Another subject, My Lord. Can you assist his Lordship by telling him if you know of your personal knowledge, when the subdivisional roads were constructed on the American Investments land immediately to the south of the subject land?

A. My only knowledge of this would be by reference to the aerial photos.

Q. You did not work in connection with those sub-divisional roads?

A. Not at all.

Hughes: Now, Ex. "AT" is the exhibit I want to ask a few questions about, My Lord.

Q. Would you have a look at your copy of Ex. "AT" and I will just ask you a few questions. Do you say you have inspected each and every one of these sites numbered on Ex. "AT"?

A. No, I do not recall having said that.

Q. Which ones have you inspected?

A. I have knowledge of ....

Q. No, which ones have you inspected?

A. I have inspected Nos. 1, 2, 5, 6, 7, 8, 9, 10, 12 and 13. Sorry, also 14.

Q. And when did you carry out those inspections in relation to each site?

A. These have been carried out over the years which I have been in Fiji.

Q. But may we take it then they were not carried out specifically for the purpose of considering the question whether they or any of them might be suitable for an electric power station?

A. Only some of them for that specific purpose.

Q. Which ones?

A. Numbers 5, 1, 12 and 13.

Court: Four of them?

A. That is correct, My Lord.

Q. Now, when did you carry out those inspections of 5, 1, 12 and 13?

A. Over a period of the last few months.

Q. Now I just want to - don't think I am asking you this question in any sense discourteously - but you will agree readily won't you that you have expertise as a surveyor but not as an electrical engineer?

A. I would agree.

Q. And your qualifications are limited to surveying, aren't they - your professional qualifications?

A. Yes.

Q. And they don't include constructional engineering?

A. Oh yes, they do.

Q. In relation to electric power stations?

A. They include experience with the knowledge of land and to what uses that land could be put.

Q. From a planning viewpoint, is that right?

A. Not only from a planning viewpoint, but as to the land's suitability as agricultural land, land which could support a structure such as a power station or land which is suitable for residential development and that type of thing.

Q. And just to get it quite plain, your qualifications do not include any qualifications in electrical engineering?

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A. No.

Hughes: I have no further questions, My Lord.

Re-examination by Gifford Q.C.:

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Q. You were asked by my learned friend about the length of time it would have taken in the field to produce Ex. "D5A" and Ex. "D5B"; that is the plans relating to roading and site works. Would that length of time depend on the number of persons involved in the work?

A. It would

Q. And also on the hours they worked?

A. Yes.

Q. Do you, of your personal knowledge, know the hours worked in the field in producing those plans?

A. No, I don't.

Q. You were asked about Mr. Jethalal Naranji being in Carter Rees'. Was he or were the plaintiffs clients of that firm?

A. I believe that they had been clients previously of that firm.

12.30 p.m. - Mrs. Vakayadra takes over.

12.30 noon - Tuesday, 17th September, 1974

Court Stenographer - Mrs. Vakayadra
3RD W/PLAINTIFF KNUCKEY - RE-EXAMINATION BY MR. GIFFORD CONTINUES -

Q. And was work still in hand for them?

A. None that I can recall.

Q. You were asked at length about aerial photographs and you referred to various checks that can be made in respect of them. Did you or did you not carry out those checks?

A. I did.

Q. Are aerial photographs used throughout Australia for producing official maps?

A. They are.

Q. Do surveyors customarily use aerial photographs or do they not?

A. They do.

Q. Do you or do you not make use of aerial photographs in your practice as a surveyor?

A. I do.

Q. Do you do so frequently or infrequently?

A. Quite frequently.

Q. You were asked as to whether you could reduce the area from 20 acres, 0 roods, 2.57 perches to 20 acres without going on the ground and you answered by saying: "If I were to accept deposited plan 3265 as correct". Do you accept it as correct?

A. No, I believe it is incorrect in certain aspects.

Q. What are the aspects in respect of which deposited plan 3265 is incorrect?

A. The obvious inaccuracy of the eastern or highwater mark boundary.

Q. In your work as a surveyor is that inaccuracy of importance in determining the amount of land taken from the plaintiffs' land or is it not?

A. Yes, it is definitely important.

Q. You were asked about the length of road within the fence which encloses some 6 1, I think, acres of land around and in the vicinity of the powerhouse. Would the length of road be in any way affected by where the powerhouse is placed on the subject land?

A. It would.

Q. You were asked about qualifications as an electrical engineer. Do you need or do you not need qualifications as an electrical engineer to choose a site with suitable foundations and access for a powerhouse?

A. You do not need such a qualification.

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Q. Do you believe that you have or do not have appropriate qualifications to choose such a site?

A. I believe I have such appropriate qualifications.

Gifford: I have no further question, My Lord.

Court: Mr. Knuckey, can you tell me why there is a difference in the area shown on the plan and the area shown in the calculations in deposited plan 3265?

A. The area shown on the calculation sheet is shown to 2 decimal places of a perch and this is not required by the Lands Department to be so shown.

Gifford: My Lord, could I just ask him a few questions before you proceed?

Court: Yes.

Q. If it were taken to the nearest number, what would it be?

A. It would be taken from 2.57 up to 3 perches.

Q. And if it were being taken to the nearest single decimal point, what would it be?

A. 2.6 perches.

Court: That still leaves the question I want to know unanswered. Is want to know why there is a difference between the area shown in the plan and that on the calculation form?

A. My Lord, there are in the survey Regulations, there are set out the way in which areas will be rounded off. However, the areas for freehold land are covered by a notice to surveyors, I believe, and this states that areas under 1 acre should be shown to the nearest decimal of a perch and areas over 1 acre should be shown to the nearest perch.

Court: So the plan is drawn to the Regulations?

A. My understanding of this notice to surveyors My Lord, is that it should be rounded off to the nearest perch, My Lord, so it should be 3, but for that I am relying on my recollection of that notice.

Court: So you can't really say why the plan should not have been made to the nearest perch?

A. No My Lord, I can't say.

Court: Mr. Knuckey, did you have anything to do with putting this Kinoya road on the plan as shown here?

A. Not as I can recall, My Lord.

Court: When I say that I mean drawing it on the plan. You did not draw it or it was not drawn under your direction?

A. No, My Lord.

Court: Can you tell me why the plan was not drawn for 20 acres precisely?

A. No, My Lord, I could not say.

Court: Thank you, that is all I wish to ask.

Gifford: I have no further questions to ask, My Lord. May he be released?

Hughes: No objection.

Court: Yes you may be released Mr. Knuckey on the understanding you will not be called again.

12.55 - Court adjourned until 2.15 p.m.

2.15 p.m. Tuesday 17th September, 1974

Court Stenographer - Miss Kunaqoro
Gifford opens - reference to Ex. "A".

In the Supreme Court of Fiji

No. 6

Evidence of I.D. Robinson under examination by Gifford Co. to Plaintiffs dated 17th September 1974

No. 6

EVIDENCE OF I.D. ROBINSON UNDER EXAMINATION BY GIFFORD CO. TO PLAINTIFFS 17th September 1974

5th P/W - Sworn on Bible in English

IAN DUNCAN ROBINSON - 29 Cole Street, Brighton, Victoria, Australia, Valuer and Real Estate Consultant

EXAMINATION-IN-CHIEF BY MR. GIFFORD:

Q. Mr. Robinson, you have prepared a statement of your qualifications and your experience?

A. I have.

Q. Do you produce that statement?

A. I do.

Gifford: I tender that by consent, My Lord.

Court: Exhibit "BB"

Q. Mr. Robinson, would you read that statement, please.

(Mr. Robinson reads his statement of his qualifications and experience).

12.00 noon - Mrs. Vakayadra continues.

Wednesday, 18th September, 1974 - 12.00 noon

Court Stenographer - Mrs. Vakayadra

5th W/Plaintiff Mr. Robinson - Examination-in-Chief by Gifford continues -

Q. Mr. Robinson, have you also on instructions from the Country Roads Board of Victoria carried out an examination of values overseas in relation to the effect which freeways have on property values?

A. I have.

Q. In what countries did you carry out that work for the Country Roads Board of Victoria?

A. In the United Kingdom and the United States of America.

Q. You have various other clients also required you to

carry out work outside Australia?

A. They have.

Q. When did you first inspect the plaintiffs' land?

A. In September, 1970.

Q. For what purpose did you do so?

A. To assess the value of the property as at the date the Notice to Treat was served and also to assess the compensation.

Q. Over what period did you examine the plaintiffs' property in September, 1970 for those two purposes.

A. I was in Suva for a period of 7 days, My Lord.

Q. Were you working on the valuation on all 7 days or some lesser period?

A. Some slightly lesser period - I would say probably 5 days on the valuation.

Q. Did you personally inspect the plaintiffs' land or not?

A. I did.

Q. How long approximately did you spend on any actual inspection of the plaintiffs' land?

A. My initial inspection would probably have only taken 1-2 hours. My recollection is that I returned at least 2 or 3 times to the property to satisfy myself on various aspects.

Q. That was in September, 1970?

A. That was.

Q. How would you ordinarily commence your valuation work in respect of the valuing of any particular property?

A. After inspection or sometimes prior to inspection, usually prior to inspection, I would ascertain the zoning applicable to the property I was to value. It would then be necessary for me to obtain comparable sales evidence to assist me in formulating my opinion as to value.

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Q. Did you in September, 1970 make inquiries as to the zoning of the plaintiffs' land and in particular the so-called 20 acre area?

A. Yes, I did.

Q. Of whom did you make those enquiries?

A. I saw the Regional Town Planning Officer and in answer to my questions, I was informed that as at 1967 there was no approved planning scheme. In answer to further questions, he advised me that the land would fall within an area that could be considered as industrial.

Q. Which land did he say could be considered as industrial?

A. The land east of the proposed, I would call it a ring road, it is a road that has been referred to, a ring road joining up King's Road up through the adjoining land to the south and north and connecting up again to King's Road. I think there is a plan, an Exhibit.

Q. Would you look at Exhibit "AS" and say is the curved road shown in black and white notation on that exhibit the road to which you refer as the ring road?

A. That is correct.

Q. You said you saw the Regional Town Planning Officer. Of what department or authority was he an officer?

A. I have no notes but my recollection is that he was Town Planning Officer for the regional area. I saw two or three Town Planning people. I think it was a Mr. Donges that I ultimately saw.

Q. You said you were told by the Regional Town Planning Officer that the land east of what you have called the ring road would fall within an area that could be considered as industrial. Was that a statement in relation to the year 1967?

A. It was.

Q. Did you enquire of him whether the land east of that road on the plaintiff's Certificate of Title continued to be industrial from 1967 on?

A. He indicated to me that that was a result of their= preliminary planning investigations, that that was the intention to promulgate this area as industrial.

Q. Did you ascertain from him how the remainder of the plaintiffs' land was to be treated for town planning purposes as in 1967?

A. Yes, residential with some reservation for public purpose.

Q. Did you ascertain from him whether the remainder of the plaintiffs' land continued to be so treated after 1967?

A. Yes, he indicated to me there had been no change from the 1967 proposal.

Q. You have said that ordinarily you would obtain comparable sales evidence?

A. Yes.

Q. In Australia, would you expect to turn to a register or a computer for that sales information?

A. That is the normal practice in Australia, yes. Sales in Victoria are computerised now and in some other States also and the procedure being you ask for sales at a particular date and zoning of whether commercial or industrial, improved or un-improved and the computer punches them out.

Q. Did you find that there was a register or computer to which you could turn for that information in Suva?

A. Not available to people outside departmental level. No computers but there are departmental records I was informed are not available outside Government sources.

Q. How then did you endeavour to establish comparable sales?

A. Well I interviewed several Real Estate agents practising in Suva and obtained from them details of transactions which they had handled. I then obtained a map, 8 chains series, which indicated deposited plans numbers and parcels of land in the environs of which I was interested, and from there

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I undertook personally myself searches at the Office of Titles to ascertain whether any transactions had occurred and also to check information which I had been given.

Where I had not been supplied with a contract or sighted a copy of the contract of sale, I then perused the transfer. From there, if I was not satisfied with any details, I did return and would discuss with one of the parties, if possible, any details relating to the transaction.

Court: By that you mean if a discrepancy between A and B you went along to B and asked why the difference?

A. That's right, yes My Lord.

Q. In addition to the estate agents, did you have discussions with development companies?

A. Yes, I interviewed L.J. Hooker, an Australian company operating in Fiji. I also saw the property manager of Morris Hedstrom Limited who undertake real estate development.

12.30 p.m. (Reama Kunaqoro took over).

12.30 p.m. - Wednesday the 18th day of September, 1974

Court Stenographer - Miss R. Kunaqoro
5th W/P - IAN DUNCAN ROBINSON
EXAMINATION-IN-CHIEF BY MR. GIFFORD Q.C. CONTINUED:

Q. Can I hold you at this stage? You said L.J. Hooker operates in Fiji?

A. Yes.

Q. In what way does it operate here?

A. It buys property for subdivisional purposes. In other words, in raw state in globo for subdivisional resale.

Q. Is that confined to residential land?

A. As far as I am aware, L.J. Hooker had no industrial development in Fiji. They were contemplating resort development at that stage. It was of no interest to me.

Q. When you say of no interest to you, do you mean

of no interest for the purpose of this case?

A. For the purpose of making this valuation. I was interested but not for the purpose of making the valuation I had in hand.

Q. What is the company to which you have referred as Morris Hedstrom?

A. Well, I only know it as a large retail store operating in various parts of Fiji. They also have a real estate division which buys, subdivides and sells real estate.

Q. Did you also go to and confer with the Fiji Property Centre Limited?

A. I did. It was Mr. Denis Williams I saw.

Q. What is that company?

A. Fiji Property Centre Limited.

Q. What does it do?

A. It is a company. They are real estate agents, but also developers of, in the main, commercial interests. They have various other real estate activities - residential, but they have been engaged in some large commercial properties in the heart of Suva - office buildings.

Q. Does that company own its own commercial properties and lease them out?

A. Yes. Most noticeable at the moment is Air Pacific House, which is leased back.

Q. When you say leased back, what do you mean?

A. Well, it is a common phrase in Australia. The property is built by developer and a head-lease is taken by a tenant for a number of years with review periods, of course.

Q. When you speak of review periods, what do you mean by that?

A. Well with the ... it is probably, I would say, the last 7 or 8 years with the inflationary spiral in properties which seems to be common throughout the world any prudent investor requires that rentals be

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renewed every 5 years or more, probably every 3 years, to the rentals that are current at that date. Sometimes those rentals are tied in addition .... in Australia it is called the consumer price index - in other words, to the inflationary spiral that is hitting all countries.

Court: Those reviews are every 5 years?

A. 3 years to 5 years. It is coming to 3 years now because of this rapid increase.

Q. Did you also make enquiries of American Investments?

A. I did.

Q. What is the American Investments?

A. American Investments is a company. I interviewed the Managing Director, Mr. Daly. They are a company formed for the purpose of acquiring land in globo, subdividing it, and selling it.

Q. Did you also make enquiries of Investment Progress and Real Estate Limited?

A. I did. That firm was involved in an industrial subdivision at Nausori.

Q. In addition did you also interview a previous witness in this case, Mr. Surveyor Knuckey?

A. I did.

Q. For what purposes did you interview him?

A. Being a surveyor operating in the area of Suva, I felt that he would know of any developmental plans proposed by clients that he could inform me of without betraying confidence and also would be aware of any subdivisional plans or proposals in the general confines of Suva and environs.

Q. And did you seek any other assistance from him than that?

A. Yes, I asked him to prepare a plan to enable me to plot my sales evidence and initially also he indicated to me the procedures at the Office of Titles to enable me to undertake searches.

Adjourned till 2.15 p.m.

On resumption - 2.15 p.m.

Witness recalled and resworn.

Q. If you were valuing in Australia, you would use contracts of sale in each case of a comparable sale, would you not?

A. I would if they are obtainable.

Q. You have had the difficulty in the present case that contracts of sale were not obtainable in all the cases?

A. That is correct.

Q. Have you examined the contracts of sale in all instances in which they were available to you?

A. I have.

Q. In other instances in which the contracts of sale were not available to you, have you examined the transfers?

A. I have.

Q. Are there any sales to which you wish to refer as to which you have not been able to examine either the contracts of sale or the transfer?

A. No.

Q. In giving your evidence as to comparable sales are you basing it on the documents you have examined?

A. I do.

Q. And have you inspected the lands in respect of the sales that you are using as comparable sales?

A. I have.

Q. What has been the purpose of those inspections?

A. To assess the degree of comparability, to look at the land in relation to its topographical features, its zoning proximity to the subject land and general degrees of comparability which as a valuer one turns one's mind to.

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Q. Now, in this case you are aware, are you not, that there is a challenge to the validity of the compulsory acquisition?

A. I am.

Q. In your evidence this morning you said that the purposes for which you inspected the plaintiffs' land in 1970 were to assess the value of the property as at the date of the Notice to Treat, and also to assess the compensation. Were those two purposes?

A. No, it was one valuation.

Q. I want you to tell me the principles that you have taken into account in assessing the value of the plaintiffs' land as at 1967?

A. My first consideration would be the highest and best use of the land.

Court: What do you mean by that?

Witness: What would the land be capable of being used and what was its highest use. In other words, the use which would have the most value. Then I turned myself to the principles of what a willing buyer and not over-anxious but willing vendor would pay for the subject land, both parties I assume being prudent. Then I would consider whether the land had any special value to the purchaser. I would then consider whether the land or the balance of the land in the owner's title would suffer any injurious affection or betterment which can arise from the purchase. I would also take into account whether there was a purchaser known at the subject time.

Court: What do you mean "the subject time"?

A. At the date of acquisition and give consideration to the fact that it is not unknown that an acquiring authority will very often reach agreement with an owner at slightly in excess of the market value in order to secure .....

Court: When you say a "purchaser known" you mean the acquiring authority?

A. Not the acquiring authority. I gave that thought in my mind in assessing value.

Q. When you said in your answer so far - and I have stopped the witness in his answer - you have said - "you would" do certain things. Did you in fact apply those principles in making your valuation in this case?

A. I did most definitely.

Q. Did you consider the potential of the land?

A. I did. I looked at the growth of the area and formed my own conclusions which were substantiated by the planning authority's views and also the exercises which I have examined which indicated to me that the subject land was located in an area which could be classified in valuation terms as a growth area.

Q. What do you mean by a "growth area"?

A. Well, from my experience in Australia and looking overseas there is usually a pattern which seems to emerge in most cities from which you can say that the city is growing in this direction or the greatest growth is in that direction, and in my opinion it was obvious that the growth was applicable in the area of the subject land.

Q. In relation to what the owners of land are entitled to by way of compensation for compulsory acquisition, have you considered any particular principle?

A. I have considered that the land could have a special value to the acquiring authority by reason of its location.

2.30 p.m. Mrs. Singh takes over the recording of notes.

2.30 p.m. on Wednesday 18th September, 1974

Court Stenographer - Mrs. Singh.
5th P/W - Ian Duncan Robinson.
EXAMINATION-IN-CHIEF BY MR GIFFORD CONTINUED:

Q. Have you considered or have you not considered the Suva City Council itself as a hypothetical purchaser?

A. I have. I have also considered the owners as hypothetical purchasers - in other words what would they be prepared to pay for the land rather than lose it.

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Q. Have you also considered whether there could be more than one hypothetical purchaser for the land in this case?

A. Yes, I have.

Q. In what way?

A. The land was in an area which I could envisage would be in demand for industrial lands as subsequent events proved.

Q. Yes?

A. It was quite feasible to envisage that the property could be suitable for various types of industry, requiring parcel of 20 acres.

Q. And did you also consider the possibility of purchasers requiring less than 20 acres for industrial development?

A. I did.

Q. Does that mean that you considered the sale of part only of the land or the whole of the 20 acres to different purchasers?

A. I considered the property being sold as one allotment of 20 acres as part over all subdivision in connection with the other land in the title of the claimants or plaintiffs.

Q. In applying the test of hypothetical purchaser and hypothetical vendor, what knowledge had you assumed them to possess?

A. I assumed that they both be aware of all the relevant factors as to zoning potentiality and would be prudent vendors and purchasers and would be aware of the current trends in the real estate market.

Q. Would that include a knowledge of the demand for land for various purposes?

A. Yes, we assume that the parties were well informed of the demand, shortage and availability.

Q. You have told us that you inspected the land in 1970. Have you also inspected it since?

A. I have. I inspected it, a cursory inspection, in 1971, had a more detailed inspection in 1972 when I came here to Suva specifically to check out data as to any further information which had become available and in 1973 when I was here on a holiday I had another cursory look twice and in 1974, in May, I again inspected the land and I inspected the land last week.

Q. When you inspected the land did you also inspect the surrounding area?

A. I did.

Q. Why?

A. I was interested to see whether my forecast or opinion in 1970 had been correct. I was interested in examining sales which showed further trends upward in real estate values and I was interested to see the number of buildings erected in the locality and even further away from Suva than the subject property.

Q. What was your forecast or opinion in 1970?

A. That there would be a growth in development and that would have been obvious even prior to 1970 but in 1970 it was forming a pattern and this pattern has continued.

Q. Where would the growth in development be, in your opinion as formed in 1970?

A. The growth would be from the present built up area along the King's Road coming from Suva extending towards Nausori not confined to the King's Road area but each side of the road.

Q. By that do you mean lands actually abutting on King's Road?

A. Yes, each time I have been since 1970 inspecting the subject land I have been impressed by the growth of the land immediately to the south - American Investments - which is now a fully developed subdivision, and industrial estate and a large residential estate. Land to the north of the subject land has developed residentially to the extent that there is also a sewerage treatment works required and in existence.

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Q. Did you in forming your opinion in 1970 expect that growth would be just a ribbon development abutting on King's Road or did you expect that it would be development in depth from King's Road?

A. I expected it would be a development in depth. It was a natural flow of suitable land which appeared to me ripe and ready for development.

Q. Did you consider development possibilities in relation to what you have called the ring road and Mr. Surveyor Knuckey called the loop road?

A. Yes, this creation of this road would obviously enhance development by creating a major road as a by-pass from King's Road. My experience has shown that that generates - even on a planning scheme the creation of a road, developers are very much inclined to adopt that as an indication of where development will flow.

Q. Does that mean that because of that road you can get development independently for King's Road frontage?

A. Yes.

Q. Did you consider the possibility of that occurring in respect of the plaintiffs' land?

A. I considered it was another factor which would facilitate development of this area east of King's Road.

Q. Did you also make enquiries to ascertain whether there was a shortage or surplus of land for particular purposes in and around Suva?

A. I did.

Q. What did you ascertain in that regard?

A. That there is an extreme shortage of industrial land and that there was a good demand for land suitable for subdivision into residential allotments.

Q. You are familiar with the business engaged in by various persons of buying and subdividing and then selling land?

A. I am.

Q. If persons were engaged in that business in Suva

and land was taken from them by compulsory acquisition would they find it easy to obtain replacement land?

A. In my opinion they would find it very difficult.

Q. From your enquiries what would have been the position as at 1967 in that regard?

A. From my enquiries, in 1967 there was only a limited amount of industrial land available for purchase.

Q. Have you regarded the sale of the land immediately to the south of the plaintiffs' land as a comparable sale or not?

A. I have.

Gifford: That is the land in Lot 1 on deposited plan 1941, My Lord. I believe, the land we have been calling the American Investments land.

Q. That is right, is it not?

A. Yes, that is correct.

Q. Now what is the area of that American Investments land?

A. 94 acres 1 rood 8 perches.

Q. Have you sighted both the contract of sale and transfer?

A. I have, and also an option to purchase.

Q. Did the option to purchase precede the contract of sale?

A. It did.

Q. Was the contract of sale in the same terms as the option?

A. It was.

Q. What was the date of the contract of sale?

A. 29th June, 1970.

Q. What was the date of the option?

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A. The option, My Lord, was very unusual - it had only 1969 on it. I was informed by the purchaser that the option was taken out in September, 1969, but apparently the documents were never executed as to the date.

Court: To do with stamp duty, I suppose.

A. Well, My Lord, it was unusual to me but apparently it was not uncommon.

3.00 p.m. - Mrs. Vakayadra continues.

Wednesday, 18th September, 1974 - 3.00 p.m.

Court Stenographer - Mrs. Vakayadra
4th P/W Robinson - EXAMINATION-IN-CHIEF BY MR. GIFFORD CONTINUED:

Q. Who sold that land?

A. Prasad & Co. Ltd.

Q. Who bought it?

A. American Investments Ltd.

Q. What was the sale price?

A. $200,000

Q. Was there any town planning requirement in respect of the development of that land?

A. No, not to my knowledge.

Q. Was there any requirement in the contract of sale as to construction of a road by the purchaser?

A. No.

Q. Was the loop road or ring road in fact constructed or not constructed on that land by the purchasers?

A. It was constructed by the purchasers.

Q. I want you to look please at Ex. "AS" which is the draft Suva Regional Planning Scheme map of this locality and tell me does the zoning on that accord with the result of your enquiries as to the zoning of the land immediately to the south of the plaintiffs' land?

A. It does.

Q. And while you have it there, does it also accord with the result of your enquiries as to zoning of the plaintiffs' land?

A. It does.

Q. Did your enquiries satisfy you as to the purpose for which American Investments bought the land?

A. They did.

Q. And was the result of your enquiries borne out by subsequent happenings?

A. Yes.

Q. What was that purpose?

A. The purpose was to subdivide the land and sell into industrial, residential and commercial sites according to the zoning.

Q. You had the difficulty that the price paid by American Investments was an overall price for the whole of the land?

A. That's correct.

Q. Would you expect the whole of the land to have the same value, or not?

A. No, it would be unreasonable.

Q. What would you expect?

A. It would be expected that the land with industrial subdivisional prospect would bring a higher price. The purchaser would pay a higher price than he would for the residential land.

Court: By a "purchaser" you mean the American Investments?

A. American Investments.

Court: Not their purchasers?

A. No, My Lord.

Q. Would their purchasers, that is the purchasers from America Investments also be paying more for industrial than residential land?

A. Sales in retail indicate this quite definitely.

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Q. Can you tell me the overall price per acre paid by American Investments for that land?

A. $2,140 approximately.

Court: Per acre?

A. Per acre.

Q. Was the price altered between the option in September, 1969 and the subsequent contract of sale in 1970?

A. No.

Q. Have industrial lots in fact been created on the land zoned industrial?

A. They have.

Q. And residential lots on the land zoned residential?

A. Yes.

Q. Has American Investments carried out any roadworks on the plaintiffs' land?

A. No, it goes up to the boundaries of the plaintiffs' land except in one part they might have been carried out, but I could not give firm evidence on that.

Q. How many industrial lots were created by American Investments on that land?

A. 26.

Q. How far was the nearest of those from the land taken by Suva City Council?

A. Several of the allotments back on to the power station enclosed boundary.

Q. When was the first of those lots sold?

A. In April, 1971.

Q. How many of the 26 lots have been sold?

A. As at May, 1974, my last enquiry, 23 allotments have been sold.

Q. Have you inspected the documents in relation to as many of those sales as possible?

A. Yes, I have inspected the documents at the American Investments offices in relation to the sales of, I would think, approximately 20 of those allotments.

Gifford: I tender by consent a statement by the witness as to sales by American Investments of industrial lots on that land, My Lord, land on deposited plan 1941.

Court: Ex. "BC1" and "BC2" the brochure attached.

Q. Mr. Robinson, you have a copy of Ex. "BC1" before you, have you not?

A. I have.

Q. Would you read it please? (Witness does so).

Court: Excuse me, Mr. Robinson, I understand you to say Prasad?

A. Yes, My Lord, there is a typographical error in Ex. "BC1". (Correction made).

My Lord, I did not put every sale in. I just took an extract of a pattern which was constant right throughout.

Court: What is the size of lot 26?

A. Lot 26 was ½ acre from memory, My Lord.

Q. Are the prices shown in Ex. "BC1" the price actually paid or the price paid converted to a price per acre?

A. No. Those are the prices paid.

Q. So that if, for example, in respect of sale number 9, we want to find the price per acre, we do not leave it at the figure of $12,000?

A. No, that is a half-acre site.

Q. Which makes the price per acre?

A. $24,000.

Q. The attached brochure, Ex. "BC2", shows a large number of allotments. What are those allotments?

A. Those are the residential allotments.

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Q. Are the industrial lots in the part of that plan on Ex. "BC2" which is not shown in the subdivision but which bears the words "industrial park"?

A. They are. The 26 allotments are located in the "industrial park" as shown on the brochure.

Q. Does the brochure Ex. "BC2" relate to more land than the land in the allotment immediately to the south of the plaintiffs' land?

A. It does.

Q. Does it also include the land in Certificate of Title 7243?

A. It does.

3.30 (Miss Kunaqoro takes over).

3.30 p.m. - Wednesday the 18th Day of September, 1974

Court Stenographer - Miss R. Kunaqoro
5th W/P - IAN DUNCAN ROBINSON
EXAMINATION-IN-CHIEF BY GIFFORD, Q.C. CONTINUED:

Q. What are the sizes of the residential allotments in this Laucala Beach Estate?

A. One-fifth of an acre, one-quarter of an acre and one-third of an acre.

Q. You have said 55% of the 336 residential lots in this estate sold within two years. Have you examined any of the transactions of sale?

A. I have not.

Q. Have you examined any of the prices obtained for those residential lots?

A. I examined the records of the company with their consent which showed lot prices, lot numbers, and sale prices, and also showed the allotments not sold with the asking prices.

Q. Can you give me the range of prices received for the residential lots?

A. For one-fifth of an acre lots, prices ranged from $3,800 - $6,750 an allotment. For one-quarter of an acre, prices ranged from $4,950 - $9,100 an allotment. For one-third of an acre, prices ranged from $9,000 - $9,975.

Q. Now, I know it is of course true to say that the smaller the piece of land, the higher the price, when converted to an acreage basis, but would you, for our convenience, convert that range of prices on an acreage basis?

A. It would range from $19,000 - $36,000 per acre.

Q. So that that range gives the range of gross return to American Investments?

A. Yes, it is the gross return.

Q. Now, I want you to turn to the land immediately to the south which is the remainder of the land in the Laucala Beach Estate, and which is in certificate of title 7243 and which was purchased by American Investments. Have you inspected the transfer to American Investments?

A. I have.

Court: Which property?

Gifford: The land second to the south from the plaintiffs.

Court: 7243?

Gifford: 7243, My Lord.

Q. What was the date of lodging of the transfer?

A. 17th August, 1972.

Q. From your search in the Titles Office, can you say if a caveat was lodged prior to that transfer?

A. Yes, there was a caveat lodged on 15th October, 1969 by American Investments.

Q. Have you experienced difficulty in analysing this sale of the land in certificate of title 7243?

A. I have.

Q. Why?

A. Well, it was a very difficult transaction to examine, My Lord.. American Investments showed me the documents which I have. The transfer showed 60 acres were purchased for $59,400 from two vendors, Jagdec Prasad and Ram Udit, and in addition each

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was to receive 3 allotments of the subdivided land, 3 residential allotments, My Lord, I should say, to the value of $7,500 each allotment. Now, in addition to that, my Lord, there were further complications because the total area was 72 acres. The company entered into an agreement dated 7th October, 1969 and I don't know why it was dated 7/10/69 but there was an agreement dated 7/10/69 to buy 72 acres, because there was actually another owner with a one-third interest in the whole parcel of 72 acres. But from my perusal of the documents, it appears that the other owner, one Mathura Prasad, was paid an additional $28,000 to obtain his signature to that contract of 72 acres and in addition, he was to be given by the purchasers one acre of land preferably where his house was located, but if this could not fit into the subdivision, his residence would have to be shifted by the purchasers at their expense. And that is the summary, my Lord, of a rather involved document.

Court: That is in addition to the $59,400, Mr. Robinson?

A. Yes, My Lord.

Q. I want you for the moment to leave out the question of the one acre. Apart from that, can you come to a summation of the total consideration paid by American Investments for that land?

A. I have analysed it as approximately $17,000 per acre.

Q. Does that include the one acre or not?

A. No, that does not include the 1 acre.

Q. Have you taken that sale into account for any purpose at all?

A. I have given it some consideration, but my enquiries with the purchasers indicated that despite all the involvement of paying over extra sums and undertakings, it was still regarded as a very good purchase and below the market level.

Hughes: It does not matter what the purchaser thinks.

Court: Mr. Robinson can give his view which may be formed from his enquiry.

Hughes: I object.

Court: The whole answer will be struck out.

Q. How do you regard the sale price in this case?

A. My interpretation is it was a figure well below market value.

Q. Now, I want to turn to the land in certificate of title 9255. Have you seen the transfer in that case?

A. I have.

Q. What was the date?

A. 3rd of September, 1965.

Q. Who was the vendor?

A. Chanderman.

Q. And the purchaser?

A. Schultz.

Q. What was the area of that land?

A. 8 acres, 1 rood, 2 perches.

Q. What was the sale price?

A. $18,000.

Q. Can you give me that price converted to a price per acre?

A. Approximately $2,150 per acre.

Q. Have you inspected the land?

A. I have.

Q. When?

A. In September, 1970.

Q. How did the location of the land compare with the location of the plaintiffs' land regarded as a whole, i.e. the whole of the land in the plaintiffs' Certificate of Title?

A. Slightly closer to Suva. It had a main road frontage but locationwise those were the main considerations.

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Q. Was its location better or worse than that of the plaintiffs' so-called 20 acre area?

A. Slightly better.

Q. If the ring road were constructed on the plaintiffs' land, how would the location of the two compare?

A. There would be less difference because the plaintiffs' land would then enjoy proximity to a main road.

Q. But you would still regard the location of the land in certificate of title 9255 as better?

A. I would.

Q. What was the nature of the land in certificate of title 9255?

A. It was flat land which at the date of inspection had been filled as to quite a fair proportion. I would think, but I have no eivdence, but it indicated from the surroundings that some of the land would have been affected by mangrove swamps.

4.00 p.m. Adjourned till 9.30 Thursday morning.

Thursday the 19th day of September, 1974 at 9.30 a.m.

Court Stenographer - Mrs. Singh
5th P/W - Recalled and resworn on Bible
IAN DUNCAN ROBINSON - EXAMINATION-IN-CHIEF BY MR. GIFFORD CONTINUED:

Q. At the adjournment yesterday you were telling us about the sale of land in certificate of title 9255?

A. I was.

Q. What was the zoning of that land?

A. It was industrial.

Q. Was there a subsequent sale of that land?

A. Yes, the land sold in June, 1973 to Burns Philp (South Seas) Company Limited for $302,000.

Court: That is by Avondale Motors?

A. Yes.

Court: Schultz?

A. Yes.

Court: That is with a building on it by this time, I suppose?

A. A small building on it but most of it was vacant, My Lord.

Q. Can you give us an idea of the size of that building?

A. No, I have not measured it.

Q. Was the building such as to have a material effect on the resale price to Burns Philp?

A. No, I would not think so.

Q. Can you tell us what type of building it was?

A. It was a concrete garage type building but I have not inspected it and would not like to state any details.

Q. I want you to turn now to the sale of the land in deposited plan 1935. Where is that land?

A. That is fronting King's Road at the western end of the whole of the land in the title of the ownership of the plaintiffs.

Court: Are you telling me that this deposited plan 1935 is the whole of certificate of title 8316?

A. It can be shown on the town plan.

Q. Will you look at Exhibit "AS" and say where, from that, you can identify this land in deposited plan 1935?

(Witness examines the plan, Exhibit "AS" and indicates it on it).

A. It is south of the ring road at the Wainivula creek - you will notice "deposited plan 1935" is at the "Y" of the junction where a short tributary of the creek runs north.

Court: What area?

A. The area transferred My Lord, contains 14 acres, 3 roods and 3 perches.

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Court: Where is that?

A. It is the area in a southerly direction from the ring road.

Court: Deposited plan 1935 - My copy looks like 10-2-12 to me.

Gifford: Mine looks like 16-2-12

A. It is part of that land, My Lord.

Court: In fact it is on both sides of the ring road.

A. ....On both sides.

Hughes: What, the 14 acres?

A. The 14 acres, yes.

Court: Well, if anyone else looks at this plan I would think it would take quite a lot of explanation to convince them that 14 acres came out of that lot.

Q. Mr. Robinson, am I right in assuming from what you have said that the sale to which you are referring was a sale of less than the total amount of the land in deposited plan 1935?

A. Yes, the transfer showed 14 acres, 3 roods, and 3 perches.

Q. And what do you understand to be the total area in deposited plan 1935?

A. It was 16 acres from memory and 1 rood - I am not sure how many perches. I did not examine the deposited plan.

Q. Who was the vendor?

A. Suchites.

Q. Who was the purchaser?

A. Schultz.

Court: Is it the same person?

A. I have not interviewed him but I understand that it is.

Q. How was the land zoned?

A. Residential.

Q. Where was the title access to the land?

A. King's Road, with a small unmade road on the southern boundary.

Court: When you say title access, you mean the access shown on the certificate of title?

A. Yes, My Lord.

Q. Was there physical access from King's Road?

A. In my opinion due to the high embankment there would be only one place of physical access with any reasonable opportunity of putting in a road.

Q. Would you describe that embankment?

A. It is high. I would estimate its height in the order of 25 feet.

Q. Is that an embankment formed by the cutting down of the road?

A. Yes. It is obviously constructed by the formation of the King's Road.

Q. For what part of the frontage of the land does that embankment exist?

A. I would say over at least $\frac{2}{3}$ of the frontage.

Court: Mr. Robinson, which side of the road is that embankment on?

A. On King's Road, on the western side.

Court: This property is, I think by the King's Road?

A. On the same side.

Court: I see.

Q. What was the topography of that land?

A. It was a high allotment but fell to some very low flat land along the creek boundary.

Q. Would that low land have been usable for residential subdivision?

A. In my opinion, no.

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Q. I will come back later to your analysis of the sale but would you for the record at this stage tell us the price per acre at which you analysed that sale, having regard to the low land that you exclude as not being appropriate for residential subdivision?

A. $1,846 per acre.

Q. What was the date of the contract of sale?

A. The contract was dated 8th December, 1967 but the transfer was held until 1973.

Court: That is the contract from Suchites to Schultz?

A. Yes, My Lord. My searches indicated the transfer was not executed until 1973 by order of the Supreme Court.

Q. And did your searches show whether the consideration for the transfer was the same as the consideration in the contract of sale?

A. It did. $24,000.

Court: Now what is the consideration?

A. $24,000, My Lord.

Q. I want you to turn now to the land which was the balance of the land in certificate of title 9968. Where is that land located?

A. That, I understand, without going right through my field notes, is at Grantham Road. I can only call it Suva, My Lord. I am not sure whether it has a suburb name.

Court: It is a long road.

A. Yes, it is a long road.

Q. Have you prepared a statement of the facts relating to this land?

A. I have.

Gifford: I tender that statement, My Lord.

Court: Exhibit "BD"

Q. Would you read that statement, please, Mr. Robinson?

(Mr. Robinson reads from Exhibit "BD" - statement).

Q. You have copies of the plan, too?

A. I have.

Gifford: I tender them, My Lord - the plan referred to as the attachment plan in Mr. Robinson's statement.

Court: Exhibit "BE"

10.00 a.m. - Mrs. Vakayadra continues.

Thursday, 19th September, 1974 - 10.00 a.m.

Court Stenographer - Mrs. Vakayadra
5th W/Plaintiff MR. ROBINSON
EXAMINATION-IN-CHIEF BY MR. GIFFORD CONTINUES:

Q. Mr. Robinson, that plan has various shadings on it. Could you tell us what is the significance of those shadings?

A. The shadings indicate the highwater mark or the area requiring filling on each allotment, that filling being required to meet requirements before any building can be placed on that land. The high watermark is indicated by a line "H.W.M."

Hughes: Also by "Tiri"

A. "Tiri", yes.

Q. Mr. Robinson, the shading does not coincide with the high watermark indicated by the line which you have referred to?

A. No.

Q. What do you understand is the effect of the shading above the high watermark line?

A. I was only concerned myself with Lots 1-11 which is Stage I. Those are the only allotments that I have walked over and looked at in detail. The subdivision had been filled to a certain extent. I could give no firm opinion as to what was meant by that shading.

Q. What do you understand by the initials "M.H."?

A. Morris Hedstroms Limited.

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Q. Now, I want you to turn to sales of industrial land at Nausori.

Court: You have not told us the price of the Morris Hedstrom land.

Q. Do you know when Morris Hedstrom bought that land in certificate of title 9968?

A. No, I understand from my enquiries, they have had it for some time - some many years. sic

Q. Now, I want you to turn to the sales of industrial land at Nausori. Have you produced a statement showing those sales? 10

A. I have.

Gifford: By consent I tender that, My Lord.

Court: Exhibit "BF".

Q. In that statement you have two columns showing amounts. Is the first column the actual price paid, and the second column of amounts the calculated price per acre as you have calculated it from the price paid and the area of the land in each case? 20

A. It is.

Gifford: May the witness read the statement, My Lord?

Court: Yes. (Read)

Court: How many miles is it from Suva to the subject land, Mr. Robinson?

A. Four miles from the General Post Office, My Lord.

Q. And for the record, how far from Suva is Nausori?

A. 12 miles.

Q. Are those the sales to which you wish to refer?

A. They are. 30

Q. Now, I want you to analyse the various sales. First of all, I want you to turn to the sale so far not mentioned by you, that is the sale from Mr. Sukhi Chand to the plaintiffs. What do you say as to that sale as indicating or not indicating the value of the plaintiffs' land as at the date of the Notice to Treat?

A. In my opinion, it has no bearing at all, My Lord. It was a sale in 1964. Conditions had changed and I gave no regard to the sale having in mind the development and potential which strongly existed in 1967. That sale would appear to be purely on an agricultural basis only.

Q. Looking to see whether that sale could be used in 1967, can you test it by reference to sale of residential land?

A. There were sales of residential land in the Nasinu Co-operative which I have not used (which have been referred to in evidence by another witness) to the north of the subject land. 300 acres sold in 1966 at the rate of $413 per acre.

Q. 300 acres?

A. Yes, for $413 per acre.

Q. As the area offered for sale increases in size, do you expect a higher or lower price per acre?

A. The larger the area the experience, here and overseas in Australia and other countries, indicates the general trend is the larger the area the lower the price per acre.

Q. For the record, what did the price paid by the plaintiffs work out at per acre?

A. I am relying only on memory - I think it was $182 or $184 per acre.

Q. That is translating it from pounds?

A. Into dollars from pounds, yes.

Q. Still looking to see whether you could use the sale by Mr. Sukhi Chand to the plaintiffs to find the value of the land in 1967, can you test that by reference to a sale of industrial land? You have said you ignore the 1964 sale by Sukhi Chand to the plaintiffs. You have so far dealt with residential sales as showing why you reject it. Can you now for industrial land?

A. Yes, industrial land. There were no other sales but the ones in the area which I consider comparable other than those I have mentioned in my evidence. As far as I can find, there is no other sale of

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industrial land in the area which I consider comparable other than those which I have mentioned in my evidence.

Q. Looking at the sale of industrial land mentioned in your evidence, is there any sale you have already said that shows, in your opinion, the 1964 sale to the plaintiffs does not assist you in finding the value of the plaintiffs' land as industrial land in 1967?

A. The sale of 1965 indicates, in my opinion, the value of industrial land in the nearby vicinity.

Q. And which sale is that?

A. That is a sale - Chanderman to Schultz.

Q. I want to go back to your analysis of that sale. Do you say on the basis of that sale that the sale to the plaintiffs does not afford a basis for determining the industrial value of the plaintiffs' land as at 1967?

A. I do.

Q. I want you to give your analysis of the various sales you have used to determine the value of the plaintiffs' land as at 1967.

A. Sale "I", which was the sale to American Investments, analyses at $2,140 per acre overall.

Court: That is land immediately south of the plaintiffs' land?

A. Yes, My Lord.

Court: What does that work out at?

A. $2,140 per acre for 94 acres, 1 rood, 8 perches.

Q. And that was an overall price for land part-residential and part-industrial?

A. That is correct.

Q. Would the industrial value as deduced from that sale be higher or lower than $2,140 per acre?

A. Yes, in my opinion you could break it up between the land within the industrial zoning and the land within the residential zoning.

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10.30 a.m.

10.30 a.m. - Thursday the 19th day of September, 1974

Court Stenographer - Miss R. Kunaqoro
5th W/P Ian Duncan Robinson
EXAMINATION-IN-CHIEF BY GIFFORD, Q.C. CONTINUED:

Q. If you did break it up between residential and industrial, would the industrial value you deduced in doing so be higher or lower than $2,140 per acre?

A. It would be higher. It is an area of about 45 acres industrial in that area.

Q. How do you use that sale to determine the value of the plaintiffs' so-called 20 acre area?

A. Well, the break-up I adopted of the subject sale was the industrial land at $2,650 per acre for an area slightly in excess of 45 acres.

Court: That is of American Investments?

A. American Investments.

And $1,500 per acre I applied to the residential. Whilst after the date of acquisition or the relevant date it indicated to me, it was a larger parcel which I would normally tend to expect would receive a lower price per acre.

Court: A larger parcel of what?

A. American Investments was 45 acres, compared with 20 acres. Now 45 acres would bring, in my opinion, $2,650 in 1969. I felt it gave me some degree of comparability. The lands were similar in contour generally.

Q. And similar in access?

A. Similar in access at the time, and as subsequent events have proved there was a demand for industrial land. Most successful, I would imagine, investment.

Q. Having regard to the prices obtained on resale in allotments, do you think the prices paid by American Investments as an in globo price were too high, too low or appropriate?

A. The price they paid would indicate to me that it was low.

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Q. What is the next sale you used in considering the value of the plaintiffs' land as at 1967?

A. Well, for convenience, the other purchase by American Investments to the south again, despite the difficulty of analysis. It has a much smaller area of industrial land. It was, if anything, I consider slightly inferior and the analysis of $1,700 per acre indicated to me it was a low sale but one which I should have some regard to.

Q. Would that $1,700 per acre be an overall price? 10

A. It was an overall price.

Q. Did you deduce as the industrial land price from that sale to American Investments?

A. Unfortunately I have not been able to accurately define the industrial area in that holding, and I have not, in the circumstances, attempted a break-up.

Q. Is that because of the difficulties of interpreting the contractual situation?

A. That is correct.

Q. What is the next sale you used in determining the value of the plaintiffs' so-called 20 acre area in 1967? 20

A. It was a third sale, the Chanderman to Schultz. That took place in September, 1965. It was two years prior to the relevant date, and I considered the area of land was 18 and a quarter acres, or slightly over. Whilst in a slightly better position, it was a sale two years almost before the relevant date, and gave me some indication and support in the lack of any great number of industrial sales. 30 It gave, in my opinion, support to use sales two years after the relevant date.

Court: As in the case of American Investments, I think?

A. Yes, My Lord.

Q. You have said that it was better located and had better access but poorer topography than the subject land. How have you equated it with the subject land?

A. Well, I felt a detriment to that sale was the site 40

had filling on it, and required further filling which, to any prudent purchaser, would in all probability incur him in addition costs of construction. In my experience, filled land sells at a lower price than land which does not require filling. There is perhaps one exception, My Lord, if the land has been filled for a great number of years and has been compacted, but at this time of my inspection the land indicated recent filling.

Q. What is the next sale you used in determining the value of the plaintiffs' so-called 20 acre area as at 1967?

A. I looked at the land at Nausori, My Lord. Admittedly, this was remote from the subject land and once again, after the date of acquisition by slightly over two years - 2½ years average - but I formed the conclusion that it was leasehold land bringing a price very close to $10,000 per acre - in one or two cases slightly over, but in round figures $10,000 per acre - and in addition to this, the owners had to pay a rental of 4% based on $9,000 per acre. In my opinion, the land closer to Suva would have indicated a much higher price. This land was out from the centre of the capital and I felt it was of some assistance to me in arriving at my valuation.

Q. You said the owners had to pay a rental of 4%. What did you mean by "owners"?

A. Well, actually, I meant the purchasers who would be Crown lessees for 99 years would have to pay the 4% on top of the price they have paid.

Q. Now, using those sales and your knowledge and experience as a valuer, what value do you place on the plaintiffs' so-called 20 acre area as at the date of the Notice to Treat?

A. $2,000 per acre.

Q. Why $2,000 per acre?

A. Well, in my opinion that is a conservative valuation My Lord, from the evidence available to me, but, in my opinion, is a true valuation as at that date.

Q. Now, you are aware, of course, that valuation is to be at the date of actual taking?

A. Yes.

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Q. Have you been able to satisfy yourself as to the date of actual taking?

A. I have not.

Q. I want you to assume that the date of actual taking of the so-called 20 acres area was about June, 1968. Would the value you put per acre as at June, 1968 be higher, lower or the same as at July, 1967?

A. It would be higher.

Q. Why?

A. Well, it was close to the date when industrial development was proceeding and also closer to the 1969 sales.

Q. Because of the difficulty of not knowing the date of actual taking, I have not so far asked you in preparing your evidence to assess value as at June, 1968. Would it be too unfair to ask you to give us some approximate indication of the value as at June, 1968?

A. No. I would think, My Lord, the approach I would take - I have analysed the sale to American Investments immediately to the south at $2,650 per acre for 45 acres approximately. I would think it would be my opinion that, for an area of 20 acres as at June, 1968, a figure of $2,500 per acre would be fair and reasonable.

Court: $2,500?

A. Yes, My Lord.

10.55 a.m. - Court adjourned for 15 minutes.

11.15 a.m. on Thursday 19th September, 1974

On resumption.
Court Stenographer - Mrs. Singh
5th P/W - recalled and resworn - Ian Duncan ROBINSON
EXAMINATION-IN-CHIEF BY MR. GIFFORD CONTINUED:

Q. Mr. Robinson, have you been able to determine from the sketch plan in Ex. "X" the boundaries of the area of land taken by Suva City Council?

A. Can I see Ex. "X"? I think I know what your question is, but I want to be sure.
(Exhibit inspected by witness).
Yes, I see it.

Q. Have you been able to determine from the sketch plan in Ex. "X" the boundaries of the area of land taken by Suva City Council?

A. I have not.

Q. Are you familiar with the use of plans?

A. I am.

Q. Do you frequently have to make use of plans in your work as a valuer?

A. I do. The majority of cases require inspection of a plan or title.

Q. Why have you been unable to determine the boundaries from that sketch plan?

A. There are no dimensions on the sketch plan, no bearings, no starting point measured.

Q. Assuming that the area taken by Suva City Council was greater than 20 acres, what value do you place per acre to the two values, (i.e. the 1967 and the 1968 values), you have already given?

A. If I may reply, your Lordship, up to 5 acres, I would still keep the same rate per acre. If it were 40 acres, I would have to reconsider.

Court: If the area were over 5 acres, you would value it as a different figure?

A. I might have to reconsider it, my Lord.

Q. So, assuming the area in fact taken is between 20 and 25 acres, your per acre rate for those two dates would remain unchanged?

A. They would.

Q. What if the excess includes part of an acre?

A. It would be an acre or part of an acre thereof.

Q. To make that plain, if the excess is 3 and 7/10 acres, is your valuation of that excess arrived at by multiplying the per acre rate by three and seven-tenths?

A. Yes, it would be.

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Q. Can you do the mathematics for us for an excess of 3.7 acre as at July, 1967?

A. I can.

Q. Would you?

A. It would be an additional amount of $7,400 for an additional 3.7 acres.

Q. Now I want you to tell us what that additional amount would be for 3.7 acres excess land if instead of July, 1967 we turn to your valuation of $2,500 per acre as at June, 1968?

A. It would be an amount of $8,250. Correction, My Lord, it is $9,250.

Q. Have you inspected the powerhouse and the flats constructed by Suva City Council?

A. I have.

Q. Is the ring road to which you have referred earlier in your evidence in fact constructed on that American Investments land?

A. It is.

Q. Does it lead on that land anywhere near the powerhouse or the flats?

A. Yes, it is in close proximity to the fence boundary of the power station.

Court: Which encloses also the flats?

A. Yes, My Lord.

Q. What do you say about the access to the plaintiffs' so-called 20 acre area, first of all as at July, 1967.

A. In July, 1967, conditions would have been similar, it is reasonable to assume, as at 1970 when I first inspected the land, My Lord. Access was available from King's Road over a bridge crossing the Wainivula Creek into the plaintiffs' land. That is the way I gained entry.

Q. In 1970 of course there was also an access from Kinoya Road to the powerhouse, was there not?

A. Yes, there was a road, a rough road, from Kinoya Road to the powerhouse gates or the enclosure of the powerhouse site.

Q. I am not clear - is your understanding that that road from Kinoya road existed or did not exist in July, 1967?

A. That Kinoya Road - I was not here in 1967, but from plans and photographs I have examined I would not think it was in existence.

Court: Was the ring road there in 1970 when you inspected?

A. No, My Lord.

Q. How would you compare access to the plaintiffs' so-called 20 acre area as at July, 1967 with access to the land immediately to the south, that is the American Investments land, when that land was bought by American Investments?

A. Somewhat similar. That had not a good access. In fact, they had to negotiate with the plaintiffs in this case to secure certain rights over the balance of their land to permit a good reasonable access to their subdivision.

Q. Would you take the industrial land forming part of that American Investments' land and compare its access, as at the date of that purchase, with the access to the plaintiffs' so-called 20 acre area as at July, 1967?

A. They are both identical being alongside each other with a sea frontage along the eastern boundary, and I could say that they were both rear parcels because they were part of a bigger holding.

Q. Would you regard the so-called 20 acre area of the plaintiffs' land as attractive or unattractive to a purchaser as at July, 1967?

A. Well, from examination all I can say - not having inspected it in 1967 - examination of aerial photographs and contours, I would say it would be identical in attractiveness.

Q. Identical with what?

A. The 20 acre area being identical with the American Investments industrial area.

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Q. I may not have made the question plain to you. Let me put it again. I want you to tell us, as a valuer, how you would regard the attractiveness or otherwise of the plaintiffs' so-called 20 acre area to a purchaser as at July, 1967?

A. In my opinion both parcels would have the same appeal to any prospective purchaser. They would be identical. I cannot see any vast difference between the two - any difference whatsoever.

Q. Would there or would there not, in your opinion, have been a ready sale of the so-called area in July, 1967?

Hughes: I object because, in my submission, Mr. Robinson's first visit was in 1967, I think on a cruise. In all events, in my submission he has not qualified himself in relation to the date in which the question was asked.

Court: All he can say is the matter must be judged by the evidence of comparable sales.

Gifford: Question withdrawn.

Q. Have you taken into consideration the fact that under the Draft Suva Regional Planning Scheme there is land immediately adjoining the so-called 20 acre area that is shown as industrial reclamation zone?

A. I have noted that.

Court: That is to the east?

A. Yes, My Lord.

Q. Do you add anything to your valuation for that or not?

A. No, I have not.

Q. So far you have valued the so-called 20 acre area in globo. Have you also made a notional subdivision of the land for valuation purposes?

A. I did a notional subdivision - yes.

Q. Were you able to obtain the necessary costings to enable you to go on and complete the valuation exercise based on that national subdivision? sic

A. No. There were too many unknown factors, My Lord, that I could not ascertain with any degree of certainty as to sewerage requirements and even the cost of the installation of a sewerage plant as at 1967.

Q. That is even assuming that one would have been required?

A. Yes, this was an unknown factor that I could not satisfy myself on, so, the circumstances, I felt I had insufficient evidence to carry out this exercise.

Q. Do you or do you not regard an in globo valuation as an appropriate valuation in the present case?

A. I consider it the correct valuation approach in this case.

Court: That is the in globo valuation of the 20 acres?

A. Yes.

Q. Have you considered the question of injurious affection?

A. I have.

11.50 a.m. - Mrs. Vakayadra continues

Thursday 11.50 a.m. - 19th September, 1974
Court Stenographer - Mrs. Vakayadra
5th w/Plaintiff Mr. ROBINSON
EXAMINATION-IN-CHIEF BY MR. GIFFORD CONTINUES:

Q. What do you say about injurios affection to the balance of the plaintiffs' land arising from the construction and operation of the powerhouse on the so-called 20 acres? My Lord, I understand my learned friend, as with Mr. Singh, also takes the same objection?

Hughes: Yes, I do, My Lord.

Court: Answer taken subject to objection.

A. From inspection of the property adjoining somewhere near what I assume to be the 20 acre boundary, the balance of the land rises for a short section. Taking the residentially zoned as being part of this rising land, I consider an area of 8 acres is injuriously affected. My reason for this, My Lord,

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is that I enquired at the Meteorological Office in Suva and ascertained from the officer-in-charge the prevailing winds over this particular land in the plaintiffs' title, and ascertained that the prevailing winds were very much blowing from east to west and in the circumstances, having stood on the 8 acres, I heard noise from the power station. There would be a small amount, very small probably, of soot fallout.

Court: Small soot fallout?

A. Yes, and in my opinion a prudent purchaser of the area of 8 acres would expect to pay less for that parcel.

Q. Have you quantified what you consider is the appropriate amount for injurious affection?

A. Yes, $300 per acre, that is $2,400.

Gifford: My Lord, by consent I tender a photostat copy of the Suva City Council electricity fund accounts for the years 1960-72. I am informed by my learned friends that the 1973 figures are not yet available...

Hughes: (Interrupting) - I should formally object to the tender because it is my submission that these documents have no relevance to any issue of damages. I object to the use of the words "by consent".

Gifford: We contend they are relevant to damages, and as I was saying to your Lordship, they are tendered by consent but subject to my learned friend arguing relevance.

Hughes: I am not insisting on formal proof, but I am objecting to their relevance.

Court: Exhibit "BG".

Q. Mr. Robinson, you have had a look, have you not, at Ex. "BG"?

A. I have.

Gifford: My learned friend has indicated his objection as relating to the remainder of this aspect of the evidence.

Hughes: Yes, sir.

Q. Now, are you able to ascertain from Ex. "BG" what profits the Suva City Council made from the use of

the powerhouse or the flats it has built on the so-called 20 acre area?

A. I have not been able to ascertain that.

Q. Have you been able to ascertain that in any other way?

A. No, I have not.

Q. Since you cannot ascertain the profit which was made, if any, by Suva City Council, have you applied your mind to how the profit that ought to have been made during the period commencing from the construction of the powerhouse and the flats respectively could be computed?

A. Well, the only avenue that appears to me as a valuer is the net return one could expect from the improvements erected on the land.

Q. Have you prepared a tabulation of net return on that basis?

A. I have.

Q. And do you produce it?

A. I do.

Gifford: I tender it and it is still subject to the same objection, I understand, from my learned friend?

Hughes: Yes.

Court: Ex. "BH".

Gifford: That is merely for the flats, not the powerhouse, is it not?

A. That is correct.

Q. Now, as to the powerhouse, what nett return would you assess for that?

A. I would have assumed a rate return of 8% nett, assuming that would be on a lease basis - I am imagining for the exercise a lease - and would be reviewed every 5 years.

Q. Why 8% nett return?

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A. Well, it is below what is the rate of return being received for commercial and residential and to some degree industrial buildings, but I looked at it - it was one tenant, a substantial tenant, and the 8% also was current mortgage rate at that time. In my opinion, it was a conservative figure an investor would require but it is my assessment.

Q. Now I want you to adopt another approach. Still seeking to ascertain the nett return which the Suva City Council should have obtained from its use of the so-called 20 acre area, what return do you consider someone spending the money spent by Suva City Council ought to be able to gain net from that expenditure in the relevant period?

A. At what date?

Q. Taking it as at the date the first section of the powerhouse came into operation?

A. I would imagine, My Lord, that an investment of this size would probably may require a big institutional investor and I would have considered they would possibly require a return in the vicinity of 10% nett.

Q. I put the question this way, please. I want you to look at the expenditure not by an investor but the expenditure by the Suva City Council. I ask you to do so to try to ascertain what nett return the Suva City Council should have been able to gain from its use of the land. Do you adopt the same 8% figure or some other figure on that basis?

A. No, I would think from my experience, I have not looked at it in detail to see whether the Suva City Council has any borrowings on this, but from my experience in Australia, a local authority would be paying 8, 9 or 10 percent on loan moneys, My Lord, so it would, I think, be looking for a return of 10%.

Q. That is 10% nett after meeting loan commitments?

A. That is correct.

Gifford: That is this point to which I understand my learned friend's objection to apply, My Lord.

Hughes: All that is subject to objection, My Lord.

Q. Is there anything else that I should have dealt with?

A. No, My Lord. I think that is all I can assist the court with.

Gifford: That is all, thank you My Lord.

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Cross-examination by MR. HUGHES

Q. Basically, is this correct - you have used four comparable sales?

A. Four industrial sales, yes.

Q. One of which, that is sale number 4, which is the land at Nausori, consists of a whole complex of sales?

A. That is correct.

Q. Of small areas?

A. That is correct.

Q. Mostly less than 1 acre?

A. Mostly.

Q. Yes, I haven't got Ex. "BF". Let me look at Ex. "BF". In fact all the sales in Ex. "BF" are less than 1 acre except for three, namely numbers 1, Lot 24 and Lot 29 - were of small allotments ranging from 25 perches up to in one case 2 roods?

A. I agree.

Q. And of course you will agree, will you not, that what you said earlier as to the per acre price escalating when you are dealing with small allotments rather than in globo deals with particular force to this string of sales?

A. It does.

Q. Will you agree that in substance you get very little guidance from the point of view of making an in globo valuation of the subject land on any particular date, that is the so-called 20 acres from this list on Ex. "BF", because they are really sales of land in subdivision? sic

A. I would say I would gain some assistance.

Q. Yes, but would you agree that such assistance as you do obtain from this string of sales in Ex. "BF" is

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very limited because those sales in Ex. "BF" are in truth sales of land in subdivision?

A. No, I would not agree it is very limited.

12.30 p.m. - Miss Kunaqoro took over.

12.30 p.m. - Thursday the 19th day of September 1974

Court Stenographer - Miss Kunaqoro
5th W/P - IAN DUNCAN ROBINSON
CROSS-EXAMINATION BY MR. HUGHES CONTINUES:

Q. Will you agree in substance that this sale I am talking of, Ex. "BF", represents sales of land in subdivision?

A. I agree.

Q. And not in globo?

A. I agree.

Q. Will you agree that that distinction places a substantial limitation on the utility of this string of sales, Ex. "BF", from the viewpoint of treating them as comparable sales?

A. No, there is a degree of relevance, My Lord.

Q. But much less relevance would you agree than would be the case if you were able to establish an in globo purchase price by the person or authority that did the subdivision set out in Ex. "BF"?

A. I agree an in globo comparability is first class.

Q. You have not told us, Mr. Robinson, that you made any attempt to translate these subdivisional sales in Ex. "BF" back to a price that the subdivider might be expected to pay for an in globo purchase preparatory to subdividing?

A. No.

Q. And you have not done that exercise, have you?

A. No.

Q. And I hasten to say I am not criticizing you for that, but to have done that exercise, if it could be done, would have been the best way of establishing a basis of comparability between that land at

Nausori and the land that you were attempting to value?

A. If it could have been done.

Q. No doubt you did not do it because you did not have the information or the resources available to you to do it?

A. That is correct.

Q. Now, would you agree with this as a general proposition, that if you are endeavouring to value particular land by reference to comparable sales, the more sales you can find that are nearly contemporaneous, and that can be reduced to a basis of comparison, the better?

A. That is a reasonable assumption.

Q. And it is, by corollary, will you agree, a reasonable assumption, that if you were reduced to one only so-called comparable sale, the exercises of deducing value from that one sale would be fraught with grave risk of error?

A. It depends on investigation into the set of circumstances and the valuer's expertise.

Q. The risk in such a case would exist, would it not, because the one sale might well be a maverick sale?

A. It could be. It is not an unusual occurrence.

Q. Now, I just want to ask you a few questions about your association with Fiji. You did not come here until 1962, did you?

A. No.

Q. And you spent a day then?

A. Yes.

Q. And a day, did you say, in each of the subsequent years 1963, '64, '65, '66 and '67 similarly visiting as a visitor in a cruise ship?

A. Yes, it would be a day to a day and a half.

Q. Well, you say in that statement "each year from 1962 to 1967 I went on a cruise which included calling at Suva for a day"?

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A. Yes.

Q. Was that a correct statement?

A. Yes.

Q. And sometimes these visits would be just inside a day - part of a day?

A. Most of them from 8 a.m. to 10-12 o'clock at night.

Q. And please don't think I am putting it to you discourteously, apart from examining residential or commercial properties?

A. Well, with respect to Suva, My Lord, after one or two visits I found I was turning back to my hobby of looking at real estate.

Q. But, as your statement says, the pursuit of your hobby on these brief visits to Suva was limited to the residential and commercial property values in the city of Suva.

A. Yes.

Q. And the first time you visited the subject land was, I think you said, in September, 1970?

A. It was.

Q. And during your visits, what you mainly did in the pursuit of your hobby, or as it happens also to be your profession, you limited your pursuit of your hobby and your profession to gaining impressions of property values in the city of Suva to people you met in your field?

A. Yes.

Q. And in gaining those impressions you relied very much naturally enough on what people told you?

A. I did an examination of some documents occasionally.

Q. Yes, and in the nature of things and because of the difficulties that inevitably arise in making a valuation away from your home city you have in your approach to the problems of valuation involved in this case, you have had to rely to a substantial extent on information obtained from others?

A. No, to the contrary, I have had to be ultra-cautious

in relying on information obtained from others when you are not in your own city.

Q. But you have had, exercising due caution, to rely on information given to you by other people in this exercise?

A. Nothing that I have not checked out myself at the Office of Titles or sighted documents.

Q. Will you agree with this that in your experience intensive land development in a suburban area is often found to take off quite suddenly?

Court: What do you mean by "take off"?

Hughes: To begin.

Witness: No, in my opinion - generally said - you can forecast an area that is going to develop by studying trends.

Q. But of course it is very dangerous, is it not, in valuation to judge the justifiability of a forecast in relation to future development in the rosy glow of hindsight?

A. I would never speculate to let that influence me to any great extent. I would use judgment. Admittedly, I had the benefit of hindsight.

Q. What I am suggesting to you, however, is this. It is dangerous, is it not, in this area of valuing land in this field of valuing land to assess the reliability or otherwise of a view that might be taken of the land's potential value by reference to hindsight?

A. Well, it is not particularly clear your question.

Q. Hindsight can be dangerous, can it not, as a means of assessing the justifiability of someone's assessment of land's potential? The potential of particular land at a particular point of time?

A. I find it difficult to answer, my Lord. I feel if a valuer does his research and he is satisfied in his own mind that his expertise over the years, or his knowledge over the years, he is satisfied he has adopted the true test over the years, that is the true test of valuation. "Are you satisfied that you have adopted the correct approach and will it stand the test?"

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Q. Well, let me put this to you. It would not be reasonable, would it, to assess the justifiability of an opinion as to the potential of land held by a particular person at a particular point of time by reference to hindsight looking back?

A. Not by relying on hindsight. You try to assess the position by looking at the relative date.

Hughes: That is all I want to put, my Lord.

Gifford: No re-examination, my Lord. Can the witness be excused? 10

Court; Very well, Mr. Robinson is released in that event.

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No. 7

EVIDENCE OF D.C. EAST UNDER EXAMINATION BY HUGHES Q.C. CO. TO DEFENDANTS Dated 19th September 1974

1st W/D - SWORN ON BIBLE IN ENGLISH

DAVID CLAYTON EAST - OF STIRLING PLACE, SUVA
Occupation - SURVEYOR
EXAMINATION-IN-CHIEF BY HUGHES Q.C. :

Q. Mr. East, are you a registered surveyor in Fiji? 20

A. Yes, sir.

Q. And you are a partner in the firm Harrison, Grierson & Partners?

A. Yes, that is correct.

Q. How long have you been in practice as a registered surveyor in Fiji?

A. Since early 1968?

Q. And prior to coming to Fiji did you acquire your qualifications in your home country, New Zealand?

A. Yes, sir, I was a registered surveyor in New Zealand. 30

Q. How long in all have you been a registered surveyor either here or in New Zealand?

A. Approximately 10 years.

Q. May Mr. East be shown Exhibit "X" my Lord? (Exhibit shown to witness)

Q. Will you just look at Exhibit "X", including the plan and the description of the land on the page opposite. I want to ask you this question first. In the ordinary terminology that is used in surveying is there any difference between a sketch plan and some other sort of plan?

A. Yes, there is. We generally use the term "sketch" for a plan which is freehand, approximate or not to scale, and the term "plan of" when it is accurately plotted to a scale which is generally noted on the plan.

Q. Yes. Now, have you visited the powerhouse site at Kinoya and done survey work there in the last several days?

A. I was on the site on Monday.

Q. What did you do there?

A. We went primarily to ascertain that the City Council was contained within the 20 acres odd as shown on this deposited plan 3265.

Court: Within the boundaries of deposited plan 3265?

A. Lot 1 or 2 of deposited plan 3265, my Lord, and we also fixed a fence at the western boundary.

Hughes: May the witness be shown Ex. "D1"? (Shown to Witness)

A. Lot 1 is the lot number.

Q. So you went on to lot 1 as shown on deposited plan 3265, the original of which is "D1" in this case?

A. That is right, the plan is not actually deposited as yet.

Court: What did you go there for, Mr. East?

A. To see that the City Council was contained within the

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20 acres on Lot 1, and to fix an old fence that exists on the western boundary of the said Lot 1.

Q. For those purposes did you yourself do certain surveying work in company with someone else from your office?

A. I myself, in company with Mr. Peter Tapper of my office, also a registered surveyor, did the work necessary.

Q. Exactly what work did you do? First of all, before I ask you that, did you have available to you during this visit to the site Exhibit "D1"?

A. Yes, we had a photostat copy in our office.

Q. Now, precisely just detailing it, if you please, what work did you and your assistant do on that visit?

A. We located the majority of the old survey marks that are shown on that plan. We fixed the high watermark as it now exists. We fixed the fence.

Court: What do you mean by "fixed"?

A. There is a surveyor expression. We established its relation to the boundary as shown on that plan. We fixed those buildings that were near the boundary.

Court: Near the western boundary you are talking about now?

A. Near the western boundary and checked that there were no other buildings or occupation near any of the other boundaries.

Q. Anything else that you did out there, or is that a description of what you did?

A. That is a description of what we did as I recall.

Q. Following the performance of the work that you have described, did you then prepare a plan?

A. Yes.

Q. And have you several copies of that plan with you?

A. I have several copies of that plan here.

Q. Now, may a copy be put in some prominent position?

Gifford: None was put to Mr. Knuckey.

Hughes: Mr. Knuckey's evidence was based throughout on an assumption that the sketch plan was a plan drawn to an 8 chain scale.

Court: I will take the evidence subject to objection.

Hughes: My attitude to the suggestion that I should have cross-examined Mr. Knuckey....

Court: Carry on with the matter.

Q. Mr. East, I think I have asked you, having produced your field work on the land, did you then prepare a survey plan?

A. I assisted Mr. Tapper to prepare a plan.

Q. I should ask you when did you do your field work on the land about which you give your evidence?

A. On Monday morning and the early part of Monday afternoon.

Q. Now, do you produce the plan which you assisted Mr. Tapper to prepare, and that is a plan which, in addition to the black lines on it, also has some two small areas at the western boundary of the land, one coloured green and one coloured blue?

A. Yes.

Q. And was the colouring green and blue made by you?

A. It was made by myself.

Q. Do you also produce a calculation form with respect to the survey that was done?

A. Yes, I produce a calculation form.

Hughes: I tender, my Lord, the plan.

Gifford: I object that the plan relates to something existing last Monday.

Q. Would you describe to his Lordship, in words, the several boundaries as surveyed by you and Mr. Tapper in conjunction with each other that the plan depicts? What did you survey out on the land?

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A. We surveyed the western boundary and fixed a fence that exists there. We surveyed the high watermark as it exists today. We fixed the three buildings.

Court: When you said you surveyed the western boundary, you mean as it exists today?

A. As it exists on deposited plan 3265. We established the location of the three closest buildings in relation to the boundaries, and we checked that there was no encroachment over the boundaries as delineated on deposited plan 3265.

Q. Of what did you draw a plan?

A. We drew a plan that shows lot 1. Deposited plan 3265 shows three buildings in relation to those boundaries, a fence on the western boundary in relation to the surveyed boundary, the high watermark as it exists and the high watermark as it was shown on deposited plan 3265.

Q. Does the plan also show a northern and southern boundary of the land?

A. Yes.

Q. And what northern and southern boundaries does it depict?

A. Those boundaries that are shown as lot 1 deposited plan 3265, and also locates a trunk sewer that has recently been put in.

Q. To what scale was the plan drawn?

A. 40 feet to an inch.

Hughes: I now tender the plan, my Lord.

Gifford: I object on the ground that what the high watermark is today is irrelevant, and that there is no evidence to establish when the fence referred to by the witness was erected, but if, as the plan shows, the fence is an old one, then that is something that could certainly have been put to Mr. Knuckey.

Court: This is something to be admitted subject to objection.

Gifford: Yes, my Lord.

Court: Exhibit "D6".

Q. Mr. East, since the plan was drawn, have you made calculations as to the area of land enclosed by the western boundary as shown on it, the northern and southern boundaries as shown on it and the high watermark as surveyed and shown on deposited plan 3265 and reproduced on your plan?

4.30 Miss Kunaqoro took over.
1st W/D David Clayton EAST
EXAMINATION-IN-CHIEF BY HUGHES Q.C. CONTINUED:

A. Yes, the calculation sheet shows the calculation.

Q. And does the final result in that calculation sheet represent your calculation of the area?

A. Yes.

Q. 20 acres, 0 roods, 0 perches. The total area is given as 20 acres, 0 roods, 0 perches?

A. That is correct, yes.

Q. Is that a rounding-off from some other figure?

A. In this particular case it did happen to be exactly 20 acres, or slightly under - 19.9823 - but not being a natural boundary we have called it 20 acres.

Court: I think we will mark the plan "D6A" and the calculation sheet "D6B".

Q. Now, I want you to describe to his Lordship the fence that you have referred to.

A. The fence which we fixed or located appears to be very old, but in Fiji it is difficult to tell the exact age of a fence as very frequently secondhand materials are used.

Q. Yes, what?

A. And corrosion particularly near the coast is often excessive.

Q. Could you describe the construction of the fence?

A. The fence is an old barbed wire fence. In parts only two strands remain, in other parts there are

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still four or five strands. It was not on solid posts, as is normal.

Q. Would you describe the posts as is?

A. I suspect the posts are pieces of local tree.

Q. Are they thin or thick or normal size, if there is such a thing?

A. They would be thinner than a normal New Zealand or Australian fence.

Adjourned to 9.30 a.m. - Friday 20th September.

IN THE SUPREME COURT OF FIJI

Civil Jurisdiction

Action No. 213 of 1968

IN COURT AT LAUTOKA
10th Day of Trial

Before the Honourable Mr. Justice Stuart, Judge

Friday the 20th day of September, 1974 at 9.20 a.m.

Between: 1. MUKTA BEN d/o Bhovan Plaintiffs
2. SHANTA BEN d/o Bhimji

and

SUVA CITY COUNCIL Defendant

Mr. K.H. Gifford, Q.C. and Mr. V. Parmanandam for the Plaintiffs.

Mr. T.E.F. Hughes, Q.C. and Mr. R. Lateef for the Defendant.

Court Stenographer - Miss R. Kunaqoro

On resumption - 1st W/D David Clayton EAST
Resworn on Bible in English
EXAMINATION-IN-CHIEF BY MR. HUGHES, Q.C. CONTINUED:

Q. I want to ask you just a few more questions about the plan, Ex. "D6A". Have you made a calculation as to the area that is delineated on that exhibit produced in green colouring?

A. Yes. I have calculated the area and shown it on the plan.

Q. And that is an area where the surveyed western boundary of lot 1, deposited plan 3265, is to the west of the line of the fence, it that so?

A. Yes, that is correct.

Q. Yes, would you please tell his Lordship what is your calculation as to the extent of the green area? Is the 11.2 perches your calculation of the green area?

A. Yes.

Court: You say that is the place where the western boundary of deposited plan 3265 diverges from the western boundary of your plan?

A. No, my Lord, that is the point where the fence diverges from the western boundary of deposited plan 3265.

Q. Now, I next ask you - have you calculated as 5.3 perches the area on Ex. "D6A" that is coloured blue?

A. Yes, I have calculated it as 5.13 perches.

Q. And is that an area where the surveyed western boundary of Lot 1, deposited plan 3265 is to the east of the line of fence?

A. Yes

Court: The previous one is where the boundary is to the east of the line of the fence or to the west?

Hughes: To the west

Court: That is the 11.2 perches?

Hughes: Yes, My Lord.

CROSS-EXAMINED BY MR. GIFFORD. Q.C.

Q. At what time of the day did you commence your work in the field on the land in deposited plan 3265 last Monday?

A. It would be about 9.30 in the morning when I first arrived on the site.

Q. At what time of the day on that Monday did you end your work in the field on this land?

A. I came back to the office about 11, I recall, and went out again in the afternoon.

Q. When did you get back to the land in the afternoon?

A. Approximately 2.15, 2.30.

Q. And when did you leave it in the afternoon?

A. About 3.30

Q. I want to make certain that we all understand exactly what work you did. Did you survey at any time the actual high watermark in 1967 as distinct from the high watermark as shown on Mr. Surveyor Carter's plan?

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Hughes: Objects.

Q. Did you yourself carry out a survey in 1967 of the high watermark in relation to the land comprised in deposited plan 3265?

A. I was not even here in 1967.

Q. So what you did was to adopt as correct the high watermark as shown on deposited plan 3265?

A. Yes.

Q. You were working against time in obtaining your information in this case?

A. Not really, because I have a large staff that can assist me.

Court: The distinct impression I got yesterday was that you surveyed the high watermark.

A. As it is today, my Lord. We actually fixed it as it is today.

Q. Did you in fact re-establish every traverse in relation to the high watermark as shown on deposited plan 3265?

A. No.

Q. Did you in fact re-establish all points in relation to the northern boundary as shown on deposited plan 3265?

A. I would doubt if it was all points.

Q. Did you in fact re-establish all points in relation to the southern boundary as shown on deposited plan 3265?

A. Without a copy of the plan I cannot answer you exactly because I cannot recall.

Q. Which plan do you want to see?

A. Well, there be 3265 plus a number of other plans around the area which we used as survey data.

Q. To make this plain, in order to carry out the work which you in fact carried out last Monday you had to have resort to plans in addition to deposited plan 3265?

A. Yes.

Q. But you would agree, would you not, that you did not in fact re-establish all the points on the southern boundary of deposited plan 3265?

A. Yes, I would agree.

Q. Similarly as to the western boundary, would you agree that you did not in fact re-establish all the points on the western boundary of deposited plan 3265?.

A. Yes, I would agree.

Q. You said in your evidence yesterday that deposited plan 3265 has not in fact been registered even now, did you not?

A. I noted that it was not really deposited.

Q. And to make that plain, that also means that it has not been registered?

A. Yes, it has not been registered.

Q. If deposited plan 3265 had been deposited and registered in the form in which it was prepared by Mr. Surveyor Carter, then that deposited plan and the resultant certificate of title would show lot 1 as having an area of 20 acres, 0 roods, 2 perches?

A. That is what is shown on the plan at the moment.

Court: You mean if the plan was finally registered?

Q. If deposited plan 3265 in fact went through to registration in its present form, then it would still show an area of 20 acres, 0 roods, 2 perches?

A. Yes, if it went through in its present form.

Q. And if it had been deposited and registered in compliance with Mr. Surveyor Carter's work in its

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present form, then the certificate of title resulting from it would have shown lot 1 as having 20 acres, 0 roods, 2 perches?

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Hughes: I object that that involves a question of law really.

Court: The practice is a fair question to ask the witness.

Q. If the deposited plan 3265 was registered in the form in which it was prepared and lodged by Mr. Surveyor Carter, then is the practice that the resultant certificate of title would issue showing 20 acres, 0 roods, 2 perches?

A. If the plan is registered in its present form.

Q. Now, that answer could appear equivocally.

Court: You were asked the question if the plan is registered in its present form, would the certificate of title issue with that area?

A. Yes, it would be.

Q. You have calculated areas in part by measurement and in part by use of a planimeter have you not?

A. Yes.

Q. In respect of the differences between fence line and western boundary of deposited plan 3265, you have had to rely on the planimeter have you not?

A. And measurement.

Q. And in respect of ascertaining the effect of the eastern boundary of deposited plan 3265 you have also had to rely on the planimeter?

A. Yes.

Q. There is, of course, a margin of error in the use of a planimeter?

A. Yes.

Q. What margin of error do you say could exist in respect of the use of the planimeter in the two areas on the western boundary?

A. Approximately 10%.

Q. What margin of error do you say could exist in respect of the use of the planimeter on the eastern boundary?

A. Approximately 10% on our plan.

Q. A planimeter is a device for measuring an area with irregular boundaries, is it not?

A. Yes.

Q. It is an instrument with which you trace the actual irregular boundary by following it with one point of the instrument?

A. Yes.

Q. The point of the instrument that traces the actual irregular boundary has a wheel which follows that boundary?

A. Yes. It is a double-armed instrument, one arm being a point and the other a counterweight. The end of the arm with the point has a wheel which moves on the paper's surface.

Q. As the boundary is traced the instrument records the distance it has traversed on the paper?

A. Yes.

Q. And the instrument, on completion of the work, gives you a recording in square inches?

A. Generally in square inches.

Q. That is, it expresses in square inches the total area of the paper enclosed in the boundaries it has traversed?

A. Yes.

Q. And then you have to convert that reading in square inches into acres, roods or perches for the purpose of your present plan?

A. Yes.

Q. That is done by applying the scale of the plan to the reading in square inches?

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A. No, depending on the type of planimeter. More generally, the square of the scale of the plan.

Q. It is a multiplication?

A. Yes.

Q. I want to look at Exhibits "D1" and "D6A" together. I want you to look carefully at the deposited plan eastern boundary as appearing on the deposited plan and as appearing on the plan Ex. "D6A" you have prepared. I want you, merely for the purpose of identifying the particular points to which I shall refer, to treat the eastern boundary as the outline of a face, with the nose where the word "high" appears on your plan. I am referring to the word "high" where it appears on your plan in relation to what your plan shows as the high watermark boundary from the deposited plan.

Now, first of all, I want to take you above what would be the forehead, and what I will call the scalp. That is above where the word "mangrove" appears on your plan. You see that?

A. Yes.

Q. Your plan shows that as almost a straight line?

A. Virtually.

Gifford: My Lord, I am taking the Carter line on the witness's plan and comparing it with the Carter Line on the deposited plan.

Q. Now, you have agreed that on your plan this line is shown as virtually a straight line?

A. Yes.

Q. Now I want you to look at the same line as it appears on the deposited plan 3265 and I put it to you that on the deposited plan it is an irregular line?

A. It is extremely hard to tell on the scale of that plan.

Q. Looking at it on the deposited plan, there is a shallow bay or indentation about where the number "100" appears, is there not?

A. There is a squiggle there of some sort. Could be a draughtman's plotting point.

Q. I am looking at the line itself, and I want you to do the same. I put it to you that the line itself has an irregularity there?

A. It appears to have some.

Q. And if you carry further to the east on that same line on deposited plan 3265 it shows an upward bend or irregularity about where the number "80" appears on that plan?

A. I am not really following you at all.

Q. Let me put it again.

Court: It might be better for the witness to look at the exhibit itself, instead of a copy.

(Exhibit handed to witness)

Q. Now, if you carry further along to the east on that same line from the point you have already agreed appears to have some irregularity, you come to where the deposited plan has the number "80" do you not?

A. Yes.

Q. And at that point there is an upward bend or irregularity in that line on the deposited plan 3265?

A. Yes.

Q. And in point of fact neither of those irregularities appears on the relevant line as drawn on the plan you have produced, Ex. "D6A", does it?

A. No.

Q. Now, I want to turn to what I have merely, for identification, called the forehead which you see appears on deposited plan 3265, where the word "mark" appears. Do you see that?

A. Yes.

Q. I put it to you that the line as drawn on deposited plan 3265 is not as vertical as the line drawn on the plan you have produced, Ex. "D6A".

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A. They appear the same to my eye.

Q. I now want you to direct your attention to what I have termed the point of the nose just below where the word "water" appears on the deposited plan. Do you see that?

A. Yes.

Q. Do you agree that as drawn on the deposited plan the nose can properly be described as pointed?

A. Yes, it is pointed on the deposited plan.

Q. When you look at the same part of the line on the plan you have produced it as rounded?

A. Yes.

Q. When you are redrawing something from one scale to another scale which is larger, then you expect the irregularities to be more prominent on the larger scale, would you not?

A. No.

Q. If a line diverges upwards by a measured amount on a smaller scale, it must diverge upwards by a greater amount on the larger scale, must it not?

A. Yes.

Q. And when it diverges downwards by a measured amount on a smaller scale, it must diverge downwards by a greater amount on the larger scale, must it not?

A. Yes.

Q. In fact, the use of the larger scale should make any such divergences more apparent?

A. Yes.

Q. Now, you wanted to give some explanation did you not?

A. Yes.

Q. What is that?

A. I would like to point out that we have replotted the plan and not redrawn it from the deposited plan.

To explain further you will see that there are fixings taken by Mr. Surveyor Carter that we have replotted.

Q. So you agree that the line you have produced on your plan as the high watermark boundary of deposited plan 3265 is in fact different to that line as in fact appearing on deposited plan 3265 as a question of fact?

A. Different shapes, yes.

Court: Different indeed, surely.

A. Yes, they are different.

RE-EXAMINATION BY MR. HUGHES, Q.C.

Q. Mr. East, you gave an explanation for the differences in configuration between the eastern boundary as shown on deposited plan 3265, Ex. "D1", and the eastern boundary as shown on your plan, Ex. "D6A", and you accounted for the difference or differences by saying that you replotted the eastern boundary as shown on the deposited plan as against redrawing it? Do you remember saying that?

A. Yes.

Q. You went on to say that there are certain fixings on Mr. Surveyor Carter's plan which you used for the exercise of replotting?

A. Yes.

Q. That is replotting the eastern boundary?

A. Yes.

Q. Would you please identify for his Lordship the fixings shown on the deposited plan that you used for the purpose of replotting?

A. The fixings are shown from a traverse line that runs through, you will see, at the bottom.

Q. Would you read out from the plan the fixings that you used, would you?

A. Commencing from the southernmost corner by the eastern boundary there is a distance of 40 links from an old water pipe.

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Q. Did you use for your replotting from 40 up to 75?

A. Yes.

Q. Then did you use some other fixings?

A. Yes, the others continuing north running up from 75, 10, 10, 20.

Q. And then did you see further fixings running east as shown on the deposited plan numbered 3265?

A. Yes.

Q. Now, the next question I want to ask you is this. Can you say whether or not the method of replotting on to a new map as opposed to endeavouring to redraw an old plan or to a larger scale is standard practice?

A. Yes.

Q. Can you explain to his Lordship the basis of this practice, why it is adopted by surveyors?

A. Because you accept the physical measurements produced in the field by the surveyor in preference to a line that is generally drawn by a draughtsman.

Q. The only other matter about which I want to ask you is this, do you remember indicating to my learned friend that when you use a planimeter there is a margin of error?

A. Yes.

Q. And you mentioned a margin of 10%?

A. Approximately.

Q. Can you say whether or not such a margin of error is a usual one when you use a planimeter?

A. No.

Q. What factor in this particular task that you performed, that was measuring off the area of green and blue hatched part of the plan, gives rise to the margin of error you assess at approximately 10%?

A. Knowing the type of paper it was plotted on, the quality of the planimeter and the accuracy of plotting.

Q. And what are the factors that give rise to a margin of error in using a planimeter in relation to the eastern boundary of the subject land?

A. Basically, the steadiness of your hand tracing the line.

Court: That is, those factors plus the steadiness of your hand?

A. Yes.

Q. Why is the steadiness of the hand a factor in using the planimeter on the eastern boundary when it is not on the western?

A. The lines are straighter on the western boundary.

Court: Mr. East, as I understand your plan drawn by you, the boundary of the eastern boundary of the land has now been taken out by accretion, is that correct?

A. No, but by development of that trunk sewer.

Court: The area has been increased by accretion caused by the trunk sewer?

A. Yes.

FURTHER CROSS-EXAMINED BY MR. GIFFORD Q.C. (BY LEAVE) :

Q. But you yourself did not survey the high watermark boundary in 1967?

A. Yes.

Q. And as to part of what is now the high watermark, you are not in a position to say whether or not there has been natural accretion, are you?

A. No, I am not.

Q. And as to so much land as you say has been gained by reason for the provision of the trunk sewer, is that because reclamation was carried out?

A. Yes.

In the Supreme Court of Fiji

No. 7
Evidence of D.C.East under Examination by Hughes Q.C. Co. to Defendants dated 19th September 1974

Q. So that it is fair to say that there has been a gain of land by reclamation and possibly also a gain of land by accretion?

A. Yes.

(At this stage the witness demonstrated the use of the planimeter to the Court).

Adjourned for mid-morning break.

On resumption:

FURTHER RE-EXAMINATION - MR. HUGHES Q.C.:

Hughes: With your Lordship's leave.

Q. You have his Lordship a demonstration with a planimeter for the purpose of showing how such an instrument is used in surveying work. Do you remember that?

A. Yes.

Q. When you measure lines on a plan with a planimeter, do you measure the same line or lines once only, or more than once?

A. No. Generally an average of three endings is taken.

Q. And is that what you did in this case?

A. That is what was done in this case.

(Witness excused)

No. 8

EVIDENCE OF S.A. TETZNER UNDER EXAMINATION BY HUGHES
Dated 23rd September 1974

In the Supreme Court of Fiji

No. 8
Evidence of S.A. Tetzner under examination by Hughes dated 23rd September 1974

SERGIUS ALEXANDER TETZNER
EXAMINATION-IN-CHIEF - MR. HUGHES

Q. Where do you live?

A. Paparoa, New Zealand.

Q. Your present occupation.

A. Farmer.

Q. Did you come to Fiji to live and to take up employment in the year 1937?

A. I did.

Q. Had you previously acquired a qualification in New Zealand as a registered surveyor?

A. I had.

Q. And had you at that time acquired any qualifications in New Zealand in the field of valuation?

A. Not at that time.

Q. Did you eventually acquire qualifications in the field of valuation?

A. Yes.

Q. When did you acquire your New Zealand qualification as a valuer?

A. In 1946.

Q. And did you become an associate member of the New Zealand Institute of Valuers?

A. I did.

Q. Are you also a Fellow of the Fiji Institute of Valuers?

A. I am.

In the Supreme Court of Fiji

No. 8
Evidence of S.A. Tetzner under examination by Hughes dated 23rd September 1974

Q. Now when did you become so. Can you remember the year?

A. 1955 I think. I am not certain of that.

Q. Did you take up when you arrived in Fiji in 1937 government employment?

A. I did.

Q. As a surveyor and road engineer?

A. A road engineer.

Q. Working in the Department of Lands?

A. No. Public works.

Q. Did you work for the government until 1949?

A. Yes.

Q. Did you in that year retire from government service or resign from government service and take up work in a private capacity as a surveyor and valuer?

A. I did.

Q. In Fiji?

A. I did.

Q. Until when, that is what year, did you pursue those activities?

A. I left Fiji permanently in October 1972. I had a brief absence of 18 months in 1967-68.

Q. Now during that period of your career did you undertake valuation work for the government?

A. Yes.

Q. Would you tell us please what was the range and extent during that time? Did you value towns and cities in Fiji for rating purposes?

A. I have valued every city and town and township in Fiji for rating purposes.

Q. And at whose instigation did you do that work?

A. Directed by the Lands Department.

Q. And did you do that work between 1949 and 1965?

A. Yes.

Q. As well as that particular work, that is to say, valuations for rating purposes, did you do other than valuation work in relation to land?

A. Yes.

Q. Have you yourself ever undertaken land development either in your own right or in right of companies or partnerships in which you are interested?

A. I have.

Q. Over what period if you can specify it have you done that?

A. The first land we bought was in 1952 when we disposed of our last parcel of land in 1972.

Q. And during that time were you active in land dealings in and around the Suva area?

A. Yes.

Q. Did your activities extend beyond those broadly expressed boundaries?

A. Yes. We also dealt with some land at Nadi.

Q. When you say that you undertook land dealing do you include in that description subdivision?

A. Yes.

Q. Were you appointed valuer for the Suva City Council in 1952 or thereabouts?

A. Yes.

Q. Previous to that?

A. Yes.

Q. And how long did you remain valuer for the City Council?

A. The last time I valued Suva was 1964 or 1965. After that a valuation department was created.

Q. Mr. Tetzner are you familiar with the location of the land in Certificate of Title 7243?

A. I am.

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Evidence of S.A. Tetzner under examination by Hughes dated 23rd September 1974

Q. And with the land adjoining in Certificate of Title 8315?

A. I am.

Q. And with the land adjoining again in Certificate of Title 8316?

A. I am.

Q. Yes. And it is common ground that in January 1964 you made a valuation of the land in Certificate of Title 7243 at a sum unimproved value of £75 per acre?

A. I did.

Q. Yes. And your valuation plus your explanatory letter is set out in Exhibit A, p. 5 and the following pages. In 1964 what was your opinion as to the potential and the best use to which that land could be put? Certificate of Title 7243.

A. The best use I thought was farming, dairying and the potential was very remote. Potential for any other use.

Q. And in your view at the time, that is 1964, was £75 per acre a fair market price as between a ready but not anxious and a willing but not anxious ...

A. Yes.

Q. That is as an unimproved value?

A. Yes.

Q. Now were you asked in 1966 to turn your mind to the question of the valuation? I withdraw that question. Fixing the valuation of £75 per acre in January 1964 as a proper unimproved value for the land in Certificate of Title 7243 did you take into account any sales that you regarded as comparable?

A. Yes.

Q. Have you any recollection or records now of the sales that you took into account?

A. No, I have not.

Q. My next question to you is do you recall being asked by the Suva City Council or on behalf of Suva

City Council in 1966 to turn your mind to the question of the value of the land contained in Certificate of Title 8316, that is the plaintiffs' land?

A. Yes.

Q. And in dealing with that question did you take any particular sale or sales into account?

A. Yes. That of 8316 itself which prima facie had changed hands at that period or very shortly before.

Q. Do you mean to say that you took into account as a comparable sale in your opinion the sale from Sukhi Chand to the plaintiffs?

A. Yes, it was a sale of portion of the same land.

Q. What was your view as to the potential and best use of the land sold by Sukhi Chand to the plaintiffs at the time you were asked in 1966 to turn your mind to its valuation?

A. Still dairy farming.

Q. And what was your view in 1966 as to the value of the land sold by Sukhi Chand to the plaintiffs?

A. I thought a fair price would be $200 per acre.

Q. I want you to, do you recall when asked in 1966 to give your views on valuation that you were being asked to give those views in the context of a proposal for compulsory acquisition?

A. Yes.

Q. And with that in mind what figure did you come up with?

A. I suggested $220 an acre as fair compensation.

Q. Well now we know from the correspondence that is in evidence that ultimately the Council designated 20 acres at the eastern end of Certificate of Title 8316 as the land it wanted and proceeded purportedly, I shall say, to acquire that land compulsorily.

A. Yes.

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No. 8
Evidence of S.A. Tetzner under examination by Hughes dated 23rd September 1974

Q. I want you to tell His Lordship, if you would what in your view was the fair market value of the land in Certificate of Title 8316 including the 20 acres on a per acre basis in mid-1967?

A. $200 per acre.

Q. Yes. Now do you express that view on the basis of any particular view of the potential of the land then?

A. There was no immediate potential.

Q. Yes. Now we heard evidence given during your absence as to sales by the respective owners of land in Certificate of Title 7243 and land in Certificate of Title 8315 to American Investments in 1969, I think in one case and well, in or about 1969, say in 1969.

A. Yes the sale was negotiated in 1969 but the transfer took place in 1972 as to Certificate of Title 7243 and in 1971 as to Certificate of Title 8315.

Court: That is to say the whole of the sale in Certificate of Title 8315 took place in 1971 is it? Both contract and transfer?

A. The transfer was registered on 7th June 1971 but whether it was negotiated prior to that date I could not say.
(Mr. Robinson's evidence as to the transaction was read to the witness)

Q. Well, you have heard what has just been said. I want you to tell His Lordship whether in your opinion or not, the American Investment purchases of the land respectively contained in Certificate of Title 7243 and Certificate of Title 8315 which began with options in 1969 give any useful guidance to the assessment of value of the plaintiffs' land back in mid-1967?

A. No, I do not.

Q. The answer is "No, I do not"?

A. No, I do not.

Q. Why?

A. In 1967 there was no development there whatever. In 1969 it was known that work had physically started on the power house and on access road.

Q. Now we also heard evidence in your absence as to some land in Certificate of Title 9255 on King's Road?

A. Yes.

Q. Do you know that land?

A. Yes.

Q. Have you in fact inspected it?

A. Yes.

Q. Yes. You have ascertained the details of that transaction have you?

A. Yes.

Q. I think the contract there was some time in 1965?

A. Yes.

Q. What is the date?

A. 3.9.65.

Q. First of all would you compare that land with the subject 20 acres in terms of location and the suitability of location?

A. In 1965 Certificate of Title 9255 was in the City of Suva, was zoned as industrial zone under Suva City Council Scheme.

Q. Draft Scheme?

A. No, I think it was an approved scheme, Sir. Had a tar-sealed commercial access frontage road constructed on it which fronted to King's Road; had been subdivided into 4 road frontage lots and a balance area and had considerable levelling work carried out on it cutting down high spots and filling low lying areas.

Q. Yes?

A. Immediately adjoining it, part of the same land in

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effect but not included in the transfer to Schultz, had been sold 4 lots of $6,800 and building had started or was about to start.

Court: Building was about to begin?

A. I think it had begun. I am not certain about it.

Court: That was in 1965 was it?

A. 1965, yes. On the other hand the 20 acres approximately for the power station site were inaccessible; no services - water electricity, telephones - were nearer than just south of King's Road. It was situated ....

Court: What was just south of King's Road?

A. Services, electricity, water, telephones. It was situated on land controlled by the Suva Local Rural Authority and was not specifically zoned in any manner.

Q. Are you aware that there was some sort of a Draft Suva Regional Planning Scheme in 1967?

A. I was talking of 1965, but I think there was not. The procedure used to be you submitted plans for development to the Suva Local Rural Authority which in turn referred these proposals for the Town Planning Board. There were no published town plans for that area.

Q. Draft or otherwise?

A. Not available to the public.

Q. In either 1965?

A. Or 1967.

10.15 a.m. - Mrs. Vakayadra continues.

Monday, 23rd September, 1974 - 10.15 a.m.

Court Stenographer - Mrs. Vakayadra.

3RD W/DEFENCE MR. TETZNER - EXAMINATION-IN-CHIEF BY MR. HUGHES CONTINUED

Q. Well, then in your view is this sale of the land

in Certificate of Title No. 9255 that took place in September 1965 of any assistance in deducing a value for the subject land in mid-1967?

A. No.

Q. Now in your consideration of this case, have you since arriving, after you arrived in Suva some weeks ago to give evidence, had a look at another transaction namely a sale of 12 acres 0 roods and 30 perches of land in Certificate of Title No. 8550 on the 16th August, 1964?

A. Yes. (A plan was shown to the witness).

Q. Have you marked on this 8 chain series plan that I have just shown you, various pieces of land about which evidence has been given in this case both by you in respect of some land and I think by Mr. Robinson in respect of other?

A. I have marked pieces of land which I consider relevant.

Hughes: I tender that plan, My Lord.

Court: Exhibit "D7"

Q. I think your markings will speak for themselves, but is the land in Certificate of Title 8550 marked in green?

A. It is in the left hand upper part of the plan.

Q. And did you make some analysis of that transaction, that is the sale of the land in Certificate of Title 8550?

A. I did.

Q. And what was your analysis?

A. The purchase price was $9,600 paid on 16/8/64. The land had frontage to the old King's Road where services were available and five road frontage lots were created and sold immediately after the purchase, well, in 1965/66, for the sum of $5,270.

Court: Each?

A. No, Sir. The total. There was further road frontage immediately to the north of the land which could have been sold on survey and without further

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work for $2,400. Deducting the actual and possible sales from the purchase price a sum of $1,530 was paid for the remaining 10 acres approximately. That works out at a per acre price of $153 approximately. The land is of easy contour and physically comparable to the power station site.

Q. Did you also in connection with your preparation to give evidence in this case look at the land described in Certificate of Title 8553 reference "4". Did you look at a transaction with respect to Certificate of Title 8553 marked "reference 4" on your plan?

A. I did.

Q. Did that investigation lead to any conclusion in your mind?

A. I was not satisfied with it. It was sold for $2,800 on 5/7/67.

Q. Area?

A. 11 acres and 14 perches.

Q. Yes.

A. This land had frontage to the old King's Road and six frontage lots have since been created.

Q. Yes. What did this lead to - your conclusion?

A. The value of the lots created is greater than the purchase price paid for the whole land. I therefore discarded that as a comparison.

Q. You have marked some land on your plan R8 Certificate of Title 12455?

A. Yes.

Q. Is that an area of 14 acres 3 roods and 12 perches?

A. Yes.

Q. Sold to Mr. Schultz?

A. Yes.

Q. On the 17th July, 1972?

A. Yes.

Q. For $24,000?

A. Yes.

Q. Calculating out on a per acre basis of $1,613?

A. Yes.

Q. Did you regard that sale in 1972 as affording any guidance to the value of the subject land in 1967?

A. No.

Q. Now I want to turn your mind to another problem for a moment. Have you given any consideration to the question what would be a reasonable rental value of the land that the Council purported to acquire in Certificate of Title 8316?

A. I have.

Q. First of all, what in your opinion was the reasonable rental value of the land on the basis that it was unimproved land except for pasture and a bit of fencing in say late September, 1967?

A. $6 per acre per annum.

Q. And in your view how long thereafter did that remain the fair annual rental value of the land in the condition I have described, grassed and fenced?

A. Until the 1st of January, 1970.

Q. Yes. In your view did the rental value thereafter increase?

A. Yes.

Q. First of all, why in your view did it increase?

A. Because of the work done round about in the construction of the power house and because an adjoining area of native land had been leased to the Crown for purposes of sewerage treatment plant.

Q. What in your view was the unimproved rental of the subject land from 1st January, 1970 onwards?

A. $36 per acre per annum.

Court: That is the return?

A. The rental value, My Lord.

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Q. And what are the factors that lead you to the view that that was the unimproved rental value from the 1st of January, 1970 on?

A. A lease has been negotiated by the Native Land Trust Board to Government of an area immediately north and adjoining the power station site.

Q. For how much?

A. 29.45 acres.

Q. At?

A. $36.00 per acre per annum.

Q. Well, how does that land, that is the land upon which the sewerage treatment works have been constructed, compare with the subject land?

A. Very similar, possibly a little more hilly.

Q. Well then what do you, you say that you have told His Lordship that from the 1st of January, 1970, $36.00 per acre was a fair rental value on an unimproved basis for the subject land per annum. Has that value increased in the meantime, or has it remained the same or what?

A. I would see no increase.

Q. Now would you indicate on this plan by marking what is the Kinoya subdivision or what it was in 1967?

A. I am not certain how much development had taken place in 1967.

Hughes: May I show the witness Exhibit "S", My Lord?

A. If you want to.

Q. Can you pick out the Kinoya subdivision as it existed in September 1967 from that photograph? (Exhibit "S" given to witness).

A. There was just a little development south of the King's Road over here.

Q. Would you please mark it on the original exhibit, with his Lordship's approval? (Witness places a red mark on an area showing the Kinoya subdivision in September 1967 in a tulip shape south of King's Road).

Court: You recollect, Mr. Hughes, do you not, that there is some marking on that exhibit already?

Hughes: Yes, My Lord, the subject land.

Court: No., Mr. Hughes, some parallel line.

Hughes: Well, perhaps it may be noted that the witness marked in red, in a sort of tulip shape, the Kinoya subdivision south of King's Road.

Q. Now do you see a road leading apparently off King's Road through the area you have marked as the area of the subdivision and then extending in a broadly southerly direction and then extending past the subdivision?
Do you see that?

A. Yes.

Q. Have you seen the access road that the Council constructed?

A. Yes.

Q. Have you travelled along it?

A. Yes.

Q. Once or more than once?

A. Literally hundreds of times.

Q. And you can say whether or not that road that runs through the Kinoya subdivision and then south towards the subject land now forms any part of the access to the power station site?

A. Yes, it is part of it.

Q. Did the access road in fact built by the Council connect up with road that runs south through the Kinoya subdivision?

A. Yes, and extended it to the power station.

Hughes: I have no further questions, My Lord.

10.42 a.m. Court adjourned for 15 minutes morning break.

In the Supreme Court of Fiji

11.00 a.m. - Monday the 23rd day of September, 1974

Court Stenographer - Miss R. Kunaqoro
3rd W/DEFENCE - TETZNER, S.A.

No. 8
Evidence of S.A. Tetzner under examination by Hughes dated 23rd September 1974

Resworn on Bible in English
EXAMINATION-IN-CHIEF BY MR. HUGHES, Q.C. CONTINUED -

Q. There is just one more question I want to ask. Would you have a look at a copy of Ex. D1, that is Deposited Plan 3265, Mr. Tetzner? You will see there that the western boundary of Lot 1 is depicted?

A. Yes.

Q. We know that there is a Deposited Plan 2957 which covered the whole of the land, which included the whole of the land, sold by Sukhi Chand to the plaintiffs.

A. Yes. I do not know the number of the plan.

Q. If necessary for any purpose would it be practicable for a surveyor to transpose or to plot on Deposited Plan 2957 the line marking the western boundary of Lot 1 Deposited Plan 3265?

A. Yes.

Hughes: That is all My Lord.

CROSS-EXAMINATION BY MR. GIFFORD, Q.C.

Q. When assessing value of the so-called 20 acres as at 20th July, 1967, did you consider the council as a hypothetical purchaser?

A. Yes.

Q. As a hypothetical purchaser for industrial purposes?

A. For purposes of a power station.

Q. Do you agree that that is an industrial purpose?

A. A special industrial purpose, yes. Not a general industrial purpose.

Q. And an electricity supply is a trading undertaking?

A. It is a municipal undertaking in this case.

Q. It is a trading undertaking by Suva City Council.

A. Yes.

Q. Treating Suva City Council as a hypothetical purchaser of the so-called 20 acres in 1967, did you regard it as offering an industrial price or a rural one?

A. A rural one, sir.

Q. But it was a hypothetical purchaser for an industrial purpose, wasn't it?

A. In my view, it was for a municipal purpose, a public purpose. Not an industrial purpose.

Q. You made no allowance for the council being a hypothetical purchaser for industrial purposes?

A. No.

Q. And no allowance for it being a hypothetical purchaser for a trading undertaking?

A. No.

Q. Did you consider the plaintiffs' land had a potential as at July, 1967?

A. I considered the point.

Q. I didn't ask you that.

A. May I have the question again, please?

Q. Did you consider the plaintiffs' land had a potential as at July, 1967?

A. I considered the point. I saw no immediate potential.

Q. Mr. Tetzner, I propose reading to you certain documents from Ex. "A". I want you to listen carefully to them and I will put the next question afterwards.
(Reads various pages from Ex. "A").
It is quite clear from that, is it not, that the council regarded that area as one that would develop rapidly?

A. Yes.

Q. And it is quite clear that that was one of the reasons why it wanted to locate the power station there?

In the Supreme Court of Fiji

No. 8
Evidence of S.A. Tetzner under cross examination by Gifford dated 23rd September 1974

A. I don't think that follows.

Gifford: I will read from the memorandum of the Electrical Engineer of Suva City Council to the Town Clerk, a memorandum of 26th May, 1964, Ex. "A" p. 28. (Reads).

Q. It is clear from that, is it not, that the Electrical Engineer anticipated that the land in Certificate of Title 7243 would be in the centre of the anticipated land development?

Hughes: I object to that question.

Gifford: I rephrase the question.

11.30 a.m. Mrs. Singh takes over.

11.30 a.m. on Monday 23rd September, 1974
Court Stenographer - Mrs. Singh

3rd W/DEFENCE - S.A. TETZNER
CROSS-EXAMINATION BY MR. GIFFORD, Q.C.

Q. It is quite clear from that, is it not, that the city electrical engineer anticipated that the land in Certificate of Title 7243 would be as near as possible to the centre of the anticipated land development?

A. That was the electrical engineer's view.

Q. And since the Suva City Council proceeded with its attempt to obtain that land it is reasonable to assume it accepted his view as correct?

Hughes: I object.

Q. The city engineer was a person whom you knew well?

A. No.

Q. Did you make any inquiries of Suva City Council or its officers as to why they wished to locate the power house on the plaintiffs' land?

A. No.

Q. Did you make any inquiries of Suva City Council or any of its officers as to whether they anticipated any development occurring in the locality of the plaintiffs' land?

A. Not in this specific instance, no.

Q. For the purposes of your valuation you did not make any inquiries of the Suva City Council or any of its officers as to whether they anticipated any development occurring in the locality of the plaintiffs' land?

A. I knew that they wanted to put a power station on the land.

Q. Mr. Tetzner I will repeat the question. For the purposes of your valuation you did not make any inquiries of Suva City Council or of any of its officers as to whether they anticipated any development occurring in the locality of the plaintiffs' land?

A. No, I did not.

Q. I read you that correspondence from Exhibit "A". Had you known of it at any time prior to my reading it to you this morning?

A. No.

Q. Did you make any inquiries of Suva City Council or of any of its officers as to the basis on which it sought approval for a power house on the plaintiffs' land?

A. No.

Q. Did you make any inquiries of Suva City Council or any of its officers as to the basis on which it sought approval for a power house on any other land?

A. I am sorry I did not get the question.

Q. Did you make any inquiries of Suva City Council or any of its officers as to the basis on which it sought approval for the power house on any other land?

A. No.

Q. Did you make any such inquiries of the city solicitors?

A. I discussed it with Mr. McFarlane.

Q. Do you say that you discussed with Mr. McFarlane the basis on which the Council had sought approval

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for a power house on plaintiffs' land?

A. No, Sir. I discussed the question in general of the power house with Mr. McFarlane. Not the basis.

Q. Did you discuss with Mr. McFarlane any representations made by the Council to any Government authority for approval of a power house on the plaintiffs' land?

A. No.

Q. Did you discuss with Mr. McFarlane any representations made by the Council to any Government authority for approval for a power house on any other land?

A. No.

Q. Did the Suva City Council or any one on its behalf inform you of the representations so made on its behalf?

A. No.

Q. Did you have any knowledge of those representations prior to my reading to you from exhibit "A" this morning?

A. I knew that something must have occurred but I had no particular knowledge whatever.

Q. Did you make any inquiries from the town planning authority as to the zoning of the plaintiffs' land in 1967?

A. Yes.

Q. Of whom did you make those inquiries?

A. The town planning officer.

Q. Which town planning officer?

A. I don't know.

Court: When you say "which town planning officer" what do you mean by that? Are you asking what his designation is or what his name is?

Q. Do you know the name of that town planning officer?

A. No. Sorry I have forgotten.

Q. Do you remember saying in your evidence this morning that the procedure used to be that you

submitted plans for development to the Suva Rural Local Authority which in turn referred those proposals to the Town Planning Board?

A. Yes.

Q. Is that what you understand the position to be as at 1967?

A. Yes.

Q. And was it as you understood it the position from 1964 to 1967?

A. Yes.

Q. That is in respect of the plaintiffs' land?

A. Any subdivisional development.

Q. But specifically in respect of the plaintiffs' land that was the position?

A. It would apply to the plaintiffs' land, yes.

Q. Valuing the plaintiffs' land as at mid-1968, that brings it very close to the date of the sale to American Investments of the land immediately to the south does it not?

A. I did not value it in 1968.

Q. If you had been asked to place a value on the plaintiffs' land as at mid-1968 then the American Investments sale would be very close to it in point of time would it not?

A. It is still a year later - more than a year later. Negotiations were in 1969 if I remember rightly. The first ones.....

Q. As I understand you, you completely reject the sale to American Investments of the land immediately to the south of the plaintiffs' land as being a comparable sale?

A. In 1967, yes, I reject it.

Q. It is of course true that the American Investments sales show that there was a demand for industrial land in that area?

A. Yes now with the erection of a power station.

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Evidence of S.A. Tetzner under cross examination by Gifford dated 23rd September 1974

Q. There were also sales of industrial land in Nausori in 1969 were there not?

A. Yes I believe so.

Q. The Nausori land sold readily?

A. Not particularly.

Q. I put it to you that there were 29 lots of industrial= land offered for sale at Nausori in 1969/70 and that all of those lands sold within the year.

A. I have no knowledge.

Q. So when you said in answer to my question that the Nausori land sold readily, "not particularly", you had no knowledge?

A. I had no knowledge of those facts. I knew the subdivider. In fact we built the roads for him.

Q. But when in answer to my question that the Nausori land sold readily you said "not particularly", you had no knowledge as to whether it did or didn't?

A. I had complaints by the subdivider about the slowness of his sales.

Q. Mr. Robinson has given specific evidence of the sales. I want you to look at Exhibit "B.F.".

A. Yes. (shown to witness).

Q. If the sales as shown in Exhibit "B.F." in fact occurred within the one-year period stated in it then would you agree that the Nausori industrial land sold readily?

A. Yes.

Q. But you had no knowledge of those sales?

A. No specific knowledge.

Q. Did you know when making your valuation that the council had been negotiating in the locality of the plaintiffs' land for several years?

A. I knew in 1964 at the beginning. That was my first knowledge.

Q. You knew in 1964 that the Council was trying to buy the land in Certificate of Title 7243?

A. Yes.

Q. It was reasonable to assume that other land owners in the area would become aware of that, was it not?

A. It was possible.

Q. Did you take that into account in making your valuation in 1966?

A. No. I expressly excluded the use to which the land would be put from my valuation.

Q. Did you also expressly exclude the use to which the land would be put from your valuation in 1967?

A. Yes.

12.05 p.m. - Mrs. Vakayadra continues

Monday 23rd September, 1974 - 12.05 noon
Court Stenographer - Mrs. Vakayadra

3rd W/DEFENCE MR. TETZNER - CROSS-EXAMINATION IN CHIEF BY MR. GIFFORD, Q.C.

Q. Did you in making your valuation take into account the principle enunciated by the Judicial Committee of the Privy Council in Raja Vyricherla Narayana Gajapatiraju v. The Revenue Divisional Officer, Vizagapatan?

A. I do not know the case or the principle.

Q. I will read to you from pages 322 and 323 of the report of that case where their Lordships said:

"If and so far as this means that the value to be ascertained is the price that would be paid by a willing purchaser to a willing vendor, and not the price that would be paid by a 'driven' purchaser to an unwilling vendor, their Lordships agree. But so far as it means that the possibility of the promotor being the Council as a willing purchaser being willing to pay more than other competitors, or in cases where he is the only purchaser of the potentiality, more than the value of the land without the potentiality is to be disregarded, their Lordships venture respectfully to differ from the learned Judge.

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For these reasons, their Lordships have come to the conclusion that, even where the only possible purchaser of the land's potentiality is the authority that has obtained the compulsory powers, the arbitrator in awarding compensation must ascertain to the best of his ability the price that would be paid by a willing purchaser to a willing vendor of the land with its potentiality in the same way that he would ascertain it in a case where there are several possible purchasers and that he is no more confined to awarding the land's 'poramboke' value in the former case than he is in the latter."

Q. You did not take into account the value of the land as a power house site, did you?

A. No, I did not.

Q. Did you regard the hypothetical vendor as treating the Council as purchasing for a power house?

A. I'm sorry.

Q. I put the question again. Looking at the valuation of the Plaintiffs' land as at mid-1967, would you regard the hypothetical vendor of that land as someone treating the Council as a hypothetical purchaser of that land?

A. I'm sorry. I am being very dense. I don't follow it.

Q. What test do you use for determining on the value of the land?

A. Comparable sales under comparable conditions, between reasonably not interdependent parties.

Court: Not independent parties you say?

A. No relatives.

Q. Do you take into account in making your valuations a hypothetical purchaser and a hypothetical vendor?

A. No.

Q. If the Council had difficulty in obtaining a site for a power house, would that enhance what it would be prepared to pay for a site on the open market?

A. I imagine so.

Q. Did you enquire as to whether the Council had had any difficulty in obtaining a suitable site for the power house?

A. No.

Q. Have you at any time, right up to now, enquired as to whether the Council had had any difficulty in obtaining a suitable site for the power house?

A. I made no such enquiries, no.

Q. When you said in your evidence in chief that the land in Certificate of Title 9255 was in the City of Suva, it is only just over the City boundary into the city area, is it not?

A. It is in the city. I am not sure where the city boundary is.

Court: Are you suggesting that it is outside the city boundary?

Gifford: No, My Lord, the question is that it is just inside.

Q. But you took the fact that it is within the city boundary as of significance in assessing its value, did you not?

A. Yes, because it carried an industrial zoning under an existing town plan.

Q. I put it to you that at that time of the sale of the land in Certificate of Title 9255, the Suva Planning Scheme was not a planning scheme approved by the Town Planning Board?

A. It may be. It existed, though.

Q. Are you aware that in 1967 the land in Certificate of Title 8316 had actually existing access from King's Road by a road and thence by a bridge over Wainivula Creek?

A. There was no dedicated road. There was a piece of Crown Land over which a track had been formed. There was a bridge, a very rickety bridge, over Wainivula Creek.

Q. I put it to you that that bridge was in fact usable by motor vehicles?

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A. At a risk. I have been over it, yes.

Q. I put it to you it was still usable by motor vehicles in 1967?

A. It was used by the dairy farmer for his farming purposes only.

Q. And the use by the dairy farmer included taking vehicles over it?

A. I believe so.

Q. Including motor vehicles?

A. I believe so.

Q. When you said in your evidence in chief in relation to the plaintiffs' land that it was and I quote - "land controlled by the Suva Rural Local Authority". Did you mean that it was in any way owned by that Authority?

A. No.

Q. Did you merely mean that it was within the area of that local authority?

A. Yes.

Q. I want to turn now to the land in Certificate of Title 8550. Do you remember in your evidence in chief you analysed that sale by deducting from the sale price the total price received from sales of individual allotments within it and adding to that deduction the amount you allowed for other possible sales?

A. Yes.

Q. Is that the way that you approach the analysis of sales evidence?

A. It is one way.

Q. You said that because the total price of sales and possible sales exceeded the purchase price therefore you discarded it as a comparable sale?

A. That was in reference to another piece of land, Sir, not that one.

Q. I put it to you that that was in relation to the land in Certificate of Title 8550.

A. No, no. I am sorry. Certificate of Title 8553 I said that about.

Q. I will read your evidence to you, immediately after your plan was tendered.
"Q. And did you make some analysis of that transaction, that is the sale of the land in Certificate of Title 8550?

A. I did.

Q. What was your analysis?

A. The purchase price was $9,200 on 16 August, 1964. The land had frontage to the old King's Road where services were available, and five road frontage lots were created and sold immediately after the purchase, well, in 1965 and 1966, for the sum of $5,270.

Court: Each?

A. No, Sir, the total.

There was further road frontage immediately to the north of the land which could have been sold on survey and without further work for $2,400. Deducting the actual and possible sales from the purchase price, a sum of $1,530 was paid for the remaining 10 acres approximately. That works out at a per acre price of $153 per acre approximately."

Do you agree now you said that in respect of the land in Certificate of Title 8550?

A. Yes.

Q. When you said this morning that "a sum of $1530 was paid for the remaining 20 acres approximately", what you had done was to add together the actual sale prices of the lots sold plus your assessment of the value of the other part of the land that could be sold without any further work and then deduct the total of those two figures from the price paid by the original purchaser for the whole of the land?

A. Yes.

12.25 noon - Miss Kunaqoro took over

In the Supreme Court of Fiji

12.35 p.m. - Monday the 23rd day of September, 1974
Court Stenographer - Miss R. Kunaqoro

3rd W/D - S.A. TETZNER
CROSS-EXAMINATION BY MR. GIFFORD, Q.C. CONTINUED -

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Q. I put it to you that a purchaser would expect to sell that land for more than he bought it for?

A. He did.

Q. And ordinarily a purchaser of land that intends to sell off in subdivision would expect to sell in total for more than he paid for the land?

A. Yes.

Q. Much more?

A. It depends on the case.

Q. American Investments sold for much more than it paid for the land?

A. What they have sold, yes.

Q. For how much more did American Investments sell the land immediately to the south of the plaintiffs' land than they paid for it?

A. I have no idea.

Q. And you do not know how many of their industrial lots on that land immediately to the south of the plaintiffs' land have sold, do you?

A. No.

Q. Or how many of their residential lots have sold?

A. No.

Q. Or how quickly their industrial lots sold?

A. No.

Q. Or how quickly their residential lots sold do you?

A. No.

Q. Now coming back to that sale of the land in Certificate of Title 8550?

A. Yes.

Q. That was a sale of approximately 12 acres, was it not?

A. That is right, 12 acres and 30 perches.

Q. For a total purchase price of $9,200?

A. Yes.

Q. If instead of doing as you have done, deducting the resale prices and the amount you assess for the other part of that land capable of being sold without further work, you averaged that sale price over the whole of the land, would it be a price of about $768 an acre?

A. $754, I make it.

Q. And that was a sale in 1964?

A. Yes.

Adjourned for lunch break

On resumption at 2.15 p.m.

CROSS-EXAMINATION BY MR. GIFFORD, Q.C. CONTINUED

Q. Mr. Tetzner, Mr. Robinson has given evidence that he was able by inquiries to ascertain that the plaintiffs' land for town planning purposes was treated as zoned industrial east of the ring road in 1967, and that it was residential with some reservation for public purposes west of the ring road. (Gifford reads Mr. Robinson's evidence to the witness: Mr. Robinson a fifth witness for the plaintiffs).
Does that refresh your memory as to whether it was possible to find out the zoning of the plaintiffs' land in 1967?

A. There was no firm town plan for that area in 1967.

Q. I did not ask you that. I emphasise I am not asking you as to an approved town plan. All I am asking you is now that you have heard that evidence, does it help you to refresh your own memory as to whether inquiries could have been made in 1967 of a town planning officer?

A. Inquiries could have been made.

Q. And if those inquiries had been made in 1967, an

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answer would have been given by the town planning officer?

A. No.

Q. Did you try for the purpose of this case to find out what the zoning the plaintiffs' land was in 1967?

A. Yes.

Q. When did you try?

A. Before I made the valuation. I don't know exactly.

Q. Which valuation?

A. The 1967 verbal one.

Q. But I put it to you your oral valuation was in 1966?

A. Yes, I could be confused. I am sorry.

Gifford: I refer the Court to Ex. "A" p. 73.

Q. You see that was a letter from Grahame & Co. to the Directors of Lands dated 26 October 1966 and it reads, *Was what Mr. McFarlane was referring to in that letter what you have called your verbal valuation?

A. Yes, there was more than that, though.

Q. I am not asking you about what was in the valuation. If you will just answer the question. It follows does it not that since that verbal valuation, as you call it, was given in 1966 you could not have made inquiries in 1967 in order to give that valuation?

A. No, I have apologised for my error. It was before the valuation.

Q. Now, I want to turn to the sale of the land in Certificate of Title 8553. Can you tell me what was the total price received on the resale of that land in allotments?

A. No.

Q. Have you no note of it at all?

A. No.

* Quoted

Q. In giving your evidence about comparable sales, have you examined the contract of sale in each case?

A. No.

Q. Have you examined the contract of sale in any of those comparable sales?

A. Yes.

Q. Which?

A. 8550. I know the circumstances of 8316. I did not examine the document.

Q. And you did not examine the contracts of sale of any of the other sales to which you have referred?

A. No.

Q. In estimating the rental value of the plaintiffs' land, you estimated it as unimproved except for pasture and a bit of fencing, did you not?

A. Yes, I do not remember the fencing.

Q. You don't remember the fencing?

A. I don't. It would only be a very small amount.

Q. In respect of the sale of the land in Certificate of Title 8550 you gave a date of 16th August, 1964. Was that the date of transfer or contract of sale?

A. Transfer.

Q. So you do not know the date of the contract of sale?

A. No.

Q. If an industry had been leasing the plaintiffs' land for the establishment of a factory you would expect it to pay a higher rental value than a pasture value, wouldn't you?

A. An industry could not be established in the locality because there was no access, no water, no power.

Q. Are you familiar with the principle that for compensation purposes the land is to be valued not at the date of the Notice to Treat but at the date of actual taking?

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A. Yes. Date of service of notice is the date that I took.

Court: You took the date of service of the notice?

A. Yes, My Lord.

Q. Not the date of actual taking of possession?

A. No, sir, because it could be well delayed - physical possession.

Q. The American Investments land had access only through the plaintiffs' land, didn't it?

A. Yes.

Court: That is Certificate of Title 8316, is it?

Gifford: Yes, My Lord.

Q. And if the plaintiffs' land had to have services brought to it to be used for industrial purposes, so also did American Investments land, didn't it?

A. Yes.

Q. In fact, it was essential for American Investments to get access through the plaintiffs' land to subdivide their land at all?

A. Yes.

Gifford: That is all, My Lord.

Hughes: No re-examination.

Witness was released.

No. 9

REASONS FOR JUDGMENT OF STUART J.
Dated 26th August 1975

In the Supreme Court of Fiji

No. 9
Reasons for Judgment of Stuart J. dated 26th August 1975

IN THE SUPREME COURT OF FIJI
Civil Jurisdiction Action No. 213 of 1968

Between:

MUKTA BEN d/o Bhovan and
SHANTA BEN d/o Bhimji Plaintiffs

- and -

SUVA CITY COUNCIL Defendant

Dates of Hearings: 9th, 10th, 11th, 12th, 13th,
16th, 17th, 18th, 19th, 20th,
23rd, 24th, 25th, 26th & 27 September, 1974.
1st, 2nd, 3rd, 4th & 8 October, 1974.

Mr. K.H. Gifford, Q.C. and Mr. S.M. Koya and
Mr. V. Parmanandam for the Plaintiffs;

Mr. K.H.F. Hughes, Q.C. and Mr. R. Lateef for the Defendant.

JUDGMENT

In 1963 the Suva City Council (which I will hereafter refer to as 'the Council') wanted to obtain land for a new power station and to that intent began to make inquiries about suitable sites. Several sites appear to have been examined and eventually the Council fixed upon land in the vicinity of the plaintiffs' freehold land near Kinoya. The plaintiffs, becoming aware of the search for sites, offered the Council in October 1964, a gift of 5 acres out of a block of 90 acres which they had recently agreed to buy from one Sukhichand. At the same time, they offered, since they understood that the Council wanted 50 to 70 acres, to negotiate for the sale of 50 acres or so of the property. In the letter in which the offer was made, the plaintiffs stated that they proposed to subdivide and develop the property for residential use and if permitted, industrial use. It appears that the Council were faced with opposition from radio installations which anticipated that a power

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station would interfere with their operation, and it was not until 1966 that the matter was reopened, and on 22nd April in that year the plaintiffs' then solicitors wrote to the Council's solicitors, offering to sell 50 acres being the eastern portion of the land they had bought, for £200 ($400) per acre. They also offered to provide free of cost, land for the Council to construct a road, at the cost of the council, connecting the land to be sold with an existing bridge over the Wainivula creek at the western end of the plaintiffs' block, the plaintiffs' express intention being to advantage the balance of their land. Further discussions took place between the plaintiffs' solicitors and the Council's solicitors, and three weeks later on 13th May, the plaintiffs' solicitors wrote again, observing that since the Council preferred the western end of the land, they would offer 40-50 acres at that end, at £300 ($600) per acre, the price having increased because they had intended to subdivide that particular area. There was, however, a stipulation that the Council were to provide, without cost to the plaintiffs, a formed public road from the King's Road - about 50 chains away - to the western end of the balance of the plaintiffs' land. The Council could still not make up their minds, and it was not until 12th August 1966 that they replied to the plaintiffs' offer. By that time they had decided that they wanted to buy the western end of both the plaintiffs' land comprised in C/T 8316 and the adjoining land comprised in C/T 8315 owned by a man named Chanik Prasad, a total of about 80 acres, but they wanted to buy at $220 an acre. So they made a counter offer, offering to buy 40 acres from the plaintiffs at the western end of their property at £110 ($220) per acre, and stating that they would form a public road access to the western end of plaintiffs' land. It appears fairly clear that the plaintiffs' solicitors had indicated that they considered £110 per acre too low, because the Council stated that if the price were not acceptable, they would proceed to acquire compulsorily. The plaintiffs' solicitors replied speedily, stating that they considered the offer quite unrealistic, in view of the then use of the land and its potential, and ended up by assuming that compulsory acquisition would therefore be undertaken. That was on 17th August 1966.

It is perhaps desirable to explain at this point that the Council conduct their electricity undertaking under the Suva Electricity Ordinance which is Cap. 57 of the 1955 Laws of Fiji section 15 of which reads as follows:

"The Council are hereby authorized subject to the approval of the Governor in Council to exercise the powers of the Crown Acquisition of Lands Ordinance for the acquisition of such land as they may require for the purpose of the works hereby authorized."

There is, however, provision in section 132 of the Towns Ordinance (Cap. 106) for a town council to promote, establish and maintain public utility services with the approval of the Governor-in-Council. It must be borne in mind that in 1966 the Electricity Ordinance had been passed, and if it had been brought into force the Suva Electricity Ordinance would have been repealed, and a new body, the Fiji Electricity Authority, would have taken over the Suva City Council's electricity undertaking. In point of fact, however, only that portion of the Electricity Ordinance which did not affect Suva was brought into force and the Fiji Electricity Authority did not take over the Council's undertaking.

So the Council decided upon compulsory acquisition of the plaintiffs' land and their solicitors decided to ask for approval of acquisition under the Ordinance which was then the Local Government (Towns) Ordinance but in the 1967 revision became the Towns Ordinance Cap. 106, of which section 136 reads:-

"(1) If a town council are unable to purchase by agreement and on reasonable terms land for any purpose for which they are authorised to acquire land the Council may represent the case to the Governor in Council and if the Governor in Council is satisfied, after such inquiry, if any, as he may deem expedient, that suitable land for the said purpose cannot be purchased on reasonable terms by agreement and that the circumstances are such as to justify the compulsory acquisition of the land for the said purpose and that the said purpose is a public purpose within the meaning of the Crown Acquisition of Lands Ordinance he may authorise the Council to acquire the land compulsorily.

"(2) The provisions of the Crown Acquisition of Lands Ordinance shall apply to the compulsory acquisition of the land by a town council under this section, and in the application of the provisions of that Ordinance to such acquisition reference to "the Crown", "the Governor" or "Government" shall be deemed to be reference to

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a town council authorised to acquire land under the provisions of this section and reference to "The Director of Lands" shall be deemed to be reference to "The Town Clerk."

On 8th September 1966 they wrote to the Acting Chief Secretary of Fiji, asking for the approval of the Governor in Council to the Council acquiring compulsorily 40 acres of land from the plaintiffs. There is no indication in the letter where this 40 acres was situated but it seems likely that it was to be at the western end of the plaintiffs' block. This letter does not mention any acquisition of land from C/T 8315 nor does it make any mention of the access road which had been discussed between the plaintiffs' solicitors and the Council's solicitors. The letter to which I have referred was presumably handed to the Director of Lands, for a reply was received from him asking for further information, and suggesting that the application should be made under section 15 of the Suva Electricity Ordinance, and in reply the Council's solicitors furnished information about ten other areas which the Council had considered, and gave certain other information stating, among other things that the Council intended to provide access to the land, and that the only issue between the Council and the owners of the land was compensation. They did not, however, mention the alternative head of power. Since the plaintiffs claim that the Council misled the Governor-in-Council it will be necessary to further consider this information hereafter.

Having received and considered that information the Governor-in-Council on 1st March 1967 duly granted his approval of the Council's application to acquire, under section 137 of the Local Government (Towns) Ordinance (Cap. 78) stating that he was satisfied under the provisions of that section, but limited the area which might be compulsorily acquired to 20 acres and that approval was notified to the Council by letter dated 6th March 1967. The Council thereupon resolved to change the area they intended to acquire and instead of an area from the western end of plaintiffs' block, they now asked to take their 20 acres from the eastern end of the block. The Governor in Council agreed to this request. At this time it appears that the access which the plaintiffs expected, and to which the Council had agreed, was changed without notification to the plaintiffs or their solicitors, and a new access decided upon which did not go near the balance of the plaintiffs' land. The Council then gave a notice dated 25th July 1967 under the Crown Acquisition of Lands Ordinance (Cap. 119) and

delivered that notice to the Plaintiffs' solicitors and also to Sukhichand who was still the registered proprietor of the land which the Council desired to acquire. Sukhichand was apparently served personally, but the notice to the plaintiffs was sent to their solicitors, accompanied by a letter advising that the Governor in Council had approved the compulsory acquisition of 20 acres at the eastern end of the plaintiffs' land, and that the Council intended to enter into possession within 8 weeks, and that a survey of the 20 acres was being put in hand. There was no mention of access, or of the road which had been discussed between the plaintiffs' solicitors and the Council's solicitors. The Council sent surveyors on to the land and a plan was prepared and sent by the Council's solicitors to the plaintiffs' solicitors for signature by the plaintiffs. This plan showed a subdivision of the plaintiffs' land into two lots, the one of the eastern end of the plaintiffs' land containing 20 acres 0 rood 2 perches which was the land intended to be taken, and the other of the balance comprising some 70 acres 0 rood 12 perches. No road access was shown on the plan. That plan was signed by the plaintiffs' attorney and returned to the Council's solicitors with a letter dated 26th October 1967 which I set out:

"Messrs. Grahame & Co.,
Solicitors,
SUVA.

Dear Sirs,

8626 Mc/jc - Suva City Council - Mukta Ben & Or

We return herewith the survey plan which Mr. McFarlane left with the writer on the 24th instant. It has been signed by our clients without prejudice to their claim for compensation and on the understanding that it is the Council's intention to establish access from King's Road to the 20 acre area by means of a public road as shown red in the map returned herewith, portion of which will run along and touch the northern boundary of our clients' land for a distance of about 18 chains.

Yours faithfully,
Munro, Warren, Leys & Kermode

D. J. Warren

Neither the Council nor their solicitors ever replied to that letter. The proposed public road ran from the point forming the north western boundary of the land which was being taken by the Council, west along the

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northern boundary of the plaintiffs' land for approximately 18 chains and continued west to the boundary of a large block of Crown land before bearing north west to join an existing road, and is a completely different access from that which the Council's surveyors attempted to show on the plan signed by the plaintiffs, and which was subsequently formed by the Council.

On the previous day that is 25th October 1967 the plaintiffs' solicitors had written to the Council's solicitors enclosing notices of claim, both on behalf of Sukhichand and on behalf of the plaintiffs. By the letter enclosing plaintiffs' claim, the plaintiffs' solicitors notified the Council's solicitors that they had registered the transfer from Sukhichand to the plaintiffs and a mortgage back to secure the balance of purchase money. This was expressed to be "in order to simplify the claims." Sukhichand's claim was after some delay accepted by the Council, and he was paid in March 1968. No action was, however, taken on the plaintiffs' claim nor did the Council at that time file any originating summons for determination of compensation. Indeed no originating summons for determination of compensation was filed until after the writ in this action had been issued. In May 1968 the plaintiffs' agent (appointed under power of attorney) appears to have been advised orally by the Council's surveyors that the road access to the power house site was no longer to be as originally anticipated, and the plaintiffs proposed to increase their claim for compensation if the access as arranged was not to be given. In July 1968 Mr. Warren the plaintiffs' then solicitor inspected the site, and found work going on, but he was unable to ascertain where the plaintiffs' boundaries were. In September Mr. Warren spoke to the Council's solicitor Mr. McFarlane pointing out that the road did not give access to the plaintiffs' land as promised, but there is no evidence that any action was taken. The plan produced in Court, which is admitted to be the plan signed by the plaintiffs' agent, showed an access from Kinoya Road to the north of the plaintiffs' land. The plan had admittedly been lodged in the Titles Office by or on behalf of the Council, but rejected, and the Council did not explain how they were able to alter the plan without the plaintiffs' consent, and yet endeavour to have it registered. Up to this time the plaintiffs' attitude had been one, if the correspondence means anything, of sweet reasonableness, but in September 1967 they discharged their solicitors, and instructed new solicitors who on 19th September 1968 wrote to the Council's solicitors drawing attention to the arrangements about access to the plaintiffs' remaining land and challenged the validity of the compulsory

acquisition. The Council's solicitors replied to that letter very promptly on 20th September 1968, referring to the road rather evasively, and alleging that the Council had taken possession of the land acquired by arrangement with the plaintiffs' former solicitor, Mr. Warren. The letter ended up by offering to discuss the question of suitable access further. There is no evidence of any further discussion, and a writ was issued on 4th October 1968. The pleadings suffered many changes before the action came to trial but in their final form they contained an allegation by plaintiffs that the Council had no authority to carry on the business of supplying electricity. That allegation, in fact, was not proceeded with, and the plaintiffs' case as presented at the trial was that although the Council might have power to resume land for the purpose of building a power station under the Suva Electricity Ordinance, they had elected to resume under the Towns Ordinance (Cap. 106) and must follow the procedure laid down by that Ordinance in section 136 which I have already set out. The plaintiffs further say that the Council could have purchased other land which was suitable on reasonable terms, and that the area acquired is unreasonably large and that the notice of intention to take possession at the end of eight weeks after the notice is in breach of section 6 of The Crown Acquisition of Lands Ordinance and that the purpose for which the land was taken was not a public purpose as defined by section 2 of that Ordinance. They also say that the Council had no power to so acquire land outside the city boundaries, that the acquisition did not define the land, that the application made by the Council to the Governor in Council did not afford an effective basis upon which the Governor in Council could act, and that moreover the authority when it came did not authorise compulsory acquisition of the plaintiffs' land which was in fact taken, nor for the purposes for which the Council used it, and in fact the Council took more than they were authorised to take. They then say that the notices served were not advertised as required by section 7(4) of the Crown Acquisition of Lands Ordinance and that the Council acted in breach of the Subdivision of Lands Ordinance (Cap. 118) and in breach of an undertaking given to the plaintiffs to provide road access to the balance of their land. For all this they ask for declarations that the acquisition was unlawful, that the entry into possession is wrongful as being ultra vires the Council and that the Council is trespassing upon the plaintiffs' land. They also ask for an injunction to restrain the Council from proceeding further, and for damages. It was common ground that the Council had erected installations to the value of some $2,600,000 in connection with the power house, in addition to buildings for staff to the value of $118,498.38. Later, in their reply to the Council's defence the

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plaintiffs alleged that the fact of their registration as registered proprietors conferred upon them indefeasibility of title under the Torrens system of registration in force in Fiji, and alleged also that the Council had waived the notice of acquisition. The Council meet these allegations for the most part by denial, but they do say that since the plaintiffs were not at the time registered proprietors they had no right to receive the notice of acquisition although they concede that the plaintiffs were equitable owners. They also say that they took possession of the land in September 1967, as contrasted with the plaintiffs' allegation that possession was not taken until September 1968, and further that the plaintiffs are estopped from challenging the Notice of Acquisition. I should perhaps mention, too, that at a very late stage in the trial - on the tenth day - the council sought to introduce a further amendment and plead the Public Officers Protection Ordinance (Cap. 19) but I rejected this application on the ground that it came too late. I also disallowed an application to amend the Council's admission that it entered not only for the purpose of constructing a power station but also for the purpose of providing housing for persons employed in the power station which the plaintiffs claim to be without the powers conferred by the Ordinance and the authority given by the Governor in Council. There was considerable delay with pleadings The original Statement of Claim was delivered on 12th November 1968, a defence being delivered on 14th February 1969. The plaintiffs obtained leave to amend their Statement of Claim on 10th December 1970, but a statement of claim pursuant thereto was not filed until 7th November 1972 and the amended defence was not filed until 10th September 1973. Then in May 1974 the Council again sought leave to amend, and both parties were given leave to amend generally, and the final Statement of Claim was delivered on 28th May 1974, to which a defence was duly delivered but amended on 10th September 1974 and a reply was finally delivered on 16th September 1974.

In opening their case in this Court the plaintiffs challenged the acquisition upon thirty-two grounds. Before dealing with those grounds, perhaps I should say something about the oral evidence. It was noticeable that none of the protagonists was called. Neither the plaintiffs nor their attorney Jethalal Narainji gave evidence, and the plaintiffs' case, apart from survey and valuation evidence, depended upon the evidence of Donald John Warren, their solicitor up to the time he was discharged shortly before the action was begun. The Council called none of their officers to give evidence on their behalf but relied upon Sukhichand the plaintiffs' predecessor in title. The evidence of

Mr. Warren served to confirm the facts which have been previously related, and that an access route had been set out on plans of the area and, as he understood, agreed between himself and the Council's solicitors, and to bring out the fact that the plaintiffs' agent Jethalal Narainji was not advised by the Council of the change of access, but found out more or less by chance. It was made clear that the plaintiffs were willing to accept compensation if they got access, and further that their agent, acting under his power of attorney signed the subdivision plan in the belief that the Council would give access as agreed. When the plaintiffs' attorney found out that the Council had decided to construct its access road in such a position that it would not give access to the plaintiffs' remaining land, the plaintiffs decided to increase their claim for compensation to £600 or $1200 per acre. Warren also gave evidence that on Sukhichand's instructions he advised the defendants' solicitors that Sukhichand had vacated the subject land on 30th September 1967, but he was careful to explain that such notification was given on behalf of Sukhichand only, and not on behalf of the plaintiffs and he denied the truth of the statement in the letter from the Council's solicitors to the plaintiffs' new solicitors that he had made any arrangement for the Council's electrical engineer to take possession of the land. The evidence of Sukhichand was that he ceased to occupy the land when the surveyors went on to it about a month or two after he received the notice of acquisition. His attitude was that he got the notice, he knew the Council were going to take the land, and when the Council's surveyors came along, he found out what they wanted, put up his fence on the boundary, and kept his cattle on the rest of the land. I accept the evidence of both these witnesses as evidence of truth. The remainder of the evidence was technical, and nothing need be said about it at this stage.

I turn now to Mr. Gifford's propositions of law. He says, first of all that the Council is a body with limited powers, and I pause here to say that since a town council is referred to in the Towns Ordinance in the plural I shall follow that method of description. He says that their powers are given them by the Towns Ordinance (Cap. 106), and that their actions are circumscribed by the powers given them by the Ordinance which has created them. He agrees that certain other powers can be implied but says that only those can be implied which are fairly necessary or incidental to enable the statutory body to exercise their powers. He then says that a Court should give a narrower interpretation to local government powers when compulsory acquisition is involved, basing himself here upon the dictum of Vaughan Williams L.J. in Attorney-General v Mersey Railway (1907)

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1 Ch.81, 106 where that learned judge said:

> "You ought to give a wider construction to the words of a memorandum of association creating and defining the powers of a purely commercial company having no compulsory powers and no monopoly than you would give to the words of a statute creating a company, like the railway company, having compulsory powers of land purchase and a practical monopoly."

Then Mr. Gifford goes on to argue that the Council must not only act within the head of the power entrusted to them, but must strictly comply with the prescribed procedure, and if the Council's actions are in any way outside their powers, then those actions are a nullity. He says finally on the aspect of the powers of the Council that their compliance with these statutory powers is mandatory and that having chosen to acquire this land under the Towns Ordinance, they are committed to that method of acquisition and cannot now claim to have acquired under the Suva Electricity Ordinance.

Some, at least, of these propositions Mr. Hughes accepts, although perhaps not in their entirety. The Council pleaded that they were acting both under section 15 of the Suva Electricity Ordinance and under section 136 of the Towns Ordinance. It will be noted that whether they act under the Suva Electricity Ordinance or under the Towns Ordinance they require the approval of the Governor in Council, the difference being that under the Towns Ordinance they have to represent a case to the Governor in Council and satisfy him of various matters which will be discussed hereafter. It seems to me that since they applied for and received authority under the Towns Ordinance to acquire land, they cannot now resort to the Suva Electricity Ordinance, see Penrith Municipal Council v Prospect Council (1959) 5 L.G.R.A. 205; State Planning Authority of New South Wales v Shaw (1970) 21 L.G.R.A. 192, both cases from New South Wales and Dunkerley v City of Nunawading (1957) V.R.630; 3 L.G.R.A.47, a case from Victoria. It is true that section 129 of the Towns Ordinance provides that the powers given by the Ordinance are "in addition to and not in derogation of the provisions of any other law in force relating to such powers and duties . . .", but I do not think that section helps the Council here.

The next set of propositions depends upon the facts adduced by oral evidence and in correspondence. They are, broadly, five. The plaintiffs say first that

the Council misled the Governor in Council into believing that there had been negotiations with the plaintiffs, secondly that they misled the Governor in Council by not disclosing the prior offer for the land to the south of the plaintiffs' block, thirdly that they misled the Governor in Council in relation to the access road, fourthly that they misled the Governor in Council by not disclosing that they could have acquired suitable land free of cost, and lastly that they failed to comply with the rules of natural justice. To apprehend the issues raised by these five propositions, it is necessary to have recourse to some of the correspondence and in particular to the representations made by the Council to the Governor-in-Council. The Council's solicitors wrote on 8th September 1966 to the Acting Chief Secretary of Fiji as follows:

> "As you know the Suva City Council has been contemplating the acquisition of a suitable site for the erection of a new power station, which is very necessary due to the expansion of its electrical undertaking and the restricted area in which it is now operating in Suva.
>
> Over three years ago, the Council investigated areas likely to be suitable and finally decided on a site at Vatuwaqa. This year on behalf of the Council we have been negotiating with Messrs. Munro, Warren, Leys & Kermode, Solicitors for Mukta Ben f/n Bhovan of Suva, the wife of Jethalal Niranji and Shanta Ben f/n Bhindi of Suva the wife of Sundarjee Niranji the owners of approximately 88 acres being the balance of the land comprised in Certificate of Title No. 8316. These two owners only purchased the land in question in July 1964 for the sum of £6,100.0.0. The Council's officers have inspected the area and the Council decided that it would like to purchase approximately 40 acres out of the site for its new power station area.
>
> On taking up negotiations, however, the owners ask a price of £300 per acre. This was considered highly excessive in view of the fact that the Council had in 1962 an earlier valuation of the adjoining property from Mr. Tetzner, and in view of the fact that the owners themselves had purchased the land for about £90.0.0.an acre.
>
> After consideration, we offered to the owners £110 per acre for approximately 40 acres

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subject to survey, but that has been refused and as the owners' solicitors say there seems no prospect of any further negotiations. There is little likelihood of the owners agreeing to reduce their price much below £300, and we have advised the Council, having regard to the knowledge of the land and of valuations in that area that £110 is a reasonable market price today. The land is used as a dairy farm as is the land on each side.

We enclose an office sketch taken from a plan supplied by the Chief Electrical Engineer.

We are now instructed to take steps compulsorily to acquire the land on behalf of the Council, and for that purpose require the consent of the Governor in Council under section 137(1) of the Local Government (Towns) Ordinance Cap. 78.

We are instructed by the Council that no other suitable land can be purchased on reasonable terms, and that this area is most suitable for the purpose of the Council. We are also informed that the matter is now urgent, as the Chief Electrical Engineer wishes to have buildings erected by the end of 1967 and the installations made during 1968.

By virtue of subsection 2 of section 137 Cap. 78, The Crown Acquisition of Lands Ordinance Cap. 140 applies, and the purpose of the acquisition by the Council for a power house site is a public purpose within the meaning of The Crown Acquisition of Lands Ordinance (see definition of 'public purposes' (a) for exclusive Government or for general public use). For the word 'Government' substitute the word 'Suva City Council' use.

The site would be used exclusively for erection of buildings in connection with the power house and all purposes incidental thereto.

We shall be glad if this application could be put before the Governor in Council at an early date so that the authorisation for the Council to acquire the land compulsorily may be given.

A notice of intention under section 6 of the Crown Acquisition of Lands Ordinance will

"then be served upon the owners. After the expiration of three months from the service of notice, if there is no agreement as to the amount of compensation be paid for the land which is not likely, then the dispute is referred to the Supreme Court for determination.

You will appreciate that the Council is anxious to proceed with this matter with expedition and we shall be glad of your co-operation.

Would you kindly let us know if you require any further information.

Yours faithfully,

GRAHAME & CO. "

The reference to the Crown Acquisition of Lands Ordinance Cap. 140 is a reference to that Ordinance before the 1967 revision. It is now Cap. 119. As I have stated, that letter was referred to the Director of Lands and he asked for further information which was furnished to him in a letter from the Council's solicitors dated 26th October, 1966. It will be noted that the area to be taken has increased from 40 acres from the plaintiffs' land to 40 acres from each of plaintiffs and the adjoining land. The material parts of that letter are as follows:

"We refer to your letter of the 19th ult. and to a subsequent interview this month with you at which the Chief Electrical Engineer and the writer were present.

We now supply the particulars required by your letter as follows:-

1. Nine copies of plan showing the proposed acquisition of land out of the two titles, C.T. 8316 and 8315 with proposed roads A and B.

   The proposed acquisition is of 40 acres out of each title.

2. Re: Access. The Electrical Engineer has shown alternative routes. Route A through adjacent Crown land and Route B marked red along the boundaries of the second area out of Title 8315 to be acquired. This would entail the acquisition of the existing private

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"road from the owners, and coming along the strip or right-of-way already shown on the plan that you have.

It was agreed with the owner of Title 8316 that if the Council acquired the area out of the title that a road would be provided to give access to the balance area.

3. In reply to (b), (c) and (d) in ycur letter, we enclose copy of information supplied by the Chief Electrical Engineer, Mr. Smith.

4. We are informed that the Local Authority and the Town Planning Board have no objection.

5. Re: the value of the land. In 1964 Mr. Tetzner gave the City Council a valuation of the land in C.T. 7243, which is adjacent to the area proposed to be taken. That also is a dairy farm, very similar to those conducted on the other land. Mr. Tetzner's valuation was in respect of the land under grass, comprising 36 acres - was £75.0.0. per acre. We spoke to Mr. Tetzner recently in regard to the two areas in question and he considered they would be about the same value and that £300 asked by the owner of Title 8316 was ridiculous.

We We enclose an original stamped agreement between Sukhichand and Mukta Ben and Shanta Ben dated 22nd July 1964 for your perusal. You will note that an estimated area of 88 acres was sold for £8,100 on terms the vendor retaining about 6 acres for his house site, which is shown on the plan you already have. This sale price works out at approximately £92 per acre.

We therefore offered £110 per acre, being an advance over £92 per acre, which the Council considered to be the ultimate price they could offer. The dairy farm land in that area is worth no more than £100 an acre today, having regard to the use to which it is now put, which £100 an acre is an increase on Mr. Tetzner's valuation two years ago. So it was considered £110 was the limit to which the Council could go, and this was done in order to attract the vendor and to allow something for displacement.

It was pointed out to the vendors that the

"balance areas in the title would be considerably increased in value due to the Council erecting a Power Station there and giving good road access, thus enabling the vendors to subdivide.

Mr. Warren is acting for the vendor of C.T. 8316, and there is no hope of a compromise, and indeed the Council would not give any more than £110 an acre, which it considers is above the present market value.

There is no objection to the Council's proposal to acquire by either owner, but each wants as much as possible, so that the only point of disagreement is one of price.

The owner of C.T. 8315, whom we know well, discussed the matter with us and with the City Electrical Engineer went out on the site to see what area the Council proposed to acquire, but we could not come to any agreement with him as to price, having offered the same rate of £110 per acre. He thought the 40 acres were worth much more than that, being aware of the request of £300 an acre from the adjacent owner. The owner of C.T.8315 claimed that he could get £15,000 for the whole of his land in the title. There the matter rested, but he had no objection to the acquisition, it being purely a disagreement as to price. He, also is well aware that he could subdivide the balance of the land once the Council acquired portion of it.

All legal costs and out of pockets of acquisition, and transfer would be paid by the Council.

We have not considered settlement by means of Arbitration, and are of the opinion that the Council can only use the processes of law, which is in effect arbitration by a Judge.

As we pointed out to you the Electrical Engineer considers this is the most suitable site, and the Council must have room for expansion and requires the land proposed as a buffer area. We also mentioned to you that it was considered that Samabula/Vatuwaqa is expanding rapidly, and the growth of Suva is towards Nausori, and that eventually that area along the road to Nausori will become a suburb of Suva, and the proposed site for this power station will be really in another decade more or less in the centre of Suva and its environs.

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"It is virtually impossible to get any suitable land inside the present City boundary, and indeed it is far too congested.

We trust the above answers all your queries, and the information is helpful.

We shall be glad if you will put up your recommendations to the Governor in Council as early as possible, as the Council desires to move as quickly as possible in this matter.

Thanking you.

Yours faithfully,
GRAHAME & CO. "

The information supplied by the Council's Chief Electrical Engineer referred to in item 3 of the second paragraph was as follows:

"1. Other Sites Investigated.

1. C.T. 7243 - Mouth of Samabula River. This is a suitable alternative to the C.T. 8316 site. Memo 7/9/67.

2. Mouth of Tamavua River, adjacent to Delainavesi Road - rejected because of noise echo in Tamavua Valley.

3. Rubbish Dump at mouth of Tamavua River - difficult foundations.

4. Old Rubber Plantation approximately 1 mile up Lami River. Native land, susceptible to flooding.

5. D.P. 2736 - Old Quarry, north western shore of Nubulekaleka Bay - insufficient area.

6. Bilo Point adjacent to Draunibota Island. Difficult access. Away from probable centre of gravity of load expansion.

7. Industrial Area - Walu Bay - behind Brewery - rejected by Government, as this area is required for industrial purposes.

8. C.T. 8522 - 9 acres - between Wainivula Road and Waimarama River. Insufficient

" area and is in centre of domestic area development.

9. Namadai - difficult site to supply with fuel.

10. C.T. 8895 - Tamavua River at Wailoku - unsuitable area.

11. C.T. 3213 - Nasinu adjacent to Nasinu River. Too far from existing station for adequate paralleling control. Would be extremely expansive to inter-connect.

2. An area of 40 acres was considered to be the minimum which should be obtained, to allow for future expansion, the provision of suitable storage areas for stores and fuel, suitable working areas for maintenance, and for running ancillaries such as water cooling towers etc., and adequate isolation of the station from existing and future development in the immediate vicinity of the area. Owing to the undulating nature of the topography of the particular area, the most suitable position for the station building is near the southern boundary of the portion of C.T. 8316. The purchase of this site together with the portion of C.T. 8315 required will permit the siting of the station virtually in the centre of the whole block thus acquired. The section of C.T. 8315 adjacent to the Samabula River would enable the installation of fuel oil handling and storage facilities, and permit fuel oil deliveries to be made by barge from Suva. This would be very much cheaper than using road transport.

It is possible that some living quarters may be provided on the perimeter of the area for the housing of breakdown and shift staff.

3. It was hoped that some industry could be established immediately adjacent to the station which could use waste heat in the form of steam. This could materially reduce the cost of the electricity supply."

On 7th June 1967 the Council's solicitors wrote again to the Government concerning the proposal to change from the western to the eastern end of the plaintiffs' block as follows:

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"Vatuwaqa for Power Station Site (Your ref.45/3/26).

We refer to your letter of the 16th March last to the Town Clerk informing him that the Governor in Council considered that 20 acres was sufficient land for the above purpose and that the Governor in Council agreed that the Suva City Council be authorised to acquire 20 acres compulsorily.

We presume that the 20 acres would be inside the area of 80 acres asked for by the Council.

After further consideration, we are now instructed by the Council that it would prefer to acquire the 20 acres at the eastern end, i.e. adjacent to the sea out of C.T. 8316. This area is further away from the Vatuwaqa Receiving Station than the first proposed area, although it is still within the 1½ mile limit. It is at present completely isolated and any development around the station could be controlled preferably as industrial. Also the area could be enlarged by reclamation in Laucala Bay. On the northern boundary is Native land, which we understand is under Crown Lease sub-leased for agricultural purposes, and adjacent to that is Crown land running through to the main Government road.

"Exclusive of the 20 acres the Council would require an access road through the Native land and Crown land up to King's Road. In addition, the Council would require a cable easement, and it is suggested that such easement could be along the northern boundary of the proposed site, i.e. the southern boundary of the Native and Crown land, but the Electricity Ordinance would probably give sufficient power to the Council for that purpose.

The enclosed sketch shows the proposed site hatched red, the suggested access road coloured brown, and the recommended cable easement coloured blue.

On behalf of the Council we now make an application for consent of the Governor in Council to acquire the area of 20 acres as shown on the plan, and also any necessary authority to acquire any part of the Crown land or Native land for the access road.

We are instructed that the 20 acres will provide a sufficient area for some years, but it

is hoped in years to come that some part of the Native land will be required by the Council for expansion purposes. The site also has the advantage of sea access.

We are instructed by the Electrical Engineer of the Council that the matter has become urgent, as the Council would like to take possession by September in order to make any surveys and lay-out for buildings.

The site proposed is the extreme end of the dairy farm, and the acquisition should not materially interfere with the conduct of the farm. The owner had already asked much more than the Council was prepared to pay for what the land was worth, and the question of compensation would have to go to the Supreme Court for determination.

Therefore, the Council would be obliged to have power to give notice of intention. Council would be obliged if it could have the power to give less than three months' notice under section 7 of the Crown Acquisition of Lands Ordinance, Cap.140.

We suggest that a period of 14 days would be sufficient time for the owner to remove any cattle from the area. Thereafter the Council could make the necessary survey and put up dividing fences.

We should be obliged if you could give your early attention to this application."

It is first necessary to consider whether one can from this correspondence fairly draw the conclusion that the Council misled the Governor-in-Council in any of the four matters mentioned above, and one has to consider this against the background of the requirement in section 136 of the Towns Ordinance Cap. 106 that the Council had to be unable to purchase by agreement and on reasonable terms suitable land and that the Governor-in-Council was satisfied that the Council was so unable and that the circumstances were such as to justify the compulsory acquisition of land for the purpose required by the Council and that the purpose was a public purpose. Now the facts are that although the Council had indeed considered several pieces of land, the only ones about which they had actually made enquiries as to price were the plaintiffs' land and the land immediately to the south of it in C.T. 8315. As to the latter, the owners apparently wanted much more than the Council were prepared to pay. Nevertheless I think that the Council

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might fairly say that they were unable to purchase suitable land by agreement. I think that the expression 'on reasonable terms' means not only that the Council must consider the terms reasonable but that they must appear reasonable according to the actual facts. The way in which the matter was put to the Governor-in-Council was that the plaintiff had bought the land in 1964 at £92 or $184 an acre, that the Council's valuer in that year had valued the adjoining land at £75 or $150 an acre, and that it was being used as dairy land, and that in offering £110 or $220 the Council were making a fair offer. There was no evidence that the value of the land was being enhanced by subdivision at that time, but it was quite obviously the Council's expectation that the value would be enhanced by their use of the land as a power station and perhaps by the development of the surrounding land as industrial land. I have come to the conclusion that the Council might fairly say that they were unable to purchase the land required on reasonable terms. The plaintiffs' contention that the Council misled the Governor-in-Council into believing that there had been negotiations with the plaintiff appears to depend upon what is meant by the phrase 'by agreement', in section 136 of the Towns Ordinance. All that the Council had to do was to satisfy the Governor-in-Council that suitable land could not be purchased by agreement. It is plain that the Council's solicitors enquired if the plaintiffs would sell and that the price could not be agreed upon. The plaintiffs say there was no negotiation. That, to my mind, is negotiation and I reject the plaintiffs' submission that negotiations did not take place. The position appears to me to be that both parties realised that between them was a great gulf fixed, and over that gulf neither was prepared to pass. I think that is the explanation of the last paragraph of Mr. Warren's letter to the Council's solicitors of 17th August 1966 when he says:

> "As there seems to be no prospect of further negotiation on price, the Council will presumably now proceed with a compulsory acquisition."

Then the plaintiffs say that the Council misled the Governor in Council by not disclosing that their valuer's valuation was on the basis of rural use, without regard to zoning or potential. But in their letter of 8th September 1966 the Council's solicitors referred in the third and fourth paragraphs of that letter which I have already set out, to the course of negotiations, and in the fifth paragraph of their

letter of the 26th October they refer to the matter again, and they go on in that letter to explain why they offered only £110 or $220 per acre. I can see there no ground for saying that they misled the Governor in Council. The solicitors may have given the Council thoroughly bad advice, but that is not to say that the Council misled the Governor in Council. On the whole of this aspect of the case the plaintiffs contend that the Council's valuation was so hopelessly inadequate and so contrary to all recognised principles of valuation that the Governor in Council was inevitably misled and that the Council must take the responsibility for so misleading the Governor in Council. To that intent considerable evidence of valuation was led, and it became quite apparent that the Council's valuer had not approached the matter with the care which might have been expected of him. That is not, however, to condemn the Council who had employed a valuer with high credentials, and might have expected a somewhat more competent valuation than they in fact received. I think also, although no point of it was made in argument, that in the matter of the price payable by the Council, it should be borne in mind that they were to construct an access road, and the cost of that road might be expected to reduce the amount payable by way of compensation. Nor am I prepared to accept the contention that the Council misled the Governor in Council by omitting to disclose that the plaintiffs had offered 5 acres free of cost. The Council's attitude all along had been that they required a large area, and they regarded 5 acres as quite inadequate. I cannot see that they misled the Governor in Council by failing to mention the matter of the suggested gift.

The plaintiffs' third submission on this score is that the Council misled the Governor in Council in relation to the access road. But it appears to me that the letter to the Director of Lands of the 26th October 1966 clearly mentions this in the second paragraph of its particulars where it states:

> "2. Re: Access. The Electrical Engineer has shown alternative routes. Route A through adjacent Crown land and Route B marked red along the boundaries of the second area, out of Title 8315 to be acquired. This would entail the acquisition of the existing private road from the owners, and coming along the strip or right-of-way already shown on the plan that you have.
>
> It was agreed with the owner of Title 8316 that if the Council acquired the area out of the

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title that a road would be provided to give access to the balance area."

Title 8316 is the plaintiffs' land.

The consent of the Governor in Council embodied in the letter from the Secretary for Fijian Affairs and Local Government of 16th March 1967 was certainly given with the knowledge that plaintiffs were to get access. When the Council wrote again on 7th June, 1967 their solicitors referred to access through Crown and Native land and also to a cable easement, and since the plan handed over by defendants' counsel and shown to Mr.Warren and produced by him in his examination in chief as showing the proposed access road discussed by him with the Council's solicitors, shows also the access road through Crown and Native land and the recommended cable easement I assume that the plan produced by Mr. Warren is identical with the plan referred to in the Council's solicitors' letter of the 7th June 1967. The reply from the Acting Secretary for Fijian Affairs and Local Government on 18th July 1967 refers to two access routes, and notes that after discussion with the Council a route through the Kinoya subdivision was decided upon. That would appear to be the route of the road which the Council's surveyors subsequently showed upon the plan signed by the plaintiffs. I am not prepared to hold on this evidence that the Council misled the Governor in Council. I think that the inference rather is that the Governor in Council wanted an access road through the Kinoya subdivision, and it may very well be that he thus left the Council to make their own arrangements with the plaintiffs. The Council may have broken faith with the plaintiffs, but they did tell the Governor in Council that they had promised the plaintiffs access, and so they did not mislead the Governor in Council. I think I should say, too, since I understand that the whole tenor of the plaintiffs' argument on this particular part of the case is that the Council acted improperly, and deceived or attempted to deceive the Governor in Council, that I am unable to find any foundation for such a suggestion. Then it is said that there was a failure to comply with the rules of natural justice on the part of both the Council and the Governor in Council. The plaintiffs' argument is that they were entitled to be heard before this compulsory acquisition was put in train. They rely upon the well-known legal maxim audi alteram partem. Before considering how it applies to this particular case it is perhaps desirable to make some general observations upon the subject. There is no question but that of late years the objection that some course of action or other has infringed the rules

of natural justice has occupied increasingly the time of the Courts. The dictum of Megarry J. in Gaiman v National Association for Mental Health (1971) 1 Ch. 317, 333 was pressed upon me, as indicating both the difficulty in determining whether the rules apply and the tendency to expand the scope of natural justice. There the learned judge said:

> "Nothing has been put before me to show that test has to be applied to determine whether or not the principles of natural justice apply to any particular decision. It is clear that these principles are not universal in their embrace. It has long been accepted, for example, that a master may dismiss his servant instanter without affording him the opportunity of saying a word in his defence. The contract of service is terminated forthwith and the servant is left to any remedy that he may have for wrongful dismissal: see generally Ridge v Baldwin (1964) A.C. 40, per Lord Reid, at p.65. Again, local planning authorities refuse thousands of planning applications each year without giving the applicant any hearing, leaving him to his remedy by way of appeal to the Minister, when a full hearing is given; yet I know of no suggestion that local planning authorities are thereby universally acting in contravention of the principles of natural justice. Marshall's Natural Justice (1959) contains the most valuable examination and classification of the many cases on the subject that I have seen; but I have been unable to find in it any satisfactory test for determining whether a case is one in which the principles of natural justice apply. It may be that there is no simple test, but that there is a tendency for the court to apply the principles to all powers of decision unless the circumstances suffice to exclude them. These circumstances may be found in the person or body making the decision, the nature of the decision to be made, the gravity of the matter in issue, the terms of any contract or other provision governing the power to decide, and so on: and consider Durayappah v Fernando (1967) 2 A.C. 337, 349. This, of course, does little by way of providing a clear test: but as the authorities stand, it may not be possible to do much more than say that the principles of natural justice will apply unless the circumstances are such as to indicate the contrary. Certainly I would say that the cases show a tendency to expand the scope of natural justice rather than constrict it."

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Perhaps a citation from another judgment of the same judge further illustrates the difficulty. In Hounslow London Borough Council v Twickenham Garden Developments (1971) 1 Ch. 233, 259 he says:

> "The principles of natural justice are of wide application and great importance, but they must be confined within proper limits and not allowed to run wild. This case is another illustration of what I said in Gaiman v National Association for Mental Health (1970) 3 W.L.R. 42, 57 about the need for further research on the ambit of natural justice. Not all that is done even by the courts of law themselves accords with the rules of natural justice. Many an ex parte injunction is granted against a person who has no notice of the charge and no opportunity of being heard; and when in the Court of Appeal Counsel assails the learning and competence of a trial judge, asserting his law to be unsound and his findings of fact unwarranted, I am sure that he will not be deterred by any thought that the judge will not be heard in his own defence."

The matter has been stated broadly in two more recent cases as a requirement to act fairly. Furnell v Whangarei High Schools Board (1973) 2 W.L.R. 92 and Maxwell v Dept. of Trade (1974) 2 A.E.R. 122. The former was a New Zealand case on appeal to the Privy Council where a school master complained that he should have been heard before he was suspended from duty pending the investigation of a complaint. The latter was an investigation of one of Mr. Robert Maxwell's companies in which findings critical of Mr. Maxwell had been made by investigators appointed by the Board of Trade, and he claimed to be heard before the report was published. In the former case the Privy Council were divided, and Lord Morris of Borth-y-Gest delivering the majority judgment said at p. 105

> "It has often been pointed out that the conceptions which are indicated when natural justice is invoked or referred to are not comprised within and are not to be confined within certain hard and fast and rigid rules: see the speeches in Wiseman v Borneman (1971) A.C. 297. Natural justice is but fairness writ large and juridically. It has been described as 'fair play in action'. Nor is it a leaven to be associated only with judicial or quasi-judicial occasions.

But as was pointedout by Tucker L.J. in Russell v Duke of Norfolk (1949) 1 All E.R. 109, 118, the requirements of natural justice must depend on the circumstances of each particular case and the subject matter under consideration."

In the latter a paragraph from the judgment of Lawton L.J. is perhaps in point. He says at p.131 of the report

"From time to time during that period lawyers and judges have tried to define what constitutes fairness. Like defining an elephant, it is not easy to do, although fairness in practice has the elephantine quality of being easy to recognise. As a result of these efforts a word in common usage has acquired the trappings of legalism: 'acting fairly' has become 'acting in accordance with the rules of natural justice', and on occasion has been dressed up with Latin tags. This phrase in my opinion serves no useful purpose and in recent years it has encouraged lawyers to try to put those who hold inquiries into legal straitjackets. It is pertinent in this connection to recall what Lord Shaw of Dunfermline said in Local Government Board v Arlidge (1915) A.C. 120, 138.

> 'And the assumption that the methods of natural justice are ex necessitate those of courts of justice is wholly unfounded . . . . In so far as the term 'natural justice' means that a result or process should be just, it is a harmless though it may be a high-sounding expression; in so far as it attempts to reflect the old jus naturale it is a confused and unwarranted transfer into the ethical sphere of a term employed for other distinctions; and, in so far as it is resorted to for other purposes, it is vacuous.'

For the purposes of my judgment I intend to ask myself this simple question: did the inspector act fairly towards the plaintiff?"

The cases are many and diverse. Many of those cited to me were cases in which persons were deprived of rights as distinct from property. I think that the only aspect of the application of the maxim audi alteram partem which I need discuss here is that which relates to the deprivation of property. Lord Reid in Ridge v Baldwin (1964) A.C. 40, 68 et seq. deals broadly with

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the matter, referring inter alia to Cooper v Wandsworth Board of Works (1863) 143 E.R. 414, De Verteuil v Knaggs (1918) A.C. 557 both of which were cited to me. These were cases in which the maxim was invoked. It must be pointed out that they were both cases of deprivation without compensation as are the other cases referred to by Lord Reid on this matter, viz. Smith v R. (1878) 3 App. Cas.614, Hopkins v Smethwick Local Board of Health (1890) 24 Q.B.D. 712 and Spackman v Plumstead Board of Works (1885) 10 App. Cas. 229, and the facts in none of them approximate in any respect the facts of the present case where the plaintiffs' land is being resumed and he will receive proper compensation therefor. Lord Reid concludes his examination of the authorities relating to deprivation of property or membership of a professional or social body with a well known and oft quoted passage. At p.72 of the report, he says

> "In cases of the kind I have been dealing with the Board of Works or the Governor or the club committee was dealing with a single isolated case. It was not deciding, like a judge in a lawsuit, what were the rights of the person before it. But it was deciding how he should be treated - something analogous to a judge's duty in imposing a penalty. No doubt policy would play some part in the decision - but so it might when a judge is imposing a sentence. So it was easy to say that such a body is performing a quasi-judicial task in considering and deciding such a matter, and to require it to observe the essentials of all proceedings of a judicial character - the principles of natural justice.
>
> Sometimes the functions of a minister or department may also be of that character, and then the rules of natural justice can apply in much the same way. But more often their functions are of a very different character. If a minister is considering whether to make a scheme for, say, an important new road, his primary concern will not be with the damage which its construction will do to the rights of individual owners of land. He will have to consider all manner of questions of public interest and, it may be, a number of alternative schemes. He cannot be prevented from attaching more importance to the fulfilment of his policy than to the fate of individual objectors, and it would be quite wrong for the courts to say that the minister should or could

"act in the same kind of way as a board of works deciding whether a house should be pulled down."

After this preliminary discussion I will first consider whether the principle audi alteram partem applies at all to resumption of land by the Crown or a local body, and secondly, whether the principle is excluded by the terms of section 136 of the Towns Ordinance (Cap. 106). As to the first this will depend upon the provisions of the Crown Acquisition of Lands Ordinance (Cap. 119), and that ordinance gives the Crown the right to take land upon payment of compensation. There is certainly no express right in the landowner to object. I think that the explanation for this is rooted in the history of this type of legislation. The matter was fully discussed in both the Court of Appeal and the House of Lords in Attorney-General v De Keysers Royal Hotel (1919) 2 Ch.197 and (1920) A.C. 508, and the development of compulsory acquisition by the use of the Royal prerogative through the special statute to the comprehensive statute was traced. So far as acquisition for the purposes of defence is concerned, that development culminated in the United Kingdom Defence Act of 1842, and at much the same period, acquisition for public purposes was codified in the Land Clauses Consolidation Act 1845. Under the former act it was provided that no lands were to be taken without the consent of the owners unless the necessity or expediency was certified by certain specified high officials and it was held in Hutton v Attorney-General (1927) 1 Ch.427 that the owner need not be heard before that certificate was given. Under the latter Act, once the notice to treat had been given it could not be withdrawn, except by consent, see Gardner v Charing Cross Railway Co. (1854) 70 E.R.1049, but the only power in the landowner to object seems to have arisen where the notice to treat dealt with part only of the land. In some cases at least the passing of private acts dealing with acquisition for railway purposes was preceded by an inquiry. Hence in Lee v Milner (1837) 160 E.R. 540 Alderson B was able to say:

"These acts of Parliament have been called parliamentary bargains made with each of the landowners. Perhaps, more correctly, they ought to be treated as conditional powers given by Parliament to take the land of different proprietors through whose estates the works are to proceed."

Mr. Gifford referred me to a Queensland case, Amstad v

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Brisbane City Council (No. 2) (1967) 16 L.G.R.A. 379, in which W.B. Campbell J. held that the rules of natural justice - in particular the principle of audi alteram partem - do not apply in respect of compulsory acquisition because the dispossessed landowner received compensation. The learned judge also held that the particular Queensland statute with which he was dealing gave the land owner no right to be heard in opposition to the acquisition. The words of the statute were

> "The Council may from time to time in pursuance of the provisions hereinafter contained and without further or other authority than this Act take any lands within the area of the City which the Council, by resolution, declares to be required by the Council."

Mr. Gifford submitted that the decision in Amstad v Brisbane City Council is contrary to the principle enunciated in Hoggard v Worsbrough U.D.C. (1962) 1 A.E.R. 468. I cannot see that. Hoggard's case deals with a situation where there were conflicting claims. Winn J. in that case says at p. 471:

> "Where two parties are in dispute, and the obligation of some person or body is to decide equitably between the competing claims, each claim must receive consideration . . . . . "

In Amstad's case, the power given by the statute to the Brisbane City Council is, it seems to me, much the same absolute power as is given to the Crown by the Crown Acquisition of Lands Ordinance. W.B. Campbell J. said at p. 384 of the report above cited:

> "Whether the council is obliged to comply with the principles of natural justice depends fundamentally upon the legislative intention as expressed in the provisions of the statute. An examination of these provisions shows that the acquisition of land by the council entitles persons who have any estate or interest therein to adequate compensation for any loss flowing from such acquisition. The acquisition of property in these circumstances cannot be equated to the deprivation of proprietary rights such as was considered in Cooper v Wandsworth District Board of Works. The substitution of compensation for the loss of property taken by a public or local authority acting under statutory

power takes away, in my opinion, the element of prejudice upon which the rule of natural justice is based."

There is no provision for conflicting claims or for objecting in the Crown Acquisition of Lands Ordinance (Cap. 119), which gives the Crown the power to acquire lands, and provides for compensation. Of course the acquisition must be bona fide: see Prentice v Brisbane City Council (1962) 13 L.G.R.A. 162. But there is no question here but that the Council bona fide acquired the plaintiffs' land for proper purposes. I think that Amstad's case is in point and I conclude, that in Fiji the principle audi alteram partem has no application as regards lands acquired by the Crown under the Crown Acquisition of Lands Ordinance (Cap. 119).

While there may be no answer to the demand of the Crown to take land so long as proper compensation is paid, with the proliferation of local bodies, each seeking to develop the amenities of its particular area, there has been a proportionate increase in the demand for land to be taken from private persons for the purpose of developing these amenities and in many commonwealth countries, these demands have been met by legislation stipulating for local bodies to take land only with the authority of the particular Minister of State, to be given after a public inquiry at which objections can be heard, and some of the cases cited by the plaintiffs deal with local bodies failing to comply with or going outside the statutes under which they are constrained. Such are Webb v Minister of Housing and Local Government (1955) 1 W.L.R. 755 in England, Delta Properties Ltd. v City of Brisbane (1955) 95 C.L.R.11 and Hawtin v Shire of Doncaster & Templestowe (1959) V.R. 494 in Australia. In Fiji this development has now become crystallised in section 7 of the Constitution of Fiji scheduled to the Fiji Independence Order 1970 which provides that no property shall be compulsorily acquired except under the authority of a law which provides inter alia for the acquiring authority to give reasonable notice to the owner or person having interest of the intention to acquire and in the light of which the Crown Acquisition of Lands Ordinance has been very considerably amended. This, of course, was subsequent to the acquisition of the land the subject of this action but at that time the provisions of the constitution scheduled to the Fiji (Constitution) Order 1966 had been brought into force, and although section 6 of that order relates to the compulsory acquisition of property, there is nothing there about any requirement to give notice to

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the person whose property is being compulsorily acquired. Because these are overriding provisions it is perhaps desirable to set them out:-

"6. (1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied, that is to say -

(a) the taking of possession or acquisition is necessary or expedient -

(i) in the interests of defence, public safety, public order, public morality, public health, town and country planning or land settlement; or

(ii) in order to secure the development or utilisation of that or other property for a purpose beneficial to the community; and

(b) provision is made by a law applicable to that taking of possession or acquisition for the prompt payment of full compensation.

(2) Every person having an interest in or right over property which is compulsorily taken possession of or whose interest in or right over any property is compulsorily acquired shall have a right of direct access to the Supreme Court for -

(a) the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any compensation to which he is entitled; and

(b) the purpose of obtaining prompt payment of that compensation.

Provided that if any law for the time being in force in Fiji so provides in relation to any matter referred to in paragraph (a) of this subsection the right of access shall be by way of appeal (exercisable as of right at the instance of the person having the interest in or right over the property) from a tribunal or authority, other

than the Supreme Court, having jurisdiction under any law to determine that matter."

No point has been taken that this acquisition was ultra vires these provisions.

Subject to these provisions the powers of acquisition of land by town councils are contained in the Towns Ordinance (Cap. 106) and in section 136 of that Ordinance which has already been set out. The first part of that section surely means that if a town council have found suitable land which they cannot acquire on reasonable terms by agreement, they may ask the Governor in Council for authority to acquire tha land compulsorily. I cannot see that it is necessary for the Council to advise the owner that they propose to apply for the consent of the Governor in Council. Furthermore, I would hold, from a consideration of the correspondence in this case, that the plaintiffs had given the Council, as one might say, the green light to go ahead. I cannot see what other meaning can be attributed to the last sentence of Mr. Warren's letter to the Council of 17th August 1966. That, of course means, too, that I hold that the plaintiffs were not unfairly treated by the Council.

That brings me to a consideration of the position of the Governor in Council.

It seems to me that when he receives the Council's request for approval, he has to consider three things and he cannot give approval unless three prerequisites exist (a) that suitable land for the council's purpose cannot be purchased on reasonable terms by agreement (b) that the circumstances are such as to justify the compulsory acquisition of the desired land and (c) that the Council's purpose is a public purpose within the meaning of the Crown Acquisition of Lands Ordinance. He satisfies himself about these matters after 'such inquiry, if any, as he may deem expedient'. The plaintiffs say that in the circumstances which have arisen in this case, the Governor in Council was bound to hold an inquiry at which they could be heard, and that his failure to do so has resulted in their being denied 'natural justice'. What is really to be decided here is not so much whether the plaintiffs were entitled to be heard, but rather whether in all the circumstances they have been unfairly treated by not being heard. It is first necessary to consider whether the Ordinance says anything about this right of the plaintiffs to be heard or whether anything of that kind can be inferred. It vests in the Governor in

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Council a discretion to hold an inquiry. There is not merely the provision that he may satisfy himself after such inquiry as he may deem expedient, but it seems to me that the words 'if any' fortify that discretion and that it is a ministerial discretion rather than a quasi-judicial discretion. I think that the observations of Greer L.J. in Errington v Minister of Health (1935) 1 K.B. 249, 259 are pertinent. He said discussing the question of confirmation of a closing order

> ". . . in so far as the Minister deals with the matter of the confirmation of a closing order in the absence of objection by the owners it is clear to me, and I think to my brethren, that he would be acting in a ministerial or administrative capacity, and would be entitled to make such inquiries as he thought necessary to enable him to make up his mind whether it was in the public interest that the order should be made. But the position in my judgment is different where objections are taken by those interested in the properties which will be affected by the order if confirmed and carried out."

In my view the words of the section make the discretion here to be exercised much more like that in such cases as Russell v Duke of Norfolk (1949) 1 A.E.R. 109: Patterson v District Commissioner of Accra (1948) A.C. 341; Ross-Clunies v Papadoppoulos (1958) 1 W.L.R. 546 than any of the cases cited to me by the plaintiffs. I was referred to Regina v Secretary of State for Wales ex parte(Green) (1969) 67 L.G.R. (U.K.) 560 where the Court was dealing with regulations providing that the Minister should consider objections and "if he thinks fit may cause a public inquiry to be held". There the Court did not consider the terms of the regulation because the appellant had been led to believe that a public inquiry would be held, and because the Minister had acted without a public inquiry and the appellant was thereby precluded from putting forward his full case, it was held that the rules of natural justice had not been observed. I do not think that this case helps the plaintiffs. I was also referred to Duriyappah v Fernando (1967) A.C. 337, and I am content to apply to this matter the threefold test suggested in that case by Lord Upjohn in giving the opinion of the Privy Council. At page 349 he says:-

> "In their Lordships' opinion there are three matters which must always be borne in mind when

considering whether the principle should be applied or not. These three matters are: first, what is the nature of the property, the office held, status enjoyed or services to be performed by the complainant of injustice. Secondly, in what circumstances or upon what occasions is the person claiming to be entitled to exercise the measure of control entitled to intervene. Thirdly, when a right to intervene is proved, what sanctions in fact is the latter entitled to impose upon the other. It is only upon a consideration of all these matters that the question of the application of the principle can properly be determined."

The nature of the property concerned in this case is freehold land owned by the plaintiffs. The persons entitled to intervene, that is, the Council and for the moment I shall equate the Governor in Council with the Council, are entitled to intervene after being satisfied about three matters to which I have previously referred, and which will require to be considered in more detail. When it comes to the question of a sanction, the result of the Council taking the plaintiffs' land is that they will pay compensation for it as fixed by a Court - in other words the plaintiffs are to get value for what they give.

I return to the matters which entitled the Council to intervene or to take the plaintiffs' land. One would expect that the persons who would be best able to inform the Governor-in-Council about the first matter would be the Council whose interest it is to get land as cheaply and as quickly as possible, and although Mr. Knuckey gave evidence of other land which would have been suitable for a power station, there was no evidence that it could have been bought more cheaply than the plaintiffs' land, and there was nothing in his evidence which could lead me to think that the Council were being unreasonable in seeking to acquire the plaintiffs' land rather than any other. Likewise one would expect that the Council would inform the Governor-in-Council about the circumstances in which they want to acquire land compulsorily. Here again the plaintiffs produced no evidence to controvert the Council's correspondence showing that they wished to acquire land for a new power station and that none could be bought near where they wanted it at a reasonable price. I would have thought that neither of these matters demanded an enquiry as to why the Council should not take the Plaintiffs' land so long as they paid a proper price for it. It is perhaps significant in this connection that the plaintiffs did not place any evidence before the Court as to their intentions other than the statement in Mr. Warrens' original letter

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to the Council that they intended to subdivide. Finally under section 136 the Governor-in-Council had to be satisfied that the purpose for which the Council wanted the land was a public purpose within the meaning of that term in the Crown Acquisition of Lands Ordinance Cap. 119. The definition of public purpose is in section 2 of the Ordinance and the material part of the definition reads "Public purpose means for exclusive Government use or for general public use". Reading this in the manner directed by section 136 (2) since this is an acquisition by a town council the definition reads "Public purpose means for exclusive town council use . . ." So that even if the construction which I have placed upon the Crown Acquisition of Lands Ordinance is wrong, it seems to me that tested by the standard laid down by the Privy Council in Duriyappah v Fernando cit. sup. it was not necessary for the principle audi alteram partem to be invoked. There is still one other aspect to be considered, namely as to whether the plaintiffs have been given fair treatment by the Governor-in-Council. It is here that one has to look again at the correspondence. There is first the fact that the plaintiffs were willing to make a gift of five acres. Then they were willing to sell fifty acres - at their price, of course. Then when the Council would not agree to buy at their price, they sat back and waited for the Council to acquire compulsorily. It is interesting to compare Treasury Gate Pty. v Rice (1972) V.R. 148, a Victorian case to which, I was referred, in which the Melbourne City Council proposed to close a road. Under the Victorian Legislation the Council makes a request to the Governor-in-Council, and the request has to be sent to the owner and advertised. As soon as the notice was received by the owner in that case strenuous objection was made, first by letter to the Council, then by representations to the Council, then by action through the Courts. By contrast, in this case, when the plaintiffs received the notice of acquisition, they did not repudiate it indignantly, and aver that they wanted to be or should have been heard, they lodged a claim for compensation. In my view there is nothing in this correspondence, or indeed in any evidence placed before the Court to indicate that there was any issue between the plaintiffs and the Council save that of compensation for the land to be taken, whether by payment of money or the building of an access road. I would say also, with all deference to the plaintiffs' present arguments, that I am somewhat doubtful if they would have objected, even had they been given the opportunity. They were quite satisfied until sometime about the middle of 1968 to rely upon the Council's promise to

provide them access in the event of compulsory acquisition. It seems to me that the Governor-in-Council was entitled to act upon such information as to him seemed fit, and that his action cannot be challenged unless it were shown that he had acted unfairly. In my view that has not been done.

This is perhaps the place to mention, too, Mr. Gifford's submission that if the acquisition be invalid it can be quashed. This submission is based upon the case of Webb v Minister of Housing and Local Government (1965) 1 W.L.R. 755, and refers to the passage in the judgment of Danckwerts L.J. at p. 776 :

> "An order made by the Council which is invalid by reason of the Council's failure to follow the statutory requirements was invalid when made, and the Minister's order cannot breathe life into what has no valid existence."

There the Minister who made the order was a party. I think further more that those words may require further consideration in the light of the comments of Lord Upjohn in the Privy Council in Duyappa v Fernando (1967) 2 A.E.R. 152, 158 discussing the distinction between orders which are a nullity and orders which are merely voidable. Regina v Minister of Housing and Local Government (1960) 1 W.L.R. 587 was also a case where the Minister's confirmation was quashed, but here again the Minister was a party to the application. In Li Hong Mi v Attorney-General of Hong Kong (1920) A.C. 738 an order of the Governor-in-Council was declared invalid, but here again, I would regard the Attorney-General there as the mouthpiece of the Governor-in-Council. In Banks v Transport Regulation Board (Victoria) (1968) 119 C.L.R. 222, in the High Court of Australia, a decision of the Board confirmed by the Governor-in-Council was set aside, but there the decision was made by the Board, and the action of the Governor-in-Council merely confirmatory. In this case, neither the Attorney-General nor any Minister was joined as a party, and although the Attorney-General sought leave to intervene, that application was not proceeded with, and it was not suggested that he was a necessary party to the action. In Tonkin v Brand & Ors. (1962) W.A.R. 2 the Attorney-General for Western Australia was a party, and hence an order concerning an order-in-council could properly be made. In Brettingham Moore v St Leonards Corporation (1969) A.L.J.R. 343 the High Court of Australia was not prepared to make such an order without the Attorney-General being a party. I do not think that any of the other authorities cited by the

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plaintiffs advance their case in this particular matter. Although there may be power in this court in a proper case to declare an order of the Governor-in-Council void or invalid, I would not be prepared to exercise it without the Attorney-General being a party.

The plaintiffs' next objections relate to what they call uncertainty. They say that the Council's request for compulsory acquisition is void for uncertainty, and that the Governor-in-Council did not authorise the compulsory acquisition of any specific land. They also say that the notice of acquisition, which Mr. Gifford referred to as the Notice to treat, is void because it does not define the land to be taken. They also say that the acquisition is void because the area taken by the Council exceeds the area authorised by the Governor-in-Council. It is perfectly true, as is shown by the correspondence that the Council found some difficulty in making up their minds what they wanted, but I am quite unpersuaded that the acquisition was thereby vitiated, so longas in the event the Governor-in-Council authorised a certain area of land to be acquired. On this branch of the case the burden of the plaintiffs' contention is that the Governor-in-Council did not authorise the acquisition of any particular land because the land was not precisely defined. A great deal of evidence was given by surveyor Ronald Gordon Knuckey showing that there were small differences between the sketch plan drawn on the Notice of Acquisition and the delineation of the land shown on various standard sheets kept by the Lands Office in Suva, and attention was directed also to the fact that the Council's engineer in one document referred to the land as comprising an area of 22 acres and the plan eventually produced by the Council's surveyors and signed by the plaintiffs showed the land as containing 20 acres 0 rood 2 perches. While all this perhaps shows a measure of carelessness on the part of the Council's solicitors or their surveyors, I do not regard it as by any means decisive. In my view a precise definition of the area in the Notice of Acquisition is not required and any precise definition which is required can await the survey of the land taken. I think that the principle to be adopted here is that the land should be so shown that the landowners would have notice that their land is being taken. It is, I think, the same principle as was adopted by Vice Chancellor Hall in Dowling v Pontypool Caerleon & Newport Railway Co. (1874) L.R. 18 Eq. 714, 740 where he was seeking to give a meaning to the word 'delineated' in a special Railway Act. Mr. Gifford submitted that the English railway cases give no assistance but they appear to me to provide the only comparisons which are available. He cited several

Australian cases, but the only one which I found at all helpful was Ashcroft v Walker (1902) 2 S.R.N.S.W. Eq. 131 in which the learned Chief Justice in Equity in New South Wales held that the Crown in resuming land for a road must definitely describe the land it is resuming, but seemed to think that probably a meagre description supplemented by a plan would probably make the description sufficient. It would add that the form of the statute in that case tends to suggest that the plan would be something more than a mere sketch.

The notice of acquisition here refers to the land to be taken as that described in the schedule and the schedule reads:

> "All that piece of land containing 20 acres situated at the eastern end of Certificate of Title 8316 being part of the land known as Navioco (part of) and being part of the land contained in Certificate of Title No. 8316 in the district of Suva on the island of Viti Levu as delineated on the sketch plan hereinafter appearing."

All that is shown on the sketch plan is a tracing of the land in Certificate of Title 8316 divided by a line drawn from north to south about two inches from the eastern end and the area was outlined and the words '20 acres to be acquired' were written inside the blocked lines. It is true that no measurements are given, but looking at that sketch plan, I would say that the landowner might reasonably expect to have notice that 20 acres of his land within the eastern boundary on the seaward side of the block bounded on the east by the sea and on the west by a line more or less at right angles to the northern and southern boundaries were being taken. Nor do I think that the fact that the land acquired is bounded in the east by the sea, and that it may be changed from time to time by erosion or accretion, helps the plaintiffs. It seems to me, therefore, that there is no uncertainty about the land asked for by the Council or the land taken. I would also add that in at least one case in the books there was no description of the lands at all but simply a plan annexed to the notice - see Sims v Commercial Railway Co. (1838) 1 Railway Cas. 431. The scheme of The Crown Acquisition of Lands Ordinance (Cap. 119) appears to be that the Governor (or in this case the Council) can have a preliminary survey made of the land which might be required or alternatively

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the land can be taken by notice without preliminary survey. When it is resolved that the land be taken, the Town Clerk is authorised to give notice in the form prescribed in the schedule to the Ordinance or to the like effect. That form speaks of 'the following land' and the directions in the form read 'describe land giving measurements and showing boundaries whenever practicable'. In this case, however, no survey had been done, so that it was not practicable to give measurements, but approximate boundaries were shown. I think that the Council might have saved themselves considerable expense if they had first caused the land to be surveyed, and then given notice, but they did not.

Mr. Gifford placed some reliance upon Saunby v London (Ontario) Water Commissioners (1906) A.C. 110. There the Commissioners were authorised by their Act and I quote from the judgment of the Privy Council at p.114:

> ". . . to enter into the lands of any person within fifteen miles of the city of London and to survey, set out, and ascertain such parts thereof as they may require for the purposes of their waterworks, and also to divert and appropriate any river, pond, spring, or stream of water as they shall judge suitable and proper, and to contract with the owner or occupier of the said lands, and those having a right in the said water for the purchase thereof ..."

What the Commissioners did was to erect a dam with flashboards across the river at a point some miles below the appellant's mill thus penning back the water in the river with the result that in certain seasons of the year, the appellant's lands were flooded, and the water power of his mill interfered with. The passage relied upon by the plaintiffs is in the opinion of the Privy Council delivered by Lord Davey at p. 115:

> "Their Lordships are of opinion that, before the Commissioners can expropriate a landowner, they must first set out and ascertain what parts of his land they require, and must endeavour to contract with the owner for the purchase thereof. In other words, they must give to the landowner notice to treat for some definite subject-matter."

I do not read that passage as requiring the Council here to do any more than they did in defining the lands they intended to take. It seems far from requiring the precise definition for which the plaintiffs contend.

Here I think that the subject matter was quite definite - it was 20 acres of the plaintiffs' land at the eastern end of their title.

The argument that the area actually taken by the Council exceeds the area the Council were authorised by the Governor-in-Council to take is based upon the fact that the survey of the area done by the Council's surveyors and evidenced by the plan No. 3265 produced in Court shows an area of 20 acres 0 rood 2 perches. I am quite unable to understand how this can have come about, for each surveyor who gave evidence assured me that it was possible for the exact area of 20 acres to have been surveyed off, and why 20 acres 0 rood 2 perches has been surveyed off passes my comprehension. It is true that one of the Council's witnesses, surveyor David Clayton East, was able by an exercise in mathematical legerdemain, to arrive at a figure of precisely 20 acres, but the fact remains that the Council's original surveyor prepared a plan which showed the area as 20 acres 0 rood 2 perches. The plaintiffs produced no authority for saying that the small excess area invalidates the whole acquisition, and it must be remembered that the plan has not yet been deposited, and in view of the attempt to improve it after the plaintiffs had signed, will almost certainly have to be redrawn, and it may well be that a new survey will have to be done, perhaps evidencing rather more Mr. East's findings than those of the original surveyor. In the present condition of things I am not prepared to accept the plaintiffs' contentions in the absence of authority. Indeed such authority as I can find appears to be against the plaintiffs - see Dowling v Pontypool Caerleon & Newport Railway (1874) 18 Eq. 714, 747. The acquisition is good to the extent of 20 acres and I do not feel called upon to investigate its validity on the footing that more than 20 acres will be taken when the survey plan of the area has yet to be settled, and then deposited and registered in the Land Transfer Office. Doubtless that plan will now have to be prepared and deposited under part XXIII of the Land Transfer Act 1971.

I next deal with the technical aspects of the acquisition notice. The plaintiffs say first of all that the Council were bound to serve them with this notice, and the Council retort by saying that the plaintiffs do not fall within the definition of the term 'the registered proprietors of the said lands' as used in S.5, and they go on to say that the plaintiffs have therefore no locus standi to object to the acquisition. The Council's proposition does not appear

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to me to be well founded at all. I would think it strange if in an ordinance which exists to regulate the acquisition of land for public purposes, that is to say, to provide for compensation for the taking of such land, the rights of an equitable owner were to be completely neglected, and I am inclined to think that the term 'registered proprietor' in clause 5 should be construed in such a manner as to include other persons with proprietorial interests. The words which follow 'registered proprietors of the land', namely 'mortgagees, encumbrancees and lessees,' while probably eiusden generis with registered proprietors are susceptible of a wider interpretation, and lessees in particular may well be expected to include unregistered lessees. I notice also that s.8 provides that any person holding or claiming any estate or interest in any land acquired can take out an originating summons to determine compensation. It is to be observed also that the Constitution (Statutory Amendments) Ordinance 1970 introduced amendments to the Crown Acquisition of Lands Ordinance and that s.5 of the Ordinance now provides that notice is to be given to every person having any interest in or right over any lands to be acquired.

I am certainly not prepared to say that the plaintiffs have no locus standi to maintain this action, and although I do not know that it is necessary for me to decide whether the Council were bound to serve the notice on the plaintiffs I would say that having served the plaintiffs with the notice of acquisition the Council cannot be heard to say that the plaintiffs have no right to challenge the validity of the notice, if it turns out that the plaintiffs have an interest in the land, albeit that it is not one that would entitle them to receive a notice.

The plaintiffs next say that the Council's failure to either gazette or advertise the notice is fatal to their notice of acquisition. The Council admit their dereliction in this respect but say that the requirement in the Crown Acquisition of Lands Ordinance is directory, not mandatory. The relevant parts of section 7 are subsections (1) and (4) which are as follows:

> "7. (1) Every notice under the two last preceding sections shall either be served personally on the persons to be served or left at their last usual place of abode or business, if any such place can after reasonable inquiry be found, and in case any such parties shall be absent from Fiji or if such parties or their last usual place of abode or

"business after reasonable inquiry cannot be found, such notice shall be left with the occupier of such lands or his agent, or, if there be no such occupier or agent, shall be affixed upon some conspicuous part of such lands.

(4) All notices served under the provisions of this Ordinance shall be inserted once at least in the Gazette and in a newspaper circulating in Fiji."

The plaintiffs say that subsection (4) is mandatory in form and peremptory in nature. They refer to Cullimore v Lyme Regis Corporation (1962) 1 Q.B. 718 and several Australian cases of which the most apposite would appear to be S.S. Constructions v Ventura Motors (1963) L.G.R.A.210. The first named case was one in which the local body, being given a power of apportioning the cost of coast works within six months after the completion of the works, among the persons who should pay the same delayed the apportionment for almost two years and the apportionment was held ultra vires. Edmund Davies J. held at p. 726 of the report that whether the provisions of a statute are mandatory or directory depends upon the statute as a whole, without reference to the particular facts in the case. In S.S. Constructions v Ventura Motors, a Victorian case, Gillard J. discussed at some length the difference between mandatory and directory legislative provisions and in the course of his discussion referred to most of the cases on the subject. At p. 221 he says -

"In order to decide whether legislative provisions are mandatory or directory it would appear that there are certain guides to indicate, but there is no conclusive test to decide into which category legislation may fall. The scope and object of the statute, it is said in the cases, are of primary and possibly of vital importance. Secondly, provisions creating public duties and those conferring private rights or granting powers must be distinguished. The former generally are regarded as directory, whereas the latter are generally accepted as mandatory, particularly where conditions are attached to the exercise of the duty or the power, as the case may be. Thirdly, in the absence of an express provision, the intention of the legislature has to be ascertained by weighing the consequences of holding a statute to be directory or imperative."

He then cites a passage from the judgment of the Privy Council in Montreal Street Railway Co. v Normandin (1917) A.C. 170, 175 :

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"When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of the legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done."

Gillard J. held, however, that the argument of inconvenience could not prevail over the fact that, in the case before him, compliance with a requirement to give notice in a prescribed form and to set out clearly the location of the land and the purpose and effect of the permit sought, was a condition precedent to the granting of the permit.

It is necessary therefore to consider the object and scope of the Ordinance under consideration. It is described as "an ordinance to regulate the acquisition of land by the Crown for public purposes". I think that I have to bear in mind that the acquisition with which I am dealing is not an acquisition by the Crown, but an acquisition by a local body which requires the approval of the Governor-in-Council. Nevertheless I must assume that such approval has been duly given before the notice under The Crown Acquisition of Lands Ordinance was given. S.5 of the Ordinance specifies the persons to be served with a notice of acquisition, S.7(1) directs personal service, and goes on to state what is to be done if personal service cannot be effected. S.7(2) provides for service in the event of the recipient being a corporation, and S.7(3) provides for service in the case of native land. Then S.7(4) directs that the notices served shall be advertised once in the Gazette and once in a newspaper circulating in Fiji. The use of the word 'served' in the phrase 'the notices served' suggests that the advertisement is not to take place until after the notices are served, and it would appear to be an additional precaution to ensure that the persons who are entitled to claim compensation - not, I emphasise, the persons who intend to oppose acquisition for there is no right in them to do that - are advised of the acquisition so that they may make their claim. It seems to me that this is made clear by the succeeding section S.8 which begins "If, at the expiration of three months from the service and publication as aforesaid no claim shall have been lodged . . ." I would hold that the requirements of advertisement in the

ordinance are directory and not mandatory, and I am not prepared to hold the acquisition invalid upon this ground. I am conscious that in Scurr v. Brisbane City Council (1973) 47 A.J.L.R. 532, in the High Court of Australia, Stephen J. at p. 536 said "It is well established that a directory interpretation of a statutory requirement still necessitates, as a condition of validity, that there should be substantial compliance with the requirements" : and he refers to Cullimore v Lyme Regis Corporation (1962) 1 Q.B. 718. However, the claim for compensation still remains to be dealt with, and it may not yet be too late to advertise the notice of acquisition. However, in this connection, I regard the case of Le Feuvre v Miller (1857) 120 E.R.120 as being in point. There a public health rate was required to be published and was not. The Court of Queen's Bench refused to hold the rate void for want of publication. I also derive some assistance from State Planning Authority of New South Wales v Shaw (1970) L.G.R.A. 192 where the want of something being laid before Parliament as prescribed by the statute was held not to invalidate a resumption.

Then the plaintiffs allege that the council has used the land acquired for purposes other than those for which it was acquired, and in fact intended so to use it, so that the acquisition is invalid. The plaintiffs say, and the Council admit, that the Council have constructed on the land flats for persons employed in the electricity undertaking, and the Council's contention is that the housing of their power station employees at or near the power station is incidental to the production of electric power. The plaintiffs say further that the Council acted under the Towns Ordinance, and they must seek their authority within the Towns Ordinance, and within S.136 of the Town Ordinance only. However it seems to me that the plaintiffs argument fails in limine, for they argue that the provision of housing is not a public purpose within the Crown Acquisition of Lands Ordinance, in that the housing is not for exclusive government use or for general public use. But section 136(2) of the Towns Ordinance provides that the provisions of the Crown Acquisition of Lands Ordinance are to apply to compulsory acquisition of land by a Town Council and that reference to 'Government' shall be deemed to be reference to a town council, so that section 2 of the Crown Acquisition of Lands Ordinance, for the purpose of this exercise, is to be read "Public purposes means (a) for exclusive town council use or for general public use". I would have thought that in housing their employees, the Council are using the buildings

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for 'exclusive Town Council use'. But the plaintiffs complain that when the Council asked for the approval of the Governor-in-Council they did not tell the Governor-in-Council that in addition to erecting a power station they wanted to use the land for building living quarters for power station employees. It is true that the only mention of the Council's intention in this regard occurs in the Chief Electrical Engineer's memorandum accompanying the letter from the Council's solicitors to the Director of Lands on 26th October 1966 -

> "It is possible that some living quarters may be provided on the perimeter of the area for the housing of breakdown and shift staff."

In my view that is sufficient to acquaint the Governor-in-Council with the Council's intentions. The plaintiffs do not challenge the right of the Council to conduct the business of supplying electricity as a public utility for although they did in their Statement of Claim plead that the Council were carrying on the business of supplying electricity as a trading function and that this was ultra vires, they did not offer argument on this point. However, what the plaintiffs do say is that if the Council want to compulsorily acquire land for their electricity undertaking, they must do it under the Suva Electricity Ordinance and not under the Towns Ordinance. Mr. Hughes did not address me on this point, but I must indicate my view upon it. The power given by Suva Electricity Ordinance to take land has already been set out. It was given in 1920. By 1948 when the Towns Ordinance came into being, town councils were by section 132 given the power of conducting public utility services, and that power was widened by amendment in 1961. Section 129 declared that the powers of councils under the Towns Ordinance were in addition to other powers, but by section 136, the power to acquire land was restricted in that the Governor-in-Council had to satisfy himself of certain matters before he approved a proposed acquisition. I think that section 15 of the Suva Electricity Ordinance must be read in the light of section 136 of the Towns Ordinance, and so read, it would appear proper not only to comply with the restrictions in S.136, but to make the acquisition under that section. It is also true that acquisition under the Suva Electricity Ordinance would be more limited than under the Towns Ordinance and could not include the housing. It seems to me that here there were two sources of power. The Council acted upon one. I agree that having chosen the Towns Ordinance as their source of power they must

keep within it. It was required of them that the Governor-in-Council had to be satisfied that the purpose for which the council wanted the land was a public purpose within the Crown Acquisition of Lands Ordinance, and that they have done. I think that in using the plaintiffs' land for the purposes of their electricity undertaking, the Council can properly say that it is for exclusive town council use. It seems to me that since the housing is for their staff employed in the electricity undertaking, they can also say that when they are using the land for housing their electricity undertaking staff, it is being used exclusively for town council use. But the plaintiffs say that even if the council are given power to acquire for a power station that does not include council housing and they place great reliance upon Attorney-General v Pontypridd U.D.C. (1906) 2 Ch. 257 which concerned the attempt of a Council to operate a refuse destructor as incidental to their electricity supply, upon the ground that it could conveniently be operated in connection with their electricity undertaking. There the Council had acquired the site in exercise of their powers under their Electric Lighting Acts and they were not permitted to use the land for a refuse destructor because although the refuse destructor might have been very convenient, and indeed necessary to the Council's other objects, it was not necessary and incidental to the generation of electricity. In that case the question posed by Collins M.R. at p.264 was this -

> ". . . was the refuse destructor merely ancillary to, so as to be made part of and subservient to, the main purpose of the electric generating station, the electric works, or is it an independent work?"

It seems to me that if the question is put in this way the answer is that the housing for the council's employees is ancillary to the main purpose of supplying electricity. I think that I should take judicial notice of the fact that the supply of electricity is something that goes on for 24 hours a day.

Later on in the same page, the learned judge says:

> "Now that brings us to the legal question in this case. It seems to me to be quite clear that this is an authority which is bound by statute. It derives its existence from the statute, and its rights and obligations must be measured by the

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"statute" (that is section 10 of the Electric Lighting Act 1882 which it is not necessary to set out). "Trying the rights of the Council by the standard of that power which, it seems to me is the only power they invoked, they cannot in point of law justify buying or using land unless they can say they have bought it and hold it for the purposes of supplying electricity and for doing all such acts and things as may be necessary and incidental to such supply."

What is incidental to the Council's business of supplying electricity is a question of fact: see Attorney-General v Mersey Railway Co. (1907) A.C. 415.

I would add that later decisions seem to indicate that matters incidental to a corporation's business may very well receive a wider interpretation in 1975 than was the case in 1906. In Deuchar v Gas Light & Coke Co. (1924) 1 Ch. 422 the plaintiff attempted to prevent a statutory gas company from manufacturing their own caustic soda rather than purchasing it from chemical manufacturers. Astbury J. said at p. 435:

> "They (the defendants) rightly contend that so long as they are bona fide seeking to carry out one of their statutory objects the exact method adopted is immaterial, unless that method is forbidden by their statutory constitution."

Ungoed-Thomas J. followed that decision in Charles Roberts & Co. v British Railways Bd. (1965) 1 W.L.R. 396 and held that the Railways Board had power to construct and manufacture railway tank wagons with a view to their sale if such wagons were required for use on the Board's Railways. So in Attorney-General v Crayford U.D.C. (1962) 2 A.E.R. 147 a statutory provision giving a local authority the general management and control of houses provided by them, was held to include insuring the effects of tenants of their houses and collecting the premiums thereon upon the ground that those were acts of a prudent landlord. It was there objected that the local body was in fact acting as the agent of a particular insurance company. I hold that the provision of housing for its employees is reasonably incidental to the provision of electricity and that the Council's action in using this land for providing housing was not ultra vires.

I deal now with the plaintiffs' contention that

the Council had no power under the Towns Ordinance to compulsorily acquire land beyond the city boundaries. The Council admits the plaintiffs' land is without the boundaries of the City of Suva. Prima facie one would expect that the authority of a local body would not run beyond its boundaries, and that is, I think, the principle underlying the cases which have been cited to me on this point. It is certainly the principle in the Horners' Company case (Horners Co. v Barlow (1688) 87 E.R. 103). The plaintiffs submit that section 136 is a complete code dealing with compulsory acquisition, and that the word 'land' used therein, must be construed as meaning land within the confines of the town boundaries. The Council, on the other hand, say that the Court should look not only at section 136, but also at sections 6, and 132-6 (inclusive) and counsel referred me to a New South Wales case Collins v Willoughby Municipal Council (No. 2) (1967) 74 L.G.R.A. 256, 260. I do not think that case gives him any assistance. I must look at the whole Ordinance. In 1947 when the ordinance first came into being, only section 133 gave power to a town to acquire land outside its boundaries, and the power given there was that a town council "may for the purpose of any of their functions under this or any other law by agreement acquire, whether by way of purchase lease or exchange, any land whether situate within or without the boundaries of the town". In 1961 section 132, which previously had empowered a town council to "promote or establish and maintain public utility services" was extended to provide that those powers might be conducted either alone "or in conjunction with the Government or any other statutory body and whether within or without the boundaries of the town". Then in 1965 a new subsection was added to section 133 which permitted a town council "to acquire whether by way of purchase lease exchange or otherwise, any land whether situate within or without the boundaries of the town" and to subdivide it for housing schemes. It will be seen that whereas the first subsection to section 133 deals with the acquisition of land by a town council only by agreement, the word 'by agreement' does not appear in the second subsection. Further whereas the first subsection limits the modes of acquisition to purchase lease or exchange, the second subsection adds to those modes the words 'or otherwise'. Some discussion took place on the true meaning of this phrase 'or otherwise', the plaintiffs contending that it must be construed eiusdem generis with the words 'purchase, lease or exchange' as referring to transactions of a similar nature to agreement, while the Council pressed for a wider interpretation. The plaintiffs relied, in their

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construction of the section, as I think, upon the marginal note to section 133 'acquisition of land by agreement' which remained unaltered throughout the amendments. I think the first thing to be said about this argument is that I would be surprised if a town council's attempts at acquisition of land for housing schemes and factory residential industrial business or workshop sites would be limited to acquisition by agreement. This is social legislation which in England is effectuated by compulsory acquisition of land under the Housing Acts. Again, if I am to adopt Mr. Gifford's method of construction, a town council would not be able to acquire land by way of gift. In my view the omission of the words 'by agreement' in section 133(2) indicates that a town council is not to be restricted to act by agreement, and I think that this construction is assisted by the addition of the words 'or otherwise' which certainly extend the meaning of the phrase 'by way of purchase lease or exchange'. The plaintiff's construction would prohibit compulsory acquisition altogether, the Council's construction would enable compulsory acquisition to be made in the manner stipulated by section 136. Furthermore section 136 postulates the condition 'if a town council are unable to purchase by agreement and on reasonable terms suitable land for any purpose . . .' I think the term 'any' includes the purposes mentioned in section 133(2), although Mr. Gifford would have me exclude them. I am not disposed to treat the marginal note 'acquisition of land by agreement' as being of statutory force. I think this is in conformity with the decision of the House of Lords in Chandler v Director of Public Prosecutions (1964) A.C. 763 where Lord Reid at p.776 said 'In my view side notes cannot be used as an aid to construction', and this mode of construction was adopted independently in Fiji in Gangaiya v R. (1964) 10 F.L.R. 196 where Chandler's case does not appear to have been cited. Nor am I prepared in view of the historical development of the legislation to accept Mr. Gifford's submission that because there is express reference to land 'within, or without the boundaries of the town in section 133 and none in section 136, 'land' in the latter section must bear a restricted meaning. Mr. Gifford also endeavoured to draw a distinction between 'suitable land' in section 136 and land within or without the boundaries of the town. It seems to me that here again the historical development of the legislation is against him. In all, I hold, that the true meaning of the term 'land' in section 136 comprehends land whether within or without the town boundaries.

Then there is a dispute between the parties as to whether the Council took possession of the land in September, 1967 or 1968. It should perhaps say that, although the plaintiffs pleaded that the notice of intention to take possession is in breach of S.6 of the Crown Acquisition of Lands Ordinance no argument was addressed to me on this point. Plaintiffs say that Sukhichand did not give possession to the Council, but simply went out of occupation. Mr. Warren in his letter to the Council's solicitors on behalf of Sukhichand on 19th March 1968 says that Sukhichand 'ceased using the affected land by the end of September last, in accordance with the terms of the Notice of Acquisition'. Now the way I regard this matter is that the Council gave a notice in July 1967. In or about September of that year the Council sent their surveyor to survey the land. They might have sent their surveyor under section 4 of the Crown Acquisition of Lands Ordinance to make a preliminary survey before the notice of acquisition but they did not. I think that the acts of the Council are consistent with entering into the possession of the land, and the plaintiffs' evidence does not seem to contravert that. I think it is also relevant to have in remembrance that the notice of acquisition was given to the plaintiffs on 27th July 1967. The plaintiffs did not do any act evidencing an intention of exercising dominion over the land from that time until their solicitors wrote to the Council's solicitors on 19th September 1968 after the construction of the power house had apparently begun. In the meantime in October 1967 they had signed and submitted a claim for compensation, and in the same month they had signed a plan, and in May 1968 they had spoken to the Council's surveyors about the access road. As against that, however, are two statements in correspondence by the Council's solicitors. On 14th December 1967 they wrote to the Town Clerk :

> "Once the plan is registered, and the pegs are put in by the surveyor, then arrangements could be made by the Chief Electrical Engineer with the owner and Sukhichand for the take over of the land at a fixed date to suit the parties, as the proceedings in the Supreme Court to determine the compensation will take some time".

Again on 14th March 1968 they wrote to the plaintiffs' solicitors concerning Sukhichand's claim:

> "We should be obliged if you could let us know if this is correct and also the amount of costs, and we would arrange for payment by the Council without delay so that possession could be given up by your client as on the 1st April."

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I have considered these letters but have come to the conclusion that they have no real bearing on the matter. Although the Council's solicitors would appear to be drawing a distinction between the entry of the surveyors and the handing over of possession, I take the view that the second part of the Notice of Acquisition is much more than an option to enter into possession. I think that it is a Notice of possession, and combined with the moving out of Sukhichand with the knowledge and intention that the Council were taking over to the extent of excluding him from the land, its effect was to give the Council effective possession. The notice was of course served upon the plaintiffs by delivery to their solicitors, and they did not demur to it. I find some support for this view in the judgment of Kilner Brown J. in Harris v Birkenhead Corporation (1975) 1 A.E.R. 1001, 1006. On the evidence which I have before me, I conclude that the Council had taken possession before September 1968. Certain it is that when the plaintiffs agent came to see his then solicitor on 13th May 1968, the Council's surveyors were working on the access road, and I think that on a balance of probabilities possession was given and taken in September 1967. I also reject the plaintiffs' contention that the Council waived the notice of acquisition. There is no doubt that a corporation may waive such a notice, see Simpson Motors Sales v Hendon Corporation (1963) 2 A.E.R. 484 where Lord Evershed at p.492 points out that the private owner can then proceed to enforce his claim under the notice to treat, or accept the abandonment. But the plaintiffs did neither of these things. They issued a writ claiming that the notice of acquisition was invalid, and I cannot see how in the face of that, they can now say that the Council had waived their notice.

I then come to deal with the plaintiffs' submission that the taking is invalid because the Council did not obtain the approval of the Subdivision of Lands Board before acquiring. They refer to the adamant provisions of section 5 of the Subdivision of Lands Ordinance Cap.118, and point out that the land, being within three miles of the boundary of the City of Suva, fell within the Ordinance. The Council admit that this is the case, but say that the Ordinance does not apply to a compulsory acquisition. In the first place it is clear that the Subdivision of Lands Ordinance Cap. 118 would apply to this land by virtue of the proviso to section 5 of the Ordinance and no proclamation is necessary to bring it within the Ordinance. However, it has then to be decided whether the expression 'subdivision' as defined

in section 3 of the Ordinance is apt to include a subdivision arising by virtue of compulsory acquisition of a part of a piece of land. The plaintiffs say that the Council subdivided by depositing a plan of subdivision with the Registrar of Titles. But I do not think they did that at all. They lodged such a plan with the Registrar for deposit. But it seems to me that 'deposit' means more than simply lodging. It is, I think, synonymous with registration. It was common ground at the trial that the deposit of the plan would not be perfected until the plan had been endorsed with the seal of the Registrar of Titles. The format of the plan shows that this is so, for the plan bears an endorsement 'Registered' and a space for the date and time and underneath that a space for the signature of the Registrar of Titles. See the New Zealand case of Griffiths v Ellis (1958) N.Z.L.R. 840 for a similar practice. I cannot think that the word 'deposit' as used in sections 171 and 172(1) of the Land (Transfer and Registration) Ordinance (Cap. 136) refers to lodging a plan which may be rejected, as this one indeed was, and almost certainly will be finally, now that it is clear that it has been materially altered since the registered proprietors signed it. The Council submit that if there was any subdivision at all it occurred when Sukhichand parted with possession of the 20 acre block and the Council took over. Everything seems to me to turn on this word 'subdivide', which is defined in S.3 of the Ordinance so far as it is material, to mean :

> "dividing a parcel of land for sale, conveyance, transfer, lease, sublease, mortgage, agreement, partition or other dealing or by procuring the issue of a certificate of title under the Land (Transfer and Registration) Ordinance in respect of any portion of land, or by parting with the possession of any part thereof or by depositing a plan of subdivision with the Registrar of Titles under the last-mentioned Ordinance; "

I reject Mr. Hughes' submission that the definition requires the first 'or' to be interpreted as 'either'. In my view the definition means that a person can subdivide land by dividing it (a) for sale, conveyance, transfer, lease, sublease, mortgage, agreement, partition or other dealing or (b) by procuring the issue of a certificate of title or (c) by parting with the possession of any part of it or (d) by depositing a plan of subdivision.

I do not think that the Subdivision of Lands Ordinance applies to a compulsory acquisition. In saying this I am not to be taken as accepting everyone

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of Mr. Hughes' submissions on this subject. It is true that the Subdivision of Lands Ordinance will not normally bind the Crown, but I do not think that a Town Council can claim the Crown's exemption because it is by the Crown Acquisition of Lands Ordinance empowered to exercise powers which would otherwise be exercised by the Crown. I do think, however, that the Subdivision of Lands Ordinance is not apt to include a compulsory acquisition, because every act referred to in the Ordinance appears to be a consensual act. I do not think that under the Ordinance one can divide someone else's land nor do I think from my perusal of the Ordinance that the power to refuse an application for subdivision was ever intended to apply to a compulsory acquisition of land. Just as in Goverdhanbhai Bhailabhai Patel v Ghelabhai Premabhai (1953) 3 W.L.R. 836 the Privy Council held that a decree for partition could be made without a consent to subdivision, so here I think that a compulsory acquisition can take place without a consent to subdivision, although here as there the actual division of the land, where it is acquired by a Town Council can perhaps not be actually effected without the consent of the Subdivision of Land Board, or, since in 1973 the Board was replaced by the Director of Town and Country Planning, without the consent of that official. I am accordingly of the view that the acquisition is not void because the Council did not comply with the provisions of the Subdivision of Lands Ordinance (Cap. 118), and obtain the prior approval of the Subdivision of Land Board to the subdivision of the land being acquired.

Then the plaintiffs contend that they became registered proprietors before the Council took possession of the land, and that no notice was served upon them as registered proprietors, and they go on to say that when they became registered as proprietors by virtue of that registration, they held an indefeasible title free from the Council's notice of acquisition given to Sukhichand and that the Council might have protected its interest by caveat, but chose not to do so, and must now take the consequences. They based their case here on Frazer v Walker (1967) 1 A.C. 569. But the position, here, surely, is that plaintiffs, knowing that the notice of acquisition had been issued procured themselves to be registered as proprietors. At that time, the purpose of the registration of the transfer from Sukhichand to the plaintiffs, and the mortgage back, was, as the plaintiffs' then solicitors put the matter "in order to simplify the claims". So that up to that stage, at least, there is no question of fraud. The Council, however, say that the plaintiffs are now using the fact

of their registration to defeat the Council's rights and they have made an application for amendment of their pleadings, even at this late stage, to raise the question of fraud. They refer to Merrie v McKay (1897) 16 N.Z.L.R. 124, Webb v Hooper (1953) N.Z.L.R. 111, Rajaram v Ramraji (1964) 10 F.L.R. 202. The plaintiffs in reply refer to section 19 of the Land Transfer and Registration Ordinance Cap. 136 of the 1955 Laws of Fiji which was in force at the time of the acquisition but has now been replaced by the Land Transfer Act 1971. This point is, of course, rendered otiose by my holding that the Council took possession in September 1967 whereas the plaintiffs transfer was not registered until 16th October 1967, but if I am wrong on this matter of possession, I think this is a matter which may more properly be dealt with when the question of compensation falls to be dealt with and the order of the Court to be registered under section 10 of the Crown Acquisition of Lands Ordinance (Cap. 119). The plaintiffs will probably want then to raise the Land Transfer Act 1971, and the Council can raise the question of fraud if they are so advised. For that reason, and because I am loath to allow an amendment to raise fraud at such a late stage in the case I reject the application made on the part of the Council to amend by adding a plea of fraud.

I have now, I think, dealt with all Mr. Gifford's submissions save one relating to the land to the south of the plaintiffs' land, which was withdrawn, and one which contended that acting on an invalid notice is an abuse of office which rests upon the premise that the notice is invalid.

Mr. Hughes argued that the plaintiffs were estopped from putting forward their claim to invalidate the acquisition by the fact that they had made claim for compensation after the notice of acquisition was given. I think that the decided cases are against Mr. Hughes - see Lynch v City of London Commissioner for Sewers (1886) 32 Ch.D.72: Auckland Meat Co. v Minister of Works (1963) N.Z.L.R. 120: Hawtin v Doncaster & Templestowe Shire (1959) V.R. 494.

Finally I must say something about the access road, which I have previously mentioned but shortly. The plaintiffs' pleading concerning the access road is that by reason of the Council's leading them to believe that they would construct an access road from the King's Road to the land taken, at the Council's expense, the plaintiffs claimed compensation at only $400 per acre, the inference being - and this is supported, of course, by the evidence of Mr. Warren - that had it not been for this expectation the plaintiffs would have claimed

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more by way of compensation. They go on to plead that because the Council acted in breach of their undertaking, the acquisition is unlawful and void. They also plead that the Council is estopped from relying upon the notice of acquisition because they represented to the plaintiffs that the Council would construct an access road to serve the balance of the plaintiffs' land. I have already referred to Mr. Warren's evidence on this subject, and his evidence and the correspondence leave me in no doubt that the Council did in fact lead the plaintiffs to believe that they would construct at the expense of the Council an access by way of a public road from the King's Road to the plaintiffs' land along a route discussed between Mr. Warren for the plaintiffs and Mr. McFarlane, the Council's solicitor.

I find it quite inexplicable that when it was decided to have access to the acquired land by another route, the Council or their solicitors failed to notify Mr. Warren, particularly when in October 1967 the Council's solicitors forwarded the plan to the plaintiffs' solicitors and on its return their attention was drawn in writing to the importance attached by the plaintiffs to the access road. It is curious that the Council's solicitors in returning the plan duly signed to their principals did not mention the fact that plaintiffs had referred to the access road. The Council apparently forwarded the plan to their surveyors who appear to have been already working on the access road. I accept the evidence of surveyor Knuckey that he was instructed to survey the access road so as not to abut on plaintiffs' land, and in the absence of refutation it is difficult not to draw the inference from that evidence that the Council had formed the intention of dishonouring their undertaking to give plaintiffs access. The original plan was produced in Court and it is quite apparent that after the plan had been signed by the plaintiffs' attorney or agent Jethalal Naranji and had passed into the custody of the Council, it was altered by the addition of a drawing of a road marked as "Kinoya Road 40 feet wide". Annexures to the original plan indicate that in January 1970 attempts were being made by the Council's surveyors to lodge the plan in the Land Transfer Office, that is, as altered after it had been signed by the plaintiffs, and so far as the evidence extends, without their knowledge. Of course, I have also to consider the offer contained in the letter from the Council's solicitors on 20th September 1968 in reply to the plaintiffs' letter before action wherein the Council in effect admitted that there was an undertaking to give access but denied that it was in any particular place, and offered to discuss the question of suitable access. But I think it is also

proper to say that subsequent to that letter the Council in their pleadings explicitly denied that an undertaking had ever been given. No explanation was offered by the Council for actions which I would have thought demanded an explanation. Nevertheless I find it difficult to relate this breach of the Council's undertaking to any legal right. I cannot see that the undertaking is in any way part of the acquisition, or that the acquisition and undertaking are interdependent. Reprehensible though it may be in a local body to dishonour its undertakings, I am unable to see that this particular undertaking gave or can give the plaintiffs any rights so far as the compulsory acquisition of part of the plaintiffs land is concerned and if it gave the plaintiffs no rights as regards the compulsory acquisition, it gave them no rights either in respect of the notice of acquisition. It may affect compensation. Indeed, the plaintiffs took the view that it would, and in their letter before action, pointed out that their claim for compensation was based on the express understanding that the Council would construct the access road. But the claim for compensation has, by consent of all parties, been divorced from the present action and will be considered separately. That the dishonour of the undertaking enables the plaintiffs to invalidate the compulsory acquisition of a piece of land of which the undertaking is independent, I am unable to accept. A like position exists as regards the notice of acquisition. I am quite unable to see that the undertaking as to the access road induced the plaintiffs to change their position in any way, much less to alter their position to their detriment, which is the necessary foundation for an estoppel. The plaintiffs pressed upon me the decision of the English Court of Appeal in Regina v Liverpool Corporation ex parte Liverpool Taxi Fleet (1972) 2 W.L.R. 1262, placing particular reliance upon the passage in the judgment of Lord Denning M.R. at p. 1216 where he says:

> "It is said that a corporation cannot contract itself out of its statutory duties . . . . But that principle does not mean that a corporation can give an undertaking and break it as they please. So long as the performance of the undertaking is compatible with their public duty they must honour it . . . . At any rate they ought not to depart from it except after the most serious consideration and hearing what the other party has to say."

I have examined this case, but, I have come to the conclusion that it does not assist the plaintiffs. I observe as Roskill L.J. also observed in that case, that the plaintiffs have not asked for a declaration that the undertaking was given or an injunction to restrain the Council from doing anything contrary to the

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undertaking as to access, but for the invalidating of the acquisition or the notice of acquisition. As I have indicated, I do not think that the relief they ask for is open to them, and they ask for no other. Perhaps I should mention that one of the submissions of counsel for the Council on this particular aspect of the case was that the plaintiffs had accepted acquisition subject to compensation and that compensation is based upon the existence of the access road. Therein I understood him to concede that the dishonour of the Council's undertaking would be a ground for compensation.

The result, then, is that the plaintiffs have failed to establish any of the matters which they set out to establish, and their action must stand dismissed.

The Council have asked that since the action has been dismissed and judgment thereby entered for the defendant the defendant should have costs. Order 62 Rule 3(2) provides

> "If the Court in the exercise of its discretion sees fit to make any order as to the costs of or incidental to any proceedings, the Court shall, subject to this Order, order the costs to follow the event, except when it appears to the Court that in the circumstances of the case some other order should be made as to the whole or any part of the costs."

Now in my view the circumstances of this case are such that some other order should be made. It seems to me that this litigation would never have taken place had not the Council flagrantly disregarded their undertaking to provide an access road to the plaintiffs' land. In so saying I have in mind th e fact that they had already constructed the Kinoya access road before the issue of the writ and that their solicitors' reply to the plaintiffs' letter before action contained no satisfactory answer to the plaintiffs' charge of breach of undertaking. Further, of course, the Council in their pleadings denied having given any such undertaking. But the question is whether the Public Officers' Protection Ordinance Cap. 19 precludes my taking the view that in the circumstances of this case some other order should be made. In Bostock v. Ramsey Urban Council (1900) 1 Q.B. 357 Lord Russell of Killowen C.J. held that the similar section in the English Public Authorities Protection Act 1893, did not affect the discretion of the Court to deprive

successful local body defendants of their costs. That decision was confirmed in the Court of Appeal (1900) 2 Q.B. 616. Mr. Gifford has also urged that Section 2 applies only where public officers are sued, and not whether the Council only are sued. I do not feel obliged to decide that the decided cases do not indicate for the most part whether the local body alone was sued. I prefer to keep in paths which have been already cut. There will be no order as to costs.

(Sgd) K.A. Stuart

JUDGE

Suva,
26th August, 1975

IN THE SUPREME COURT OF FIJI No. 213 of 1968

BETWEEN: MUKTA BEN (daughter of Bhovan) and
SHANTA BEN (daughter of Bhimji)
PLAINTIFFS

A N D : SUVA CITY COUNCIL DEFENDANT

BEFORE THE HONOURABLE MR. JUSTICE STUART
DATED AND ENTERED THE 26TH DAY OF AUGUST, 1975

THIS ACTION coming on the 9th day of September 1974, 10th day of September 1974, 11th day of September 1974, 12th day of September 1974, 13th day of September 1974, 16th day of September 1974, 17th day of September 1974, 18th day of September 1974, 19th day of September 1974, 20th day of September 1974, 23rd day of September 1974, 24th day of September 1974, 25th day of September 1974, 26th day of September 1974, 27th day of September 1974, 1st day of October 1974, 2nd day of October 1974, 3rd day of October 1974, 4th day of October 1974 and 8th day of October 1974 for trial before this Court in the presence of Counsel for the Plaintiffs and for the Defendant AND UPON READING the Pleadings and UPON HEARING the evidence adduced herein and what was alleged by the Counsel for the Plaintiffs and for the Defendant AND THIS COURT having on the 26th day of August, 1975 ordered that judgment as hereinafter provided be entered for the Defendant, IT IS ADJUDGED that the Plaintiffs' claim be and is hereby dismissed and that there be no order as to costs.

BY THE COURT

(Sgd) K.P. SHARP, DEPUTY REGISTRAR

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IN THE FIJI COURT OF APPEAL

Civil Jurisdiction

Civil Appeal No. 44 of 1975

BETWEEN: 1. MUKTA BEN d/o Bhovan
2. SHANTA BEN d/o Bhimji
Appellants (Original Plaintiffs)

and

SUVA CITY COUNCIL
Respondent (Original Defendant)

Dates of Hearing: 5th, 6th, 7th, 8th, 9th, 12th, 13th, 14th July, 1976

Delivery of Judgment:

Mr. K.H. Gifford Q.C. and Mr. Tapoo for the appellants
Mr. T.E.F. Hughes Q.C. and Mr. Jamnadas for the respondent.

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In an action in the Supreme Court of Fiji the appellants claimed against the Suva City Council (hereinafter referred to as "the Council") declarations that a purported acquisition by the Council of part of the appellants' freehold land was unlawful and ultra vires, and that the Council was trespassing on the property - an injunction was asked for. The learned judge in the Supreme Court dismissed the action and this appeal is against that judgment.

The Council required land for a new power station and commenced enquiries about 1963. The appellants becoming aware of this, offered the Council in 1964 a gift of five acres out of a 90 acre block they had recently agreed to buy from one Sukhichand. They also offered to negotiate with the Council for the sale to it of some 50 acres. Neither offer was accepted at the time.

In 1966 the matter was re-opened and the appellants made a further offer; the parties were unable to agree on the price to be paid. The Council was thinking in terms of acquiring a substantial area - some 80 acres, of which 40 was to be from the appellants' land which was comprised in Certificate of Title 8316.

The Council had authority to acquire land (subject to the approval of the Governor in Council) under the Electricity Ordinance (Cap. 57 - Laws of Fiji, 1955) but it did not act under this Ordinance. Under section 133(1) of the Towns Ordinance (Cap.106 - 1967) it had power to acquire land by agreement but no agreement had been reached. So the Council sought to act under section 136 of the last mentioned Ordinance which is as follows:-

" 136.(1) If a town council are unable to purchase by agreement and on reasonable terms suitable land for any purpose for which they are authorised to acquire land the council may represent the case to the Governor in Council and if the Governor in Council is satisfied, after such inquiry, if any, as he may deem expedient, that suitable land for the said purpose cannot be purchased on reasonable terms by agreement and that the circumstances are such as to justify the compulsory acquisition of the land for the said purpose and that the said purpose is a public purpose within the meaning of the Crown Acquisition of Lands Ordinance he may authorise the council to acquire the land compulsorily.

( ) The provisions of the Crown Acquisition of Lands Ordinance shall apply to the compulsory acquisition of land by a town council under the provisions of this section, and in the application of the provisions of that Ordinance to such acquisition reference to "the Crown", "the Governor" or "Government" shall be deemed to be reference to a town council authorised to acquire land under the provisions of this section and reference to "The Director of Lands" shall be deemed to be reference to the Town Clerk."

By letter of the 8th September, 1966, the solicitors for the Council wrote to the Chief Secretary asking for approval under that section for the acquisition of 40 acres of the appellants' land, and enclosing a sketch plan. There was correspondence with Government departments (during which the Council's solicitors were

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advised that it would be more appropriate to apply under the Electricity Ordinance, but this was not done). On the 16th March, 1967, the Town Clerk was advised that the Governor in Council had approved acquisition of 20 acres of the appellants' land. The terms of that letter are material and it reads as follows:-

"Sir,

Acquisition of Land for Power Station, Vatuwaqa

I am pleased to advise that on the 1st March, 1967, the Governor-in-Council agreed that in the terms of section 137 of the Local Government (Towns) Ordinance, Cap. 78, the Suva City Council be authorised to acquire 20 acres of land compulsorily for a power station. The Governor-in-Council considered that 20 acres was sufficient land for the purpose.

2. It is realised that 20 acres is substantially less than the area of land applied for and regarding the balance, the Governor-in-Council further agreed that it would be prepared to consider an application for the compulsory acquisition of a larger area of land on its merits for other purposes, e.g. industrial, within the terms of the Ordinance. "

Section 137 of the Local Government (Towns) Ordinance (Cap. 78) later became section 136 of the Towns Ordinance above mentioned.

The Council gave the matter further consideration and on the 7th June, 1967, their solicitors wrote to the appropriate department asking that the approval be given in respect of twenty acres at the eastern end of the appellants' property; another sketch plan was enclosed. Roading was mentioned in this letter and a request made for permission to give less than three months' notice of intention to take possession - 14 days was asked for. The final approval was given by letter of the 18th July, 1967, as follows:-

"Sir,

Acquisition of Land for Power Station Site

I am pleased to advise that the Governor-in-Council on the 5th July, 1967, signified his approval of the compulsory acquisition of the 20 acres of land on CT.8316 applied for by the Suva City Council under section 137(1) of the Local Government (Towns) Ordinance, being satisfied in accordance with the provisions of that subsection. In giving his approval, however, the

Governor-in-Council expressed the view that the Suva City Council should give the owner of the land a longer period of notice of intention to acquire his land compulsorily than the 14 days proposed. I trust that your Council will be able to agree with this expression of view.

2. The Governor-in-Council also gave his approval to the compulsory acquisition of such land as is necessary, following either of the two routes proposed, to give access to the new power station site from the King's Rd. Following upon discussions (Balfour/Sanders/Williams) you have advised that the Council will follow the access route from the King's Rd. through the Kinoya Subdivision and further that the Council has agreed to provide a tar sealed surface of that portion of the access road from the King's Rd. through the Kinoya Subdivision to the border of the Crown land. The road will then pass through Native land on as direct a route as is practicable to the power station site. "

After this the Council gave notices under the Crown Acquisition of Lands Ordinance (now Cap. 119) dated the 27th July, 1967, which were addressed to Sukhichand, the registered proprietor, and to the appellants respectively, served personally on the former, and sent to the solicitors for the latter. The contents are as follows:-

" CROWN ACQUISITION OF LAND ORDINANCE CAP. 140

NOTICE OF ACQUISITION OF LAND BY SUVA CITY COUNCIL FOR PUBLIC PURPOSES

NOTICE IF HEREBY GIVEN that the land described in the Schedule hereto being part of Certificate of Title No.8316 is required by the SUVA CITY COUNCIL for public purposes absolutely, namely for a site for the electrical power station.

Any person claiming to have any right or interest in the said land is required within three months from the date of this notice to send to the Town Clerk a statement of his right and interest and of the evidence thereof, and of any claim made by him in respect of such right or interest.

And notice is also hereby given that the Suva City Council intends to enter into possession of the said land at the expiration of eight weeks from the date of this

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notice. Any person who shall wilfully hinder or obstruct the Suva City Council or any person employed by it from taking possession of the said lands is liable under the provisions of the Ordinance above-mentioned to imprisonment for three months or to a fine of twenty-five pounds or to both such imprisonment and fine.

DATED the 27th day of July 1967. "

The Schedule is as follows:-

" THE SCHEDULE
(hereinbefore referred to)

ALL that piece of land containing 20 acres situated at the Eastern end of Certificate of Title 8316 being part of the land known as "Naivoce" (part of) and being part of the land contained in Certificate of Title No. 8316 in the district of Suva on the island of Vitilevu as delineated on the sketch plan hereinafter appearing. "

The sketch plan is an outline plan of the land in C.T. 8316, there being an enclosed portion at the eastern end marked "20 acres to be acquired" - the eastern boundary itself is a wavy line which, it is common ground, indicates the high water mark. The north and south boundaries of the 20 acre portion appear to be parallel but, according to the evidence, are not entirely so, and the western boundary is a straight line joining the north and south boundaries, seemingly intended to be at right angles to both, although, if the latter are not quite parallel this cannot be exactly the case. It might be interpolated here that evidence was given that the areas of parcels of land having registered titles in this area and having sea boundaries have been known to vary by reason of accretion and there is reason to believe that this had happened in relation to this particular eastern boundary.

On the 25th October, 1967, Messrs. Munro, Warren, Leys and Kermode, who were then solicitors for all three of the persons who received the notices, wrote to the Council advising that the appellants had registered their transfer from Sukhichand and had given a mortgage back to secure the balance of purchase price. A claim dated the 24th October 1967, was put in by the appellants for compensation for the fee simple "at the rate of £400 per acre, computed on the surveyed area". The claim indicated that the transfer to them was registered

on the 16th October, 1967. Sukhichand, who, it is clear from the claim notices, was as between himself and the appellants entitled to retain possession until the 31st December, 1968, put in a comparatively small claim for his loss - this, the court was informed, has been paid. By the 31st October, 1967, the Council's solicitors had reached the conclusion that there was little prospect of settlement of the appellants' claim of £8,000 for the 20 acres as the Council's offer was only a little over £2000: it would therefore be necessary to take out an originating summons under the Crown (Acquisition of Land) Ordinance to fix the compensation. Some time after this the appellants changed their solicitors and Messrs. Koya & Co. commenced these proceedings in the Supreme Court. The originating summons had not then been issued but we are informed that that step has since been taken.

In the Supreme Court and here, Mr. Gifford has argued at great length that the purported acquisition of the piece of land is unlawful and void, with the consequence that the Council, which has entered onto the land and erected electric works and residences upon part of it, is a trespasser. The grounds relied upon are various and at the risk of tedium it will be necessary for me to go back and set out some of the facts and letters relevant to the dealings between the various parties. It will help to elucidate some of the references, to know that Mr. D.J. Warren, a member of the legal firm of Munro, Warren, Leys & Kermode, acted for the appellants during the negotiations, and Mr. D.M.N. McFarlane of Grahame & Co. acted for the Council. Mr. Jethalal Naranji who is the husband of appellant Mukta Ben and brother-in-law of Shanta Ben appeared to be authorised to act in their interests.

Mr. Warren gave evidence that Jethalal Naranji approached him about the 9th October, 1964, with the proposal of the gift of 5 acres abovementioned. He had conferences with Mr. McFarlane and with the Town Clerk and Electrical Engineer. On the 14th October, he wrote to the Town Clerk a letter containing (inter alia) the following paragraphs:

> " As the writer explained, our clients, in the belief that 5 acres might be sufficient land for a site for the Council's proposed new power house, were prepared to offer the Council a gift of such an area, at such part of the abovementioned property as was best suited to the Council's

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requirements. You explained that the site will have to contain from 50 to 70 acres, depending on the nature of the country and how much of the site can be used.

Our clients have asked us to inform you that they are prepared to enter into negotiations with the Council for the sale of 50 acres or so of the abovementioned property, if it is of use to the Council for a power house site. They envisage subdividing and developing the property for residential, and, if permitted, industrial use. "

Mr. McFarlane re-opened the matter with a letter of the 19th April, 1966 and the reply was (in part) as follows:-

"Our clients regret that they would not be willing to sell the whole 90 acres 2 roods to the Council, as they contemplate subdividing the western end of the property for industrial use, subject of course to such use having town planning approval. They think that it is likely to be approved if the Town Planning Board permits part of this property to be used for an electric power station.

We attach a copy of the plan on C.T. 8316. Our clients offer to sell the eastern portion of Lot 2, which is edged red and should be roughly 50 acres, on the following terms:

1. Price - £200.0.0 per acre, computed on the surveyed area. Terms of payment to be the subject of further negotiation if agreement on other points is reached.

2. Survey -the Council to do all necessary surveys at its expense.

3. Access -

   (a) the vendors would provide without cost the land necessary for a road through the residue of Lot 2, connecting the existing bridge over Wainivula Creek with the land offered for sale. The Council should meet all the cost of forming and maintaining this road, which should be so sited, designed and constructed that it may be used to advantage by our clients

in connection with their proposed subdivision of their residue of Lot 2."

It is to be noticed that the appellants have used a copy of the plan on Certificate of Title 8316 to indicate the area, the price to be assessed on the "surveyed area".

On the 27th April, 1966, there was a conference between the two solicitors, Jethalal Naranji and the Council's electrical engineer at which the question of access to the land was important and was fully discussed. The appellants were intent on obtaining access from the balance of their land to King's Rd. However, a 'phone call from Mr. McFarlane to Mr. Warren on the 12th May, indicated that the Council then preferred about 40 acres of the land towards the West. According to Mr. Warren the Council recognised the importance of the access question and he was invited to submit another offer. This was done in a letter of the 13th May, 1966, the text of which is as follows:-

"Messrs. Grahame & Co.
Solicitors,
SUVA.

Dear Sirs,

NO. 8626 - MC/jc
MUKTA BEN & ORTS. - SUVA CITY COUNCIL

With reference to our letter of 22.4.66 and our subsequent conversations, we have informed our clients of the Council's definite preference for the western part of their land and they have instructed us to make the following offer.

They are prepared to sell some 40 to 50 acres more or less of the western end of Lot 2 D.P. 2957. The position of the dividing line could presumably be influenced by what other land the Council might desire or be able to acquire, either from the Crown or from Chanik Prasad. For instance, if the V-shaped piece of Crown land is of use and can be obtained, the Council may like to move the dividing line to the east of the tip of the V, so as to square-off the block.

For this land, which they had wished to retain for subdivision, their price is £300 per acre. They would be willing to negotiate terms or £6000 and the balance, with 6% interest, over a period of say three years.

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Other terms and conditions which our clients propose are:

Survey - the Council to pay for all necessary surveys, including a plan on which our clients may obtain a balance title;

Access - the Council to provide formed public road access from King's Road to the western end of the balance of our clients' land, without cost to them;

Possession- Refer to 4 on page 2 of our letter of 22.4.66. Mr. Sukhichand has his milking shed on the area which the Council wants.

Costs - Refer to 5 on page 2 of the same letter. Add provision of a Balance title.

Zoning - The Council to obtain town Planning approval for _____ of the balance of our clients' land for heavy industrial use.

We will be happy to discuss the foregoing matter at any time.

Yours faithfully,
MUNRO, WARREN, LEYS & KERMODE

(SGD) D . J. WARREN "

The reply, dated the 12th August, 1966, was a counter offer at a much lower price. It reads:-

"Messrs. Munro, Warren, Leys & Kermode,
Solicitors,
SUVA.

Dear Sirs,

Suva City Council re Mukta Ben & Another

We refer to your letter of the 13th May and subsequent telephone conversation, and have now received further instructions from the Suva City Council.

1. The Council regards the value placed on the land by your client is very high, and after careful consideration, having regard to

prevailing prices, considers that £110 per acre is a fair and reasonable price today for such land having regard to its present use and therefore we are instructed to offer that rate for approximately 40 acres of land more or less out of your client's total. The area of course would be subject to survey.

2. The Council would form the public road access to the western end of your client's land.

3. We note the requirement in regard to possession of the land and arrangements would have to be made with Mr. Sukhichand.

4. All legal costs would be paid by the Council, including costs of survey and the transfer of title and balance title for your client.

5. Zoning: The Council does not consider that there is any obligation on it to obtain Town Planning approval for the use of the balance of your client's land for heavy industrial use, and we are instructed to say that that is a matter for your client to take up with the relevant authority.

We shall be glad if you will put the above before your client and let us know his answer as soon as possible, as the Council now wishes definitely to proceed.

If your client cannot accept the above price, then we are instructed to serve the appropriate notice of acquisition and proceed compulsorily to acquire and use the procedure set out in the Ordinance.

Thanking you,

Yours faithfully,
GRAHAME & CO. "

The appellants emphasize the agreement to give road access and the definite indication of an end to bargaining contained in the last paragraph. The appellants lost no time in refusing this offer in equally emphatic terms. The text of Mr. Warren's letter of the 17th August is as follows:

" We thank you for your letter of 12th August,

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which has been carefully considered by our clients. They instruct us to say that they find the Council's offer of £110 per acre for about 40 acres at the western end of their property quite unacceptable. Considering the potential of this property, not its present use, they regard the offer as quite unrealistic.

As there seems to be no prospect of further negotiation on price, the Council will presumably now proceed with a compulsory acquisition. "

It will have been noted that section 136(1) of the Towns Ordinance, set out above, only comes into play when a council is unable to purchase land by agreement and on reasonable terms. When, therefore, the Council approached the Governor-in-Council the Director of Lands asked a number of pertinent questions in a letter dated the 19th September, 1966, to the Council's solicitors. Among them were -

"(c) full details of the reasons why City Council consider it necessary to acquire as much as 40 acres for a Power Station;

(d) if the 40 acres will not be wholly utilised to accommodate a new Power Station what other uses the Council propose to put the land;

(f) whether or not the Council has obtained an assessment of the value of the 40 acres from a professional valuer in terms of 1966 land prices, and if so, what this amounts to;

(g) whether or not any attempt has been made to reach an agreement on a compromised price somewhere between Council's offer of £110 an acre and owner's demand of £300 an acre;

(h) whether or not the owners have raised any objection to Council's proposal to use the 40 acres as a Power Station site. In other words, whether or not it is reasonable to conclude that the only point of disagreement between the parties is the matter of price to be paid for the land;

(i) if the price to be paid is the only point of disagreement between the parties, has any consideration been given to reaching a

settlement by means of arbitration? "

Details of access were also requested. Answers were embodied in a letter of the 26th October, 1966 from Messrs. Grahame & Co. -

"2. Re: Access. The Electrical Engineer has shown alternative routes. Route A through adjacent Crown land and Route B marked red along the boundaries of the second area out of Title 8315 to be acquired. This would entail the acquisition of the existing private road from the owners, and coming along the strip or right-of-way already shown on the plan that you have.

It was agreed with the owner of Title 8316 that if the Council acquired the area out of the title that a road would be provided to give access to the balance area. "

The appellants emphasize the second paragraph of that extract. Concerning valuation the letter continues -

"5. Re the value of the land. In 1964 Mr. Tetzner gave the City Council a valuation of the land in C.T. 7243, which is adjacent to the area proposed to be taken. That also is a dairy farm, very similar to those conducted on the other land. Mr. Tetzner's valuation was in respect of the land under grass, comprising 36 acres - was £75.0.0 per acre. We spoke to Mr. Tetzner recently in regard to the two areas in question, and he considered they would be about the same value and that £300 asked by the owner of Title 8316 was ridiculous.

We enclose an original stamped agreement between Sukhichand and Mukta Ben and Shanta Ben dated 22nd July, 1964 for your perusal. You will note that an estimated area of 88 acres was sold for £8,100 on terms, the vendor retaining about 6 acres for his house site, which is shown on the plan you already have. This sale price works out at approximately £92 per acre.

We therefore offered £110 an acre, being an advance over £92 per acre, which the Council considered to be the ultimate price they could offer. The dairy farm land in that area is worth no more than £100 an acre today, having regard to the use to which it is now put, which £100 an acre is an

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increase on Mr. Tetzner's valuation two years ago. So it was considered £110 was the limit to which the Council could go, and this was done in order to attract the vendor and to allow something for displacement.

It was pointed out to the vendors that the balance areas in the title would be considerably increased in value due to the Council erecting a Power Station there and giving good road access, thus enabling the vendors to subdivide.

Mr. Warren is acting for the vendor of C.T. 8316, and there is no hope of a compromise, and indeed the Council would not give any more than £110 an acre, which it considers is above the present market value.

The Council's price was thus based upon what the appellants had paid and upon the opinion of a valuer, Mr. S.A. Tetzner, who approached the question on the basis of the use of the land as a dairy farm. Two more excerpts from that letter are relevant. One is -

" There is no objection to the Council's proposal to acquire by either owner, but each wants as much as possible, so that the only point of disagreement is one of price. "

The reference to "either owner" is explained by the fact that the Council was concurrently negotiating with the owner of adjoining land. The second excerpt contains an indication that, to the knowledge of the Council, uses for the land other than that of dairy farming were becoming likely -

" As we pointed out to you the Electrical Engineer considers this is the most suitable site, and the Council must have room for expansion and requires the land proposed as a buffer area. We also mentioned to you that it was considered that Samabula/Vatuwaqa is expanding rapidly, and the growth of Suva is towards Nausori, and that eventually that area along the road to Nausori will become a suburb of Suva, and the proposed site for this power station will be really in another decade more or less in the centre of Suva and its environs.

It is virtually impossible to get any suitable land inside the present City boundary, and indeed it is far too congested. "

The reference to room for expansion and a buffer area touch on the Council's desire for a larger area, and a passage from the notes of Mr. Warren's evidence which touches on the same subject reads -

> "....I knew that existing power house in City caused noise and air pollution had caused protests by nearby occupiers and I knew that defendant wanted to acquire a large amount of land because of these claims and objections. "

A further matter to which great importance was attached by the appellants also emerges from the evidence of Mr. Warren. After the service of the notices of acquisition the Council proceeded with a survey and a survey plan was prepared. Mr. McFarlane handed it to Mr. Warren with a request that it be signed by the registered proprietors, who were by that time the appellants. This was for the purposes of registration. Mr. Warren on the instruction of Jethalal Naranji then borrowed from Mr. McFarlane a locality map (Ex. N) which had been before them when they discussed access earlier, and which showed in red a suggested access road which, if constructed, would have provided good access to the balance of the appellants' land after the acquisition. According to the evidence Jethalal Naranji signed the survey plan (apparently as attorney) and on his instructions Mr. Warren returned it and the locality map to Mr. McFarlane with this letter dated the 26th October, 1967 -

> "Dear Sirs,
>
> 8626 MC/jc - Suva City Council - Mukta Ben & Or.
>
> We return herewith the survey plan which Mr. McFarlane left with the writer on the 24th instant. It has been signed by our clients without prejudice to their claim for compensation and on the understanding that it is the Council's intention to establish access from King's Road to the 20 acre area by means of a public road as shown red in the map returned herewith, portion of which will run along and touch the northern boundary of our clients' land for a distance of about 18 chains. "

It will be remembered that the question of access had been mentioned in earlier correspondence, particularly in the letter of Grahame & Co. to the Director of Lands of the 26th October, 1966, quoted above. It is common ground that the road in fact constructed by the Council

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did not follow the route indicated by Ex. N, nor did it serve the appellants' remaining land. The road stipulated for by Jethalal Naranji did not appear on the survey plan he had signed on that understanding. The Council did not advise the appellants of a change of intention regarding the access road and though by the 13th May, 1968, Jethalal Naranji had heard of the change and informed Mr. Warren, there appears to have been nothing in writing on the subject until Messrs. Koya & Co., on the 16th September, 1968, wrote to Messrs. Grahame & Co. advising that they were acting for the appellants. The letter included this passage -

> " It appears that our clients were led to believe that the Council would establish, at its expense, an access from King's Road to the 20 acres in question by means of a Public Road. This road, we understand, has been shown in red in the said Survey Plan. No satisfactory explanation has been given as to why the Council has not taken any action in this regard when it has already taken steps to construct the Power House and carried out other works on the land in question. In addition, the Council has not yet accepted our clients' claim for compensation. Our clients also wish to place on record that the claim for compensation was based on the express understanding that the Council would construct the said Public Road.
>
> This matter has been dragged for too long and this in turn has caused considerable inconvenience and loss to our clients.
>
> Our clients have re-appraised the whole matter and we are instructed to notify you and the Council that our clients now:-
>
> (a) challenge the validity of the purported compulsory acquisition of their property
>
> (b) claim damages for trespass and interference of their proprietory rights. "

The reply from Grahame & Co. was dated the next day and contains an offer to seek a solution. The text is as follows:-

> "Dear Sirs,
>
> Suva City Council re: Mukta Ben and Shanta Ben
>
> We have your letter of the 19th Inst. and it

would appear that you have not been fully instructed by your clients. We comment as follows:-

1. The Suva City Council did not undertake that the access road would be in any particular place, but the road outside the northern boundary of the land was shown on a plan as "suggested access road."

2. It is noted that your clients expected an access road on the northern boundary and based their claim for compensation on that.

3. The Statutory Notice of Intention to Acquire was issued to your clients through Mr. Warren who was then acting.

4. Mr. Sukhichand, the tenant on the land, gave up possession of the 20 acres to be acquired and was paid compensation as claimed by him through Mr. Warren.

5. By arrangement with Mr. Warren the Council's Electrical Engineer took possession of the 20 acres.

6. Your clients' claim of £400 an acre was always regarded as exaggerated, and was rejected by the Council. It was clearly understood that the matter would have to go before arbitration under the Crown Lands Acquisition Ordinance, which is applicable.

7. The only matter left for determination was the amount of compensation payable to your Company for the 20 acres.

8. There is no doubt about the validity of the handing over of the 20 acres, which was not done under compulsion, and therefore trespass does not arise.

9. Recently Mr. Warren saw the writer in reference to the road, which has been constructed by Council and suggested that Council might extend this road to meet the eastern boundary of your clients' land.

10. Immediately after that we saw the Electrical Engineer, who made the suggestion that such an extension of the road probably could be made

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if your clients would undertake that their main subdivisional road would link up with the Council's road at the common boundary. Before we had time to continue this discussion with Mr. Warren we received your letter.

We deny that your clients have any claim for damages or right to any injunction against our client.

We intend to proceed with the Originating Summons to be issued out of the Supreme Court for the determination of the amount of compensation.

However, in the meantime we are prepared without prejudice to discuss with you the question of suitable access. The writer would be happy to discuss the matter further with you, if you would telephone him of a convenient appointment.

Yours faithfully
GRAHAME & CO. "

Apparently no advantage was taken of this offer, as a writ was served on the council on the 4th October, 1968.

Some reference to the evidence may be necessary later. All I propose to say at this stage to complete this narrative is that some preparatory work for the power house had been commenced before the writ was issued and that it was continued and completed after that date. Evidence called by the appellants indicated that a number of residential type buildings had been erected and that the land occupied by the power house and the buildings was in total only about 1½ acres. The appellants called expert evidence as to the value of the appellants' land and can be said to have established that it was substantially in excess of the figure offered by the Council, based on Mr. Tetzner's earlier valuation and other considerations. The value as put forward by the appellants, as at the date of the notice of acquisition was about $2,000 per acre.

One important concession is to be noted at the outset. It is agreed between counsel that there is no allegation of bad faith against the Council or any person.

Coming now to the submissions of counsel for the appellants in his attack upon the validity of the compulsory acquisition by the Council, I will consider first the allegation that the notice of acquisition

lacked the fundamental requirement of certainty. There was insufficient definition of the land to be taken. In the schedule to the notices the land was described as twenty acres situated at the eastern end of Certificate of Title 8316, being part of the land known as Naivoce and being part of the land contained in Certificate of Title 8316 - as delineated on the sketch plan annexed to the notices. No measurements were shown on the sketch plan. This, in counsel's submission, would not enable the appellants to know what land had been taken and might expose them to penalties for obstructing the Council, particularly in view of the fact that the eastern boundary was high water mark and affected by accretion.

Mr. Gifford referred to Sovmots Investments Ltd. v. Secretary of State for the Environment /1976/ 2 W.L.R. 73, where, at P. 100, Forbes J. made a distinction between acquisition by mutual agreement and by compulsion. In the latter, Forbes J. said, it was necessary to specify precisely what is required beyond the strictly legal easements which are appurtenant to the land described. That was not, however, a question of boundaries, but of what rights automatically went (without mention) with the land being taken. Ashcroft v. Walker (1902) 2 S.R. (N.S.W.) Eq. 131 is merely an authority for the proposition that when the Crown is exercising a statutory power of resumption it must definitely describe the land it is resuming. Vitosh v. Brisbane City Council (1955) 93 C.L.R. 622 was decided by the High Court of Australia. The power being exercised was to declare a "defined" part of the city to be a residential district, and in its judgment the Court said -

> "The ordinance contemplates the definition by metes and bounds or by streets or by some other sufficient topographical description of an area forming part of the city. "

This serves only to suggest that whether or not a description is sufficient may depend upon the wording of the particular legislation but is otherwise a question of fact.

Another decision of the High Court of Australia is concerned with a problem having some aspects of similarity to the present one, though it was not a case of compulsory acquisition. The case is Havenbar Pty. Ltd. v. Butterfield (1974) 48 A.L.J.R.225 in which the land in a sale and purchase agreement contained thirty acres and was shown in a sketch plan annexed to the contract;

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it was a part only of the vendor's holding. Three boundaries of the land sold were fixed, but the northern (dividing the land sold from the part retained) was to be "at right angles" to the subject land. The east and west boundaries were almost but not quite parallel, as is the case in the present instance with the north and south boundaries. It was held that the expression used called for a line at right angles to the general north-south axis of the land as a whole; i.e. a line running midway between the eastern boundaries of the portion sold. Thus the High Court found that there was no uncertainty, as only a line in one particular position would meet the two requirements, that thirty acres should be enclosed, and that the northern boundary should be at right angles to the north-south axis of the land. I will return to this case shortly.

Not much is to be gained from a study of the form of notice prescribed by section 5 of the Crown Acquisition of Lands Ordinance and set out in the Schedule thereto. Section 5 merely enacts that the notice may be in that form or to the like effect. The instruction given in the form is "describe lands giving measurements and showing boundaries wherever practicable". No measurements were given in the present case and it was argued that it was practicable to do so by having the land surveyed before giving notice, there being ample power to enter land for the purpose of a survey contained in the Surveyors Ordinance (Cap. 234). This is so, and it may be that the Council would have been better advised if it had taken this course. In the event, however, the notices were given before a survey was put in hand and therefore at a stage when it was not practicable to give measurements. It is appropriate to mention, while dealing with the form of the notice, that Mr. Gifford made great play with the final paragraph, which contains a warning of the penalty of fine or imprisonment for obstructing the Council in taking possession. I do not think this aspect of the matter adds any weight to counsel's argument. Clearly, on the authorities the land to be taken must be sufficiently described, and, if it is not ascertainable, I would think it unlikely that an owner would be convicted of "wilful" obstruction for disputing an entry.

The question is whether the land to be taken was, at the time of the notices, sufficiently identifiable from the description therein and the accompanying sketch plan. The learned judge appears to have accepted the evidence that the eastern boundary of the area taken was

subject to change by reason of accretion. Accepting for the purposes of the case that the true boundary is the actual high water mark for the time being and not necessarily the line shown in the plan on the Certificate of Title, I think this is a factor relevant only to the measuring off of the 20 acres to be taken, which is in turn determinative of the position of the western boundary of that land. The high water mark, at the time of the notices was, not a broken but a wavy line, joining the two straight lines forming the northern and southern boundaries, and it was definite and ascertainable. Any problem as to area created by accretion would be no more than might arise on a straight out transfer of the whole of the land in Certificate of Title 8316. As to the northern and southern boundaries, they clearly purport to be the same boundaries as are shown on the plan on Certificate of Title 8316 - as that must in the ordinary course of Torrens system procedures be based on survey, those boundaries are also definite and knowable, leaving to be ascertained only the point at which they are to be intersected by the west boundary of the land being taken.

Mr. Gifford relied upon evidence that the sketch plan, as it was admitted to be, annexed to the notices, could not be successfully superimposed upon the official series of maps of the district, or the official plan in the office of the Registrar of Titles, or various aerial photo maps taken for the purpose of the case. With all respect to counsel's detailed argument on this point I do not consider that it has weight, on the question of certainty, to off-set the fact that the north, east and south boundaries were definite and knowable. Perhaps more to the point is the evidence of Mr. R.G. Knuckey, the surveyor called for the appellants to the effect that he would have been unable to define the western boundary without carrying out a high water mark traverse on the eastern side.

That, in my view, pinpoints the real difficulty in this aspect of the case. The western boundary had to be so adjusted that the required 20 acres would be enclosed, and this could only be done when the eastern boundary had been defined. But the necessity of plotting that boundary and making the calculation do not render the area to be taken uncertain - certum est quod certum reddi potest. The plotting of the eastern boundary in fact was done by the Council's surveyors for the purpose of the plan known as D.P. 3265, purporting to show for the purpose of registration the land being acquired. The area shown on that plan was

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20 acres 2 perches. Mr. Knuckey was inclined to challenge the accuracy of the survey of the eastern boundary but conceded that if the plan was correct all that needed to be done to show an exact area of 20 acres, was to move the western boundary rather less than one foot towards the east.

With these considerations in mind, the facts are seen to be very close to those in Havenbar Pty. Ltd. v. Butterfield (supra) with the exception that there is here no direction that the western boundary is to beat right angles to the subject land. Mr. Knuckey's evidence was that the north and south boundaries were not parallel. He was not asked to state the degree of divergence but it is obviously very small. As I would read the bearings shown on the plan on Certificate of Title 8316 the divergence would be just over two degrees, but counsel did not refer to this and I may be mistaken. It was, however, the manifest intention of the maker of the sketch plan that the west boundary should be a straight line without any diagonal tendency, with the result that the angles at the north and south ends of the western boundary would be equal. On that basis there would be no surveying difficulty, as Mr. Knuckey's evidence shows, in the cutting off of an area of 20 acres. I agree therefore with the learned judge that the notice was not invalid on the ground of uncertainty. Such uncertainty as could be said to exist was temporary and due to the operation of natural processes on the eastern boundary. It would need to be resolved for the final adjustment of boundaries and compensation but in the absence of clear authority I would not hold that the notice as a whole lacked the particularity required to indicate to the minds of the appellants what land was being taken. That they were content on this score is evidenced by the fact that Mr. Jethalal Naranji signed D.P.3265 at the request of the Council, making only a stipulation as to roading unconnected with the question of area or boundaries, in October 1967, after the notices of acquisition had been given but before any material work had been done on the site. I think that this action indicated that so far as metes and bounds are concerned the minds of the parties were at that stage ad unum and that the appellants should not be permitted later to rely on what is shown to be an artificial objection.

I would add that I also agree with the observations of the learned judge on the subject of a statement by the Council's engineer in a letter dated the 14th May, 1969, that 22 acres was being acquired, and on the fact that D.P. 3265 indicates an area some

2 perches in excess of 20 acres. The former is apparently an error and the latter is still capable of adjustment if it is regarded by the parties as sufficiently material.

I turn now to Mr. Gifford's submission that the Council had no power under the Towns Ordinance to acquire compulsorily land beyond the boundaries of the city of Suva. Under section 6 of that Ordinance the Council has power (inter alia) to purchase, hold and dispose of real property. Section 132 gives power to establish and maintain public utility services within or without the city boundaries. Section 133 is as follows:-

"133(1) A town council may for the purpose of any of their functions under this or any other law by agreement acquire, whether by way of purchase, lease, or exchange, any land, whether situate within or without the boundaries of the town.

(2) Subject to the consent of the Governor in Council, a town council may -

(a) acquire whether by way of purchase, lease, exchange or otherwise, any land whether situate within or without the boundaries of the town, and to lay out building plots upon or otherwise subdivide such land for the purpose of housing schemes or for the purpose of factory, residential, business or workshop sites; and

(b) sell, let or otherwise dispose of any such plots or subdivisions of land and any buildings thereon. "

That gives power to acquire land in two cases, one of which requires the consent of the Governor-in-Council. The present case falls within subsection (1) as being an acquisition for the purpose of the Council's functions under another law i.e. the Electricity Ordinance. A peculiarity of the wording used has been pointed to - in subsection (1) it is "may ..... by agreement acquire, whether by way of purchase, lease or exchange", whereas in subsection (2) the words "by agreement" do not appear. I do not consider this significant, as a purchase, lease or exchange will in the ordinary course be preceded by agreement. For convenience I repeat section 136(1) -

"136 (1) If a town council are unable to purchase by agreement and on reasonable terms suitable land

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for any purpose for which they are authorised to acquire land the council may represent the case to the Governor-in-Council and if the Governor-in-Council is satisfied, after such inquiry, if any, as he may deem expedient, that suitable land for the said purpose cannot be purchased on reasonable terms by agreement and that the circumstances are such as to justify the compulsory acquisition of the land for the said purpose and that the said purpose is a public purpose within the meaning of the Crown Acquisition of Lands Ordinance he may authorise the council to acquire the land compulsorily. "

I see no difficulty in this section. If the council fails to get by agreement the land it needs for an authorised purpose, compulsory acquisition may be authorised if the Governor-in-Council is satisfied upon a number of points. As a matter of construction I believe this section follows upon and is complementary to, section 133, and relates to the land contemplated by that section. Such land may be beyond the city boundaries. Mr. Gifford has argued that there is room for the application of the maxim expressio unius ext exclusio alterius, in that in both subsections of section 133 the words "whether situate within or without the boundaries" are used, but do not appear in section 136(1). I am unable to agree. In my view section 136 provides, with safeguards, an alternative method of acquiring the land which the local body has failed to acquire by agreement under section 133, the only other method of acquisition authorised, and the maxim has no application where the indications are so clear. Section 136(1) is a section which can only function by reference to section 133 and action attempted thereunder. Another submission, that a compulsory power of acquisition must be given in express terms, I accept, but find that section 136(1) amply satisfies that requirement.

Some difficult and related questions of construction arise from the consideration of the sections of the Crown Acquisition of Lands Ordinance which are intended to govern events following the resolution by the Governor, in exercise of his powers under section 3, to acquire particular lands for a public purpose. I will use the terms of the Ordinance as they stood at the relevant time without substituting "Council" for "Governor" and the like as indicated by section 136(2) of the Towns Ordinance.

The questions are related to the notices authorised by sections 5 and 6 of the Ordinance after the Governor has decided upon acquisition, which may be for an estate in fee simple or for a term of years (s.3). Section 5 provides that the Director of Lands shall give notice to -

1. The registered proprietors;

2. The mortgagees; and,

3. The encumbrancees; and,

4. The lessees.

The content and form of the notice is indicated only by reference to a form in the Schedule, which specifies the land to be acquired, calls upon any person claiming any right or interest in the land to send a statement of it and of any claim made by him in respect of it to the Director of Lands within three months of the date of the notice, and continues that the Governor intends to enter into possession after ..... weeks from that date. There is also a reference to penalties for hindrance. Section 6 provides that the notice (or any subsequent notice) may direct the "person aforesaid" to yield up possession of the land after the expiration of the period specified (not to be less than three months from service unless urgently required). There follows provision that at the expiration of such period the Governor shall be entitled to enter and take possession. The notice in the present case indicated an intention to enter into possession eight weeks from the date of the notice but no point has been taken on this and I assume the reduced period reflected urgency grounds.

The section actually providing for service of the notice is section 7, subsections (1)(2) and (4) of which are as follows:-

"7 (1) Every notice under the last two preceding sections shall either be served personally on the person to be served or left at their last usual place of abode or business, if any such place can after reasonable inquiry be found, and in case any such parties shall be absent from Fiji or if such parties or their last usual place abode or business after reasonable inquiry cannot be found, such notice shall be left with the occupier of such lands or his agent, or, if there be no such occupier or

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agent, shall be affixed upon some conspicuous part of such lands.

(2) If any such person be a corporation, company or firm, such notice shall be left at the principal office of such corporation, company or firm in Fiji, or, if no such office can after reasonable inquiry be found, shall be served upon some officer, if any, or agent, if any, of such corporation, company or firm in Fiji.

(4) All notices served under the provisions of this Ordinance shall be inserted once at least in the Gazette and in a newspaper circulating in Fiji."

It will be convenient also to set out sections 8 and 10:

"8. If at the expiration of three months from the service and publication as aforesaid of such notice no claim shall have been lodged with the Director of Lands in respect of such lands, or if the person who may have lodged any claim and the Governor shall not agree as to the amount of the compensation to be paid for the estate or interest in such lands belonging to such person, or if such person has not given satisfactory evidence in support of his claim, or if separate and conflicting claims are made in respect of the same lands, the amount of compensation due, if any, and every such case of disputed interest or title shall be settled by the Court, which shall have jurisdiction to hear and determine in all cases mentioned in this section upon an originating summons taken out by the Director of Lands, or any person holding or claiming any estate or interest in any land named in any notice aforesaid.

10. The Registrar of Titles shall upon presentation to him of a certified copy of any judgment or order of the Court made under the provisions of section 8 of this Ordinance register the Crown as proprietor and issue a Certificate of Title according to the judgment or order in the name of the Director of Lands. "

A good deal of argument both in the Supreme Court and on appeal was directed to whether the respondent was obliged to serve upon the appellants the notice of acquisition which it did in fact serve. It is said that the appellants, who were at the material time the

equitable owners of the land in question, in that capacity were not among the persons enumerated in section 5 as being entitled to notice. The consequence was, in the respondent's argument, that the appellants had no standing to bring an action based upon deficiencies in the notice they did in fact receive. The learned judge in the Supreme Court was inclined to the view that the term "registered proprietor" should be construed as being wide enough to include other persons who have proprietorial interests. While I agree with the learned judge when he says it would be strange to find an Ordinance conferring such powers and yet neglecting the interests of an equitable owner, I think the term "registered proprietor", derived as it is from the Torrens system of land registration, cannot possibly include an unregistered proprietor. Recent amendments of sections 5 have, I understand, removed this difficulty.

It may well have been that the legislature took the view that the registered proprietor was in a situation of trustee or agent in relation to any person holding under him by an agreement. There was a not dissimilar situation in Berger Paints N.Z. Ltd. v Wellington City Corporation /1973/ 2 N.Z.L.R. 739, though the background legislation is not the same. In delivering the judgment of the Court, at p. 746, Cooke J. said -

> "We now turn to the claim of Myers. Subject to the rights of the vendor, Myers were the owners of the property in equity; and it was not disputed that an equitable estate or interest may support a claim under the Public Works Act. Conceivably the vendor could have made a claim as trustee for Myers, but the respondent did not contend that, if there is a valid claim for the loss of Myers' interest over and above the amount recoverable by Bergers for themselves, that procedure should be insisted upon; nor do we consider that it should. "

Being in a position of trust it would be the duty of the registered proprietor to bring the notice to the attention of his purchaser, of whose existence the acquiring authority may have been unaware. The form of the notice in the Schedule supports this approach as it requires any person claiming a right or interest in the land to establish his interest and claim; and there is no limitation upon the nature or quality of the interests and claims to be dealt with under section 8 as regards compensation. Certainly if an equitable owner had a notice brought to his attention in some such way,

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and so worded, it must have been the intention of the legislature that he should act on it, and a fortiori, where, as here, the acquiring authority in fact serves a notice upon an equitable owner, the authority cannot be heard to say that the recipient, having an undoubted claim, may not rely on any deficiencies to which the notice may be subject. This was the finding of the learned judge below and I agree with it. The position is, I think unaffected by section 18 of the Ordinance which provides that service of such a notice is not an admission by "the Governor" that the person served has any estate or interest.

The next question upon this part of the legislation arises from the fact that the council did not comply at all with the requirements of section 7(4) as to publication of the notices in the Gazette and in a newspaper. Mr. Gifford's argument was that (contrary to the learned judge's finding) the requirements of section 7(4) were not directory but mandatory; that even if the requirements were directory only they must be fulfilled substantially; and that they amounted to a condition precedent in which case any discussion of the distinction between mandatory and directory requirements was futile and the notice was invalidated by the breach.

The court was referred to a dictum of Gresson J. in Auckland Harbour Bridge v. Haihe [1962] N.Z.L.R. 68, 83 when he said:-

> "The words of a statute which plainly express a condition precedent are not lightly to be qualified or modified by treating them as merely directory. The principle is that, since the ordinary sense of enacting words is primarily to be adhered to, provisions which appear on the face of them to be imperative cannot, without strong reason, be held to be directory."

That was a Worker's Compensation case and a minority judgment - the majority based themselves (inter alia) on the statement that no general rule could be laid down - Montreal Street Railway Co. v Normandin [1970] A.C. 170. Mr. Gifford relied also on Jolly v. District Council of Yorkstown [1968] 119 C.L.R. 347, at 350:-

> "Whilst we agree with their Honours that it is not always easy to decide whether a particular statutory provision is mandatory or directory, we have no doubt that if compliance with a

statutory requirement is made a condition precedent to the maintenance of an action then, as Higgins J. said in Sandringham Corporation v. Reyment (1928), 40 C.L.R. 510, at p. 533, "all arguments to the effect that it is to be treated as directory, not imperative, become futile. Courts cannot ignore a condition precedent imposed by the legislature....."

Cullimore v. Lyme Regis Corporation [1962]

1 Q.B. 718 was a case in which a council performing certain works was authorised to levy charges on owners and was required to determine the charges within 6 months. It was held that as the work scheme was formulated in exercise of statutory powers and not merely in performance of statutory duties the requirement was mandatory, and failure to determine the charges until the expiration of 23 months rendered the notice null and void. The same result would have followed had the requirement been merely directory, as the delay was such that it could not amount to substantial compliance with the requirement.

Mr. Gifford referred also to three cases in the Privy Council in which he submitted that failure to comply with a requirement of publication of notice invalidated a purported compulsory acquisition. They are Corporation of Parkdale v. West (1887) 12 App. Cas. 602, Northshore Railway Company v. Pion (1889) 14 App. Cas.612 and Saunby v. Water Commissioners of the City of London and the Corporation of the City of London (Ontario) [1906] A.C.110. The facts and law involved in these cases differ substantially from the present. In the Parkdale case the Act provided specifically that until a map, plan and book of reference was deposited the execution of the railway could not be proceeded with. Such deposit and notice of it in a newspaper were made general notice to all parties concerned and were the foundation for all steps assessing compensation; further (p. 113 of the report) compensation had to be paid before the land was taken or the right interfered with. Both of these matters were deemed conditions precedent by their Lordships.

In the Northshore Railway case consequential damage was caused to a riparian owner by an embankment made by the appellant company. The map and plans had been duly deposited in this case, but no special notice offering compensation and nominating an arbitrator had been served as required. Only when the

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compensation agreed upon or awarded had been paid or tendered did the power to "take possession of the lands, or to exercise the right" vest in the railway company. This failure, therefore, to inaugurate the arbitration procedure was held to be a breach of a condition precedent.

In Saunby's case the legislation authorised the Commissioners to enter upon land required for waterworks, and to appropriate any river etc. and to contract with the owners of the land and those having rights in the water, for purchase. In case of disagreement the matter was to go to arbitration. The Privy Council held that this meant that before the Commissioners could appropriate any land or water they must endeavour to contract with the owner - give him a notice to treat for some definite subject matter. Before lack of arbitration could be put forward as a defence by the Commissioners to an action for an injunction and damages they must have proceeded in the mode prescribed by the legislature. In the present case the Council says it has given the requisite notices and has always been ready and willing to have the compensation determined in the proper manner.

There can be no doubt that the failure to observe the respective legislative requirements specified in those cases was a failure in a true condition precedent. The question is whether there is a complete parallel in this case. Clearly the requirement of giving notice pursuant to section 5 is mandatory though the class of persons to receive it is rendered to some extent indefinite by the qualification "or to such of them as shall after reasonable inquiry be known to him". Unless such a notice is coupled with the notice authorised by section 6 it is doubtful whether it would operate so as to confer any actual rights in the land upon the Governor.

The notice under section 6, either coupled with the section 5 notice or as a second notice, is clearly a condition precedent to the right to enter and take possession. These notices must in the nature of things precede the assessment of compensation under section 8, but, unlike some of the legislation in the cases to which reference has been made, and though section 3 requires the Governor to pay compensation, neither the assessment nor the payment of compensation is a condition precedent to the right to possession. The assessment, by the combined effect of sections 8 and 10 is a condition precedent to the Council's right to

become registered proprietor. I agree with Mr. Hughes' interpretation of section 8 in that the opening words "if at the expiration of three months from the service and publication as aforesaid of such notice", apply only to the case where no claim shall have been lodged. I do not find that the search for implications fit to be attached to the words "service and publication" in section 8 is helpful - the language used in the enactment is not meticulous, as is indicated by the reference in section 6 to "the service of such notice" and the corresponding reference in the prescribed form in the Schedule to "the date of this notice".

I come then to section 7. The "giving" of notice is a condition precedent to the accrual of a right to enter into possession. Section 7 lays down how the notice is to be given. It is undoubtedly mandatory to the extent that it requires service but beyond that I do not think that subsections (1) (2) and (3) are more than directory or enabling in that they prescribe modes of service to fit different circumstances. If the acquiring authority chose an inappropriate mode of service for the mortgagee, could the registered proprietor, properly served, be heard to say the acquisition was bad on that account. I think not.

Section 7(4) differs from the three preceding subsections in that it has no enabling element. It is an additional requirement and its object is not entirely clear. Probably it is intended as an additional safeguard in the cases where there has been no personal service e.g. if the notice has been left on the land. It does not seem to have been designed for the benefit of unknown possible claimants as it is limited to notices already served, though it may serve factually for that secondary purpose. It may help to acquaint other interested parties with the names of those seeking compensation. By virtue of section 8 it has a bearing upon the court's jurisdiction over compensation assessment when there is no claimant. I acknowledge the weight of authority indicating that local bodies exercising statutory powers must conform to the statutory requirements but I do not find this case on all fours with those where there must be a giving of public notice by advertisement (e.g. Scurr v. Brisbane City Council (1973) 47 A.L.J.R. 532). The possible claimants in such a case as the present one are usually more definite and knowable. For these reasons I would find that it is the giving of notice which is the condition precedent and that the condition was sufficiently complied with by personal service. On

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that the appellants acted by lodging a claim, and there is no suggestion that they were damnified in any way by the failure to gazette and advertise. In my view they cannot now rely upon that failure as a vital part of a condition precedent. It may be said that this finding amounts to a licence to a local authority to disregard the requirements of the legislation but I consider it is more the severance of the essential from the unessential, and to hold otherwise in the circumstances of this case would be to raise artificiality to an unjustifiable level. There may be other circumstances in which the failure to gazette the notices would be fatal to an acquisition but as between the present parties and on the present facts I do not think that the interests of justice would be well served by such a consequence.

It is convenient to deal next with a number of submissions upon which Mr. Gifford relied strongly, based on section 136(1) of the Towns Ordinance, which has been set out earlier in this judgment. Under the terms of that section before the Council could represent "the case" to the Governor-in-Council for the purpose of obtaining authority to acquire land compulsorily, the position must have arisen that the Council was unable to purchase the land by agreement and on reasonable terms. The Governor-in-Council must be satisfied that such was the case before granting approval.

The first contention under this head was that the Council had never really negotiated with the appellants over the price. Its attitude had been uncompromising; as the correspondence showed, it had fixed a maximum offer at £110 per acre and communicated its decision that if the figure stated were not acceptable it would proceed to acquire compulsorily. This is correct, but it may be added that the appellants were fully in agreement that there was no advantage to be gained by further negotiation. Mr. Warren's letter to that effect is set out above. The Governor-in-Council it was claimed, was misled when the Council's solicitors, in their letter dated the 8th September, 1966, to the Acting Chief Secretary, referred to negotiations with the owners. There is, in my opinion, nothing in this point. A full explanation was given in the solicitors' later letter to the Director of Lands, dated the 26th October, 1966, and quoted (in part) above. I think the learned judge in the Supreme Court was right when he rejected the suggestion that no negotiations took place and said that the parties realised that there was a gulf between them over which neither was prepared to pass.

The next matter, which arises from the use in section 136(1) of the words "on reasonable terms", poses questions of difficulty. One accepted fact is that the land in question could have been acquired by the Council by agreement from the appellants at £300 per acre, plus the cost of an access road which would serve the appellants' remaining land. Brief mention has been made above of the evidence of value tendered on behalf of the appellants. Mr. Uday Singh valued the land as industrial land and as at July 1967 at $2,240 per acre, and Mr. J.D. Robinson, a valuer from Australia of very considerable experience, made what he described as a conservative estimate of $2,000 per acre. Mr. Tetzner's valuation was based on rural use and resulted in the offer by the Council of £110 per acre. There is no finding by the learned judge that he accepted the appellants' valuation in full but he quite evidently regarded that of Mr. Tetzner as wrong. In his judgment he said -

> "On the whole of this aspect of the case the plaintiffs contend that the Council's valuation was so hopelessly inadequate and so contrary to all recognised principles of valuation that the Governor in Council was inevitably misled and that the Council must take the responsibility for so misleading the Governor in Council. To that intent considerable evidence of valuation was led, and it became quite apparent that the Council's valuer had not approached the matter with the care which might have been expected of him. That is not, however, to condemn the Council who had employed a valuer with high credentials, and might have expected a somewhat more competent valuation that they in fact received. I think also, although no point of it was made in argument, that in the matter of the price payable by the Council, it should be borne in mind that they were to construct an access road, and the cost of that road might be expected to reduce the amount payable by way of compensation. Nor am I prepared to accept the contention that the Council misled the Governor in Council by omitting to disclose that the plaintiffs had offered 5 acres free of cost. The Council's attitude all along had been that they required a large area, and they regarded 5 acres as quite inadequate. I cannot see that they misled the Governor in Council by failing to mention the matter of the suggested gift."

At that stage the learned judge was considering whether

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the Council had misled the Governor-in-Council on this subject, in relation to ability to acquire on reasonable terms. Earlier in his judgment he had said -

> "I think that the expression 'on reasonable terms' means not only that the Council must consider the terms reasonable but that they must appear reasonable according to the actual facts. The way in which the matter was put to the Governor-in-Council was that the plaintiffs had bought the land in 1964 at £92 or $184 an acre, that the Council's valuer in that year had valued the adjoining land at £75 or $150 an acre, and that it was being used as dairy land, and that in offering £110 or $220 the Council were making a fair offer. There was no evidence that the value of the land was being enhanced by subdivision at that time, but it was quite obviously the Council's expectation that the value would be enhanced by their use of the land as a power station and perhaps by the development of the surrounding land as industrial land. I have come to the conclusion that the Council might fairly say that they were unable to purchase the land required on reasonable terms."

The proper construction of section 136(1) presents a difficult problem, accentuated in the present case by the extreme nature of the estimates of value involved. I would assume that "on reasonable terms", in the present context means "at a fair price". If the valuation put forward at the hearing of the action by the appellants (say $2,000 per acre) is accepted as correct, not only was the Council very misguided in its own estimate but the value put by the appellants themselves on their land in dealing with the Council was markedly below its true worth. Even if Mr. Robinson's valuation is scaled down to some extent it is clear that, by paying what the appellants asked, the Council could have obtained the land it wanted upon reasonable terms.

The difficulty is that this was not apparent to the Council at the material time. When the Council approached the Governor-in-Council the appellants were asking £300 per acre (plus a road) for land purchased by them only two years earlier for £92 per acre. The land was in fact being used as a dairy farm at the time, as was the land on either side of it.. In all quite a large area of land was involved and the Council might well have thought that the subdivision potential was a fairly remote one. The valuations of Mr. Uday Singh

and Mr. Robinson, though they purported to relate back to the material time, were done later and for the purposes of this case. They were not extant when the Council had to decide whether or not to seek approval for compulsory acquisition. I do not in the circumstances consider that the Council was blameworthy if it reasoned that no potential for subdivision could have arisen within the space of two years which would more than treble the value of the land in question. On Mr. Gifford's interpretation of section 136(1) of the Crown Acquisition of Lands Ordinance, however, these considerations would be irrelevant as in his submission the approach to "reasonable terms" must be completely objective.

Mr. Hughes' argument on behalf of the Council was that the intention of the section was to make available the compulsory acquisition procedure in any case where the two parties - landowner and Council - were unable to agree on what was a reasonable price. Such disagreements were of daily occurrence between would be vendors and purchasers. The objective construction urged by the appellants would mean that if in the event of compulsory acquisition proceedings it were decided that the compensation payable should be as much as or more than the owner had asked for the land, the owner could have the whole proceedings set aside. This would entail that a Council would have to predict whether the land owner's asking price would be held to be reasonable. If the Council considered it would, of course the price could be accepted and section 136 becomes irrelevant. If the Council considered the asking price too high and was later shown to be wrong the proceedings could be rendered nugatory: such an interpretation would stultify the legislation. The alternative construction, that is, that the section applies if the parties are unable to agree upon what are reasonable terms, would render it workable.

In my opinion the construction urged by Mr. Hughes is to be preferred. As the matter appears to me the first part of section 136(1) merely authorises a council to represent a case to the Governor-in-Council. It does not authorise the Council to make any decision. To "represent" a case may mean a number of things - to present again the evidence upon which the Council decided to apply for approval may be one. Among many meanings given in the Shorter Oxford English Dictionary is "To describe as having a specified character or quality", which might apply in that the case is submitted to the Governor-in-Council as one in which a

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council considers it is unable to acquire land on reasonable terms. What the Council cannot do is to say as a fait accompli - "This land cannot be purchased on reasonable terms" or, "The terms offered are not reasonable" as these are the very questions to which the Governor-in-Council must find the answer for itself. The Council might represent that it was satisfied that the terms proposed were not reasonable and the question is then immediately shown as subjective. The Governor-in-Council might give weight to the Council's opinion as evidence but is under a duty to make up his own mind on the question.

Section 136(1) contains two safeguards. First the council concerned must be of opinion that it cannot purchase land on reasonable terms; if it were of the contrary opinion it would not invoke the section. Second, the Governor-in-Council must be satisfied before giving approval that such is the case, clearly a subjective opinion to be formed upon consideration of the case as represented and such inquiry as the Governor-in-Council may make. If a council could only represent a case to the Governor-in-Council if terms offered are in fact not reasonable, who is to decide that fact, and what purpose would there be in asking the Governor-in-Council to adjudicate upon it. I would add that I think one of the purposes of the section is to ensure that the possibility of obtaining land from other sources is not overlooked, and the bargaining position between the particular owner and council is only one of a number of matters to be considered.

In my view therefore, if the Council erred in its estimate of what constituted reasonable terms that is not a matter (there being no suggestion of mala fides) which invalidated either the representation by the Council under section 136 or the approval given by the Governor-in-Council. As to the offer of five acres as a gift, this was made in 1964 and there is no evidence that it was repeated when negotiations began again in 1966. Apparently it was rejected as unsuitable, as a much larger area was wanted by the Council. If the Council's estimate of the amount of land required was erroneous (and this is a matter to which I shall return) it must be accepted that the error was made bona fide, and for the reasons I have given in relation to the "reasonable terms" question the de facto availability of this area would not invalidate the representing of a case by the Council under section 136.

In my judgment, therefore, there is nothing in the

appellants' argument on this particular aspect of the interpretation of section 136 of the Crown Acquisition of Lands Ordinance which should result in the appeal being allowed.

I turn next to the question of natural justice and Mr. Gifford's argument on the audi alteram partem rule. The learned judge in the Supreme Court gave careful consideration to this question. Among other authorities he considered Gaiman v. National Association for Mental Health /1971/ 1 Ch. 317, 333, Hounslow London Borough Council v. Twickenham Garden Developments /1971/ 1 Ch. 233, 259, Furnell v. Whangarei High Schools Board /1973/ 2 W.L.R. 92, Maxwell v. Department of Trade /1974/ 2 ALL E.R. 122, Ridge v. Baldwin /1964/ A.C. 40, Cooper v. Wandsworth Board of Works (1863) 143 E.R. 414 and De Verteuil v. Knaggs /1918/ A.C. 557. He commented on the fact that the two cases last mentioned were cases of deprivation of property without compensation, and also noted that recent cases, such as Furnell and Maxwell construed the requirement as a duty to act fairly. The learned judge then considered such cases as Attorney-General v. De Keysers Royal Hotel /1919/ 2 Ch. 197 and /1920/ A.C. 508, and placed considerable weight on the judgment of the Queensland Supreme Court in Amstad v. Brisbane City Council (No. 2) (1967) 16 L.G.R.A. 379. He commented that there was no provision for conflicting claims or for objecting in the Crown Acquisition of Lands Ordinance : in fact section 8 provides for conflicting claims to be settled by the Supreme Court on the application of the Director of Lands or a person interested. There is certainly no provision for objections. The learned judge concluded that the audi alteram partem principle had no application to a bona fide acquisition of land under that Ordinance. I do not propose to examine the authorities listed (which are in general well known) in detail but will make brief reference to the Amstad case. The passage quoted by the learned judge was from p. 384 of the report -

> "Whether the council is obliged to comply with the principles of natural justice depends fundamentally upon the legislative intention as expressed in the provisions of the statute. An examination of these provisions shows that the acquisition of land by the council entitles persons who have any estate or interest therein to adequate compensation for any loss flowing from such acquisition. The acquisition of property in these circumstances cannot be equated to the deprivation of proprietary

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rights such as was considered in Cooper v. Wandsworth District Board of Works. The substitution of compensation for the loss of property taken by a public or local authority acting under statutory power takes away, in my opinion, the element of prejudice upon which the rule of natural justice is based."

The case was one in which the Act relied upon authorised the local authority to "take any lands within the area of the City which the Council, by resolution, declares to be required by the Council". Those are strong words and the provision regarding compensation in the Act was very specific; it stated that the estate being taken would be deemed to have been converted into a claim for compensation. The case resembled the present one to some extent in that there had been much correspondence attempting to agree compensation, but of course every case must be construed in the light of its own facts and the particular legislation with which it is concerned.

I do not think that the learned judge, by his finding abovementioned, meant that in relation to a compulsory acquisition under the Crown Acquisition of Lands Ordinance the provision for compensation eliminated the necessity for the observance of the principle of fairness in the acquisition proceedings. In the case of Coles v. County of Matamata (C.A. 69/74 - 1976 not yet reported) recently decided by the New Zealand Court of Appeal it was held that the requirements of natural justice (treated in the judgments as being synonymous with fairness) had to be observed in addition to such procedural rules for objectors as had been prescribed. Compensation was claimable in that case, and it may be well to quote the following succinct passage from the judgment of Cooke J. -

"In my opinion many natural justice cases, this among them, reduce to a fairly simple question: in the light of the statutory background and all the circumstances of the particular case, was the procedure adopted fair?"

On the question whether the procedural provisions of the particular Act, relating to objections, was intended to be a complete code, Richmond P. in the same case said -

"I do not think that the statutory duty, to disclose at the hearing, the reasons which have led the council to a preliminary decision to take the land should be interpreted as removing from the council

> a duty, as a matter of 'fairness' to disclose to an objector material in the possession of the council which is relevant to the issue raised by the objector and is to be considered by the council when deciding whether to allow or disallow the objection. "

I have referred to this case as it indicates how all pervading the principle of "fairness" has become, and that in the pursuit of that principle emphasis must be given to the particular facts of each case. The learned judge in the Supreme Court did not neglect this aspect of the matter: his judgment continued with a finding that there was no conflict with the (then) Constitution of Fiji and a finding that the appellants were not unfairly treated by the Council. The appellants had, in his view, with which from my perusal of the record of evidence I respectfully agree, given the Council "the green light to go ahead".

Coming to the question of the approval given by the Governor-in-Council, the learned judge, correctly in my view, directed himself as follows:

> "What is really to be decided here is not so much whether the plaintiffs were entitled to be heard, but rather whether in all the circumstances they have been unfairly treated by not being heard. "

The learned judge's conclusion on the three matters which the Governor-in-Council was called upon by section 136 to consider, namely, that suitable land could not be purchased on reasonable terms by agreement, that the circumstances justified the compulsory acquisition for the intended purpose and that the purpose was a public purpose as defined, was that in the state of the evidence none of these matters demanded an inquiry as to whether the land should be taken. Considering the question of possible unfairness to the appellants, the learned judge expressed his conclusions as follows -

> "By contrast, in this case, when the plaintiffs received the notice of acquisition, they did not repudiate it indignantly, and aver that they wanted to be or should have been heard, they lodged a claim for compensation. In my view there is nothing in this correspondence, or indeed in any evidence placed before the Court to indicate that there was any issue between the

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plaintiffs and the Council save that of compensation for the land to be taken, whether by payment of money or the building of an access road. I would say also, with all deference to the plaintiffs' present arguments, that I am somewhat doubtful if they would have objected, even had they been given the opportunity. They were quite satisfied until sometime about the middle of 1968 to rely upon the Council's promise to provide them access in the event of compulsory acquisition. It seems to me that the Governor-in-Council was entitled to act upon such information as to him seemed fit, and that his action cannot be challenged unless it were shown that he had acted unfairly. In my view that has not been done. "

In argument before this court on this subject Mr. Gifford's submissions included the complaint that the Council had misled the Governor-in-Council into believing that it could not purchase the land on reasonable terms, and had failed to disclose the earlier offer of 5 acres free. I have already dealt with these matters. Then it was claimed that the Council should not be permitted to retain the benefit of the Governor-in-Council's approval because of its failure to implement its undertaking concerning the access road. The learned judge found this failure most reprehensible but found that there had been no misleading by the Council. I do not see that this is a matter which should go to the root of the question of approval. It is a financial matter and no doubt did influence the appellants in the price they would have been willing to accept for part of their land by way of sale and the amount of their claim for compensation. Once there was compulsory acquisition the question of compensation would be at large and presumably the award would be full and fair. The question whether the appellants and the Council were proposing to implement a collateral undertaking affecting the quantum of compensation does not seem to be relevant to the decisions the Governor-in-Council had to make before deciding to approve. I do not think the point goes to unfairness when all that the appellants are entitled to by law is compensation agreed or determined under the Crown Acquisition of Lands Ordinance.

The next submission under the heading of "fairness" was that if the Council had notified the appellants of its application to the Governor-in-Council they would have been placed in a different position because they could have drawn the attention of the Governor-in-

Council to the fact that they had bought the land for subdivision and could have lodged evidence to show the market value of the land and drawn attention to the land's potential. The answer to this is that the appellants could not at that stage have had at their disposal the very high valuations later relied upon; otherwise the price they were asking must have been much higher. Then it was submitted that the appellants could have made submissions to the Governor-in-Council that the Council did not require the amount of land it was asking for, or even the five acres it had been offered. I will return to this matter, but on the question of the fairness of the acquisition proceedings I think that on the particular facts of the case the finding of the learned judge that there was no unfairness is to be supported. The case was not put forward to the Governor-in-Council as one in which there were two competing parties, one the Council asking for approval, and the other, the appellants, resisting the application. It was not a case, like Hoggard v. Worsborough Urban District Council /1962/ 2 Q.B. 93, where two parties were in dispute on the issue the authority had to decide. The case was represented as one in which there was only one basis of disagreement, which was the amount of compensation to be paid; and in my opinion the evidence amply shows that that was in fact the case. The Governor-in-Council would not be absolved from the need to decide whether the requirements of section 136 were fulfilled, but as a matter of procedural fairness he was justified in not asking for submissions from the appellants, when the only matter in issue was one for the Supreme Court to decide. In my opinion the subsequent change of mind on the part of the appellants, even keeping in mind the fact that the change of mind appears to have been caused by an act of the Council which was strongly criticized by the learned judge, does not justify a finding that the Governor-in-Council acted less than fairly to the appellants in approving the acquisition. Looking at the natural justice question entirely from the point of view of fairness related to the particular facts of the case, I am therefore of the opinion that the appeal cannot succeed on this ground.

The matter of the area compulsorily acquired however, remains to be considered, from the point of view of jurisdiction. As the correspondence indicates, the application for approval was made on the basis that the land was required for a power station, some mention being made of residential quarters for staff. The approval given was expressed to be for 20 acres of land

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"for a power station", out of the 40 acres of the appellants' land which had been applied for. After the Council took possession it proceeded with the building of a power station and also erected four blocks of flats for the accommodation of the power house staff. This has been challenged as a use of the land for a purpose not authorised by the approval given. The case of Attorney-General v. Pontypridd Urban District Council /1906/2 Ch. 257, in which an injunction was granted to prohibit the use of a refuse destructor on similar grounds, was relied upon. Having considered that case, the learned judge in the Supreme Court held that the question was whether the housing of employees for the electricity undertaking was reasonably incidental to the carrying on of that undertaking; that what was reasonably incidental was a question of fact; and that the provision of the housing was reasonably incidental and therefore the use of the land for housing was not ultra vires.

With this finding I agree, and I do not think the implication from words used in the pleadings that the two purposes were separate, rightly pointed out by Mr. Gifford, is sufficiently cogent to induce a contrary view. My interpretation of the correspondence between the Governor-in-Council and the Council is that the reference in the letter of the 16th March, 1967, to a further application for a larger area for other purposes, "e.g. industrial", is not intended to refer to such matters as housing for the power station employees. The example given illustrates what was in mind.

However, the matter does not end there. The evidence of Mr. Knuckey indicated that the total power house area enclosed by fencing was 6.1 acres, the greater part of which was unused land. The total area actually occupied by buildings, including the flats and their gardens was only 1.6 acres. This being the position some seven years after the notice of acquisition it is submitted for the appellants that it is clear that much more land was taken than was necessary for the only public purpose relied upon - the electrical undertaking. As I have indicated when discussing the question of natural justice, the taking of an area of 20 acres was never in issue between the parties until this litigation began. Mr. Gifford has contended strongly that because the approval given by Mr. Jethalal Naranji to the survey plan, was given on a condition which the Council failed to fulfil, the approval should not in equity be held against the appellants. That is of course only part of

the evidence and I do not agree that the whole of the facts should not be before the court. If, however, this particular argument can successfully demonstrate that the approval of the Governor-in-Council was given without jurisdiction as to a large portion of the area, the earlier apparent acquiescence of the appellants would not cure this. In Pike v. Wellington City Corporation (1910) 30 N.Z.L.R. 179, 192 it was observed that where it is plain that a proclamation has been issued without statutory authority, and therefore without jurisdiction, the court can declare it to be void, and can act as if it had never been made, but where the Governor has acted within his jurisdiction the court could not review his acts.

Most of the authorities, like the Pontypridd case, are directed to circumstances where a local body has acquired land for one purpose and has used it or proposes to use it for another purpose not authorised. The court has been asked to restrain the local body from such unauthorised user. In Grice v. Dudley Corporation [1958] Ch. 329, 339 it was said:

> "Thirdly this court has an inherent jurisdiction to control the exercise of statutory powers if, but only if, it can see that the powers are being exercised not in accordance with the purpose for which the powers were conferred. In such a case it has the power, and the duty at the instance of the Attorney-General on behalf of the public or of a person damnified, to restrain the further exercise of those powers not in accord with the special Act".

There is reference in Grice's case to Attorney-General v. Hanwell Urban District Council [1900] 2 Ch. 377, where the property had actually been conveyed to the council but the council was restrained from using the property for a hospital when it had been acquired for a sewage works. There was a reference in that case to it being clear that if land acquired was not immediately required for the purpose of its acquisition it could be used temporarily for other not inconsistent purposes. In England various Acts have governed the disposal of land acquired but then not required for a particular purpose, and in Fiji section 135 of the Towns Ordinance provides that such land may be sold with the consent of the Governor-in-Council.

The following dictum is taken from London & Westcliffe Properties Ltd. v. Minister of Housing and

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Local Government [1961] 1 W.L.R. 519, 528 -

> "If a local authority seeking confirmation of a compulsory purchase order makes it plain before confirmation is given that it proposes to use the land to be acquired in a way which directly involves a contravention of the Act, it seems to me that the acquisition of itself can be called ultra vires.... If it is a matter of anxiety or suspicion it might be that the court would be very slow to interfere, taking the line....that one can normally rely on local authorities to observe the law".

In Gard v. Commissioners of Sewers of the City of London (1885) 28 CH.D 486 the Commissioners had power to take land for the widening of streets. It was conceded that they needed only 5½ feet of a section for this purpose but contended that they were justified in taking the whole section with a view to making a profit. They were restrained from proceeding on their notice to treat. At first instance Kay J. said, - at p. 499 -

> "I must not omit to say that the section I have been considering .... (is) open to this observation, that there may be very often cases where, at the moment of the adjudiciation the Commissioners do not know exactly how much they will want, and therefore bona fide they cannot say whether they really will want the whole or only part of a house - whether they will want five feet of a piece of land or five yards, and they may therefore adjudicate bona fide and rightly and within the meaning of the Act that so much is wanted, either the whole or part of a house. But to say that after they have come to the conclusion exactly what they will want, they can claim more, would I think be wrong. "

The following, from the judgment of Baggallay L.J. at p. 507 puts emphasis on honest belief -

> "Now it appears to me that if the Commissioners honestly (....in the sense of believing they may require the entirety of the property for the purpose of improvement) come to the conclusion that the possession of the whole of the property, and not merely the part of it which would interfere with the improvement, is necessary for the purposes of the improvement, the words of this section are

are wide enough to enable them to make an adjudication to that effect. "

Bowen L.J. summed up that case very clearly, at p. 511 -

"Now, first of all, with regard to the finality of the adjudication. Supposing that the Commissioners are not entitled to take the whole when they only want a part, it seems to me to be obvious that they cannot by simply asserting what is admittedly an untruth, clothe themselves with jurisdiction. They have, no doubt, a right to take what is necessary for their purposes, but the adjudication must bear some relation to reason. I do not say they must always be right, but there must be a probable ground which a reasonable person could take in support of their decision. If they have not the right to take the whole when they do not want it, their saying that they want the whole, when in the same breath they admit they only want one-fourth of it, will not help them. "

Another case in which it was alleged that land had been acquired for a purpose not authorised is Clanricarde v. Congested Districts Board for Ireland (1914) 79 J.P. 481. Lord Dunedin referred to Gard's case and to Lynch v. Commissioners of Sewers (1885) 32 Ch.D. 72, and in his judgment at p. 482, said -

"I do not think (those cases) established the proposition (for which they were cited) namely this, that a body like the Congested Districts Board having power to acquire lands compulsorily for certain purposes, must to justify the exercise of those powers, not only have a real and bona fide intention to acquire the lands for those purposes authorised and a real and bona fide belief in their suitability for the same, but must, in addition, have reasonable grounds for their belief. The presence or absence of such reasonable grounds is, in my opinion, evidence on the reality and bona fides of the alleged belief, but not a necessity in addition to such belief. From this it follows that the absence of all grounds on which a person endowed with ordinary human reason would have a belief, in the case of bodies such as this Board, may be conclusive evidence that the pretended belief is not a real and bona fide one at all. I doubt very much if the judgments delivered by Lord Bowen in the cases cited meant anything more than that."

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With these dicta in mind the evidence in the present case falls to be considered. In the majority of cases either the new and unauthorised purpose has been actually embarked upon or the local body has made no secret of its intentions. In the present case nothing has been embarked upon that is outside the authorised object, but it is suggested that this very failure to utilize so much of the land is in itself evidence that it was land not required. There was, of course, the best of reasons for not spending more money on the land; the fact that the whole basis of the acquisition was being challenged in these proceedings. The Council was not deterred by that factor from spending what must have been a substantial sum on the existing works; one may indeed wonder at that, but the failure to spend more can hardly be censured. Then it is said that the Council did not call evidence to prove its intentions with regard to the remaining land. I do not think that this question of excess land, as distinct from the question of the housing of employees was made a clear issue in the Supreme Court. The learned judge did not mention it when dealing, at some length, with the blocks of flats.

There is, as I mentioned earlier, some evidence from Mr. Warren as to why the Council might wish to acquire a larger area than might prima facie appear requisite. He referred to protests and objections from occupiers in the vicinity of the existing power house in the city; and the Council represented its need to the Governor-in-Council for a buffer area and room for expansion. I think that the strongest aspect of the evidence against the Council on this point is the fact that it asked for substantially more than twenty acres, but the question of area was clearly to the fore in the deliberations of the Governor-in-Council and his decision of twenty acres is in terms related exclusively to the electricity project. In my judgment this whole matter resolves itself into a question of bona fides; that of the Council is admitted and in any case I do not find sufficient evidence of the lack of it to induce me to take another view. The bona fides of the Governor-in-Council is not and cannot be challenged. The decision to acquire twenty acres may seem excessive at first glance, but is not surely, in an expanding city and territory in process of acquiring independence, beyond reason. I would therefore reject this ground of appeal.

It remains to consider two further grounds of appeal based on statutory provisions. The first is that the appellants, as registered proprietors of the land in question have an indefeasible title to it by virtue of

the provisions of the Land Transfer Act, 1971. The short facts relevant to this point are that when, on the 27th July, 1967, the notice of acquisition was given, Sukhichand was the registered proprietor of the land, and the appellants had an equitable interest in it under the agreement for sale with Sukhichand mentioned earlier in this judgment. Sukhichand was entitled to remain in possession of the land until the 31st December, 1968. On the 16th October, 1967, a transfer from Sukhichand to the appellants was registered, as well as a mortgage back to Sukhichand to secure the balance of the purchase money. On the 25th October, 1967, Messrs. Munro, Warren, Leys & Kermode sent to Messrs. Grahame & Co. the appellants' claim for compensation with a covering letter advising that the transfer (and mortgage back) abovementioned had been registered, "in order to simplify the claims", and that the claim was made by the appellants "as registered proprietors of the affected land". The same firm of solicitors put in Sukhichand's claim on the same date, confirming that he was mortgagee and basing his claim in the main upon the loss of his right to remain in possession until the end of 1968.

I am quite unable to see that the principle of indefeasibility of title can assist the appellants in these circumstances. The right of compulsory acquisition is conferred by statute and is effective as against any registered proprietor. I do not think that the appellants can put their case any higher than to say to the Council - "When you gave us notice of intended acquisition we were equitable owners, but before the acquisition was complete we became registered proprietors; therefore you must start again with a new notice". Whether that could in any circumstances be a valid argument I do not need to consider. In my judgment it cannot be so in the present case where the appellants, by putting in their claim as registered proprietors have clearly agreed to waive any defects which the change of status might be thought to have brought about in the proceedings prior to the registration of the transfer. The solicitors' letter of the 25th October, 1967, explaining the reason for the registration of the transfer, with the wording of the claim itself, provide a clear basis for an estoppel, when it is considered that, at that stage the Council could easily have served a new notice.

I consider this submission to be of no avail to the appellants; had I thought otherwise, I would have been of opinion that the learned judge ought to have

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acceded to the application, late though it was, for leave to amend the pleadings to raise the issue of fraud.

The other statutory provision which the appellants seek to call in aid is the Subdivision of Land Ordinance (Cap. 118 - Laws of Fiji, 1967). Section 5 of that Ordinance provides that notwithstanding the provisions of any other law no land to which the Ordinance applies shall be sub-divided without the prior approval of the Subdivision of Land Board constituted by the Ordinance. The Council did in fact apply for the approval of the Board and that was granted subject to conditions. These were that the road work had to be done within two years from the 18th July, 1968, and a plan registered within that time. These conditions, according to the evidence given in September, 1974, had not then been fulfilled, and section 9(5) of the Ordinance provides that any person who fails to comply with any condition imposed by the Board is deemed to have contravened or failed to comply with the provisions of the Ordinance. It is Mr. Gifford's submission that the failure by the Council in this case has invalidated the compulsory acquisition.

In the Supreme Court the learned judge found that the Ordinance was not apt to include a compulsory acquisition, because every act referred to in the Ordinance appeared to be a consensual act. This is not quite accurate if the words of the judgment are read literally, as can be seen from the definition of the term "subdivide" in section 3 -

> "...dividing a parcel of land for sale, conveyance, transfer, lease, sublease, mortgage, agreement, partition or other dealing or by procuring the issue of a certificate of title under the Land (Transfer and Registration) Ordinance in respect of any portion of land, or by parting with the possession of any part thereof or by depositing a plan of subdivision with the Registrar of Titles under the lastmentioned Ordinance; "

It will be seen that there are at least two possible actions within the definition which are unilateral i.e. obtaining a certificate of title for a part, or depositing a plan of subdivision. Yet there is force in the learned judge's approach as both of the actions mentioned are normally taken in preparation for or expectation of future consensual transactions - otherwise there would be no possible point in including them in the definition.

There are aspects of the wording of the Ordinance which indicate with some strength that the view the learned judge took of the construction of the Ordinance was the correct one. Before coming to these I will set out three passages from the judgment of the Privy Council in Patel v. Premabhai [1954] A.C. 35, an authority which was mentioned by the learned judge in the Supreme Court and in which the Ordinance now under examination was considered. Their Lordships said, at p. 45 -

"The Ordinance throughout speaks of subdivision, and its object appears to be to prevent the subdivision of land into such small portions as are uneconomical or undesirable."

And at page 48 -

"Ncr is the definition of 'subdivide' in s.3(a) inimical to this opinion. All that that definition means is, that a division or subdivision takes place within the meaning of the Ordinance, if the land is in fact divided, whether it is divided for the purpose of sale or conveyance or transfer or lease or sublease or mortgage, making an agreement, partition or otherwise dealing with the property. But it is not divided merely because an order for partition is made: What is forbidden is the carrying out of the order by actual partition unless and until the approval of the board, set up by the Ordinance, has been obtained. "

.....

"-- on the true construction of the Ordinance all that is forbidden is the actual division of the land or the carrying out of a decree for partition without the consent of the board."

As can be seen from those passages Patel's case was concerned with the distinction between a decree or order for partition and an actual partition or subdivision. It is not directly helpful on the present question, which is whether the Ordinance as a whole is applicable in the present circumstances, but the case does serve as a guide to the approach of their Lordships to the scope and object of the legislation.

To return to the wording of the Ordinance, I would mention first section 6, by which the application to the Board is to be made by "a person who desires to subdivide land"; and, by section 3, "applicant" means

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the owner, lessee or sublessee of any land. It is obvious that what the draftsman has in mind is an owner of land wishing to subdivide his own land - not the case of powers which fortuitously may enable a non-owner to divide some other persons property. In the present case the Council has become the applicant, contrary to the definition; it could perhaps be argued that the special power to acquire land compulsorily, implies that the acquiring authority can stand in the shoes of the owner to this extent. But that would not necessarily be enough, as the Board might impose conditions affecting the other portion of the subdivision, that retained by the owner, over which the acquiring authority would have no jurisdiction.

Section 7 of the Ordinance requires the Board to send a copy of the application for approval to the local authority, which is empowered to make recommendations. In most cases the local authority would be the acquiring authority, though this may not be so in the present case as the acquisition is outside the limits of the Council's area. Where the acquisition was within the area of a local authority, as I imagine would usually be the case, the local authority would have the right to make recommendations upon its own application. Section 17 also might occasion difficulty. It empowers an applicant to appeal to the Governor-in-Council against the refusal of approval by the Board. Such an appeal, in a case where the Governor-in-Council had originally approved the acquisition might be an awkward one if the appellant were the acquiring authority.

There are other provisions which appear incompatible with the idea of a local authority occupying the position of applicant for approval. Section 9(4) requires the Board to communicate its decision to the local authority, which shall "forthwith take such steps as are necessary to enforce the observance of the decision of the Board". This provision can hardly have contemplated that the local authority could be an applicant. Section 19(1) gives a local authority power to order demolition of and to demolish buildings erected on a subdivision made contrary to the Ordinance. It is alleged that has happened in the present case. Assuming that the power house had been within the city area could the Council have been asked to adjudicate upon its own buildings? Finally I would mention section 14(2)(b) as a further indication that the Ordinance contemplates subdivision in the ordinary way,

as being in the course of or in preparation for consensual transactions. The subsection provides that, after approval by the Board, the applicant is to receive a copy of the certified plan, and then may sell, lease, sublet or otherwise convey the land.

For the reasons given I am of the view that the Subdivision of Land Ordinance is not intended to, nor does it apply to a compulsory acquisition of land such as the one under consideration in these proceedings. In spite of the firm wording of section 5 I think the tenor of the Ordinance as a whole supports this construction. I am conscious that what may appear to be an anomaly follows. It is that if the Council had purchased the land in question from the appellants in the usual way without recourse to compulsory acquisition there would not be so much reason for holding that the Ordinance would not apply. The persons desiring to subdivide would then be the appellants and they would also be the applicants for approval. I agree that there may be some lack of logic in such a situation but it is not a serious one in the light of the Privy Council's assessment of the object of the Ordinance as, "to prevent the subdivision of land into such small portions as are uneconomical or undesirable". A project important enough to merit a compulsory acquisition of land would be unlikely to do damage to that object.

Finally I would add that, on the view of the facts I have taken, and except to the limited extent to which I may have called it in aid in relation to the question of metes and bounds, I have not found it necessary to consider the doctrine of estoppel.

For the reasons I have given in this judgment I consider that all of the grounds of appeal fail and that the appeal should be dismissed with costs. This being the opinion of the majority of the Court it is so ordered. There was a cross appeal which was withdrawn by Mr. Hughes, he submitting to any order for costs that might be made. The cross appeal is accordingly dismissed with costs against the Council, the appelant therein.

During the hearing of the appeal Mr Hughes gave an undertaking in the terms of a resolution by the Council of which the following is a copy:

"RESOLVED that counsel appearing for the Council in the current appeal in the Fiji Court of Appeal be

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authorised to give an undertaking to the Court that the Council will, in the event of the appeal and any final appeal to the Privy Council by the present appellants being dismissed and the present appellants being refused any relief in the action pay to the appellants within a time to be agreed, or if not agreed, to be fixed by the Court the sum of $11,000 as reparation for the failure of the Council to abide by the understanding as to the provision of an access road along the line set out in Ex. AC to serve the balance of the appellants' land in Certificate of Title 8316, provided that such sum may be set off against the amount of the costs (if any) that may be ordered to be paid by the Appellant to the Respondent Council in connection with the appeal and any such final appeal".

I have reproduced this undertaking for the purpose of record only. It was not relevant to the issues before the Court on the appeal.

(Sgd) V.P. Gould

VICE PRESIDENT

Certified True Copy

Registrar

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JUDGMENT OF MARSACK J.A.
18th FEBRUARY 1977

IN THE FIJI COURT OF APPEAL
Civil Jurisdiction
Civil Appeal No. 44 of 1975

Between: 1. MUKTA BEN (d/o Bhowan)
2. SHANTA BEN (d/o Bhimji) Appellants

v.

SUVA CITY COUNCIL Respondent

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The relevant facts in this case have been fully set

out in the comprehensive judgment of the learned Vice President, which I have had the advantage of reading, and I do not find it necessary to repeat them here. In my view it has been established that, in connection with the taking over by the respondent of the land involved in this case, the Council has been at fault in six different ways. These may be set out briefly as under:-

(1) That the Council misled the Governor-in-Council in its application for approval of compulsory acquisition, by stating that the Council was unable to purchase the land required, by agreement and on reasonable terms;

(2) That at no time did the Council accurately define the land it was desired to acquire;

(3) That the Council failed to gazette and advertise the notice of the intended compulsory acquisition of the lands concerned;

(4) That the Council did not obtain the consent of the Subdivision of Land Board prior to taking possession;

(5) That the Council failed to carry out the undertaking it had given to the appellants to construct an access road bounding on appellants' lands;

(6) That the Council received approval to acquire 20 acres for the purpose of a power station, but has used less than 2 acres for that purpose and also for the building of a number of residential flats.

The question for determination by this Court - and, it must be stated at the outset, a very difficult one - is this: what are the legal consequences which must follow the defaults enumerated above?

At the hearing of the appeal it was suggested from the Bench to Counsel for the respondent that substantial justice might possibly be done by the application of the equitable rule which has been considered and applied in a number of cases such as Ramsden v. Dyson (1866) L.R. 1 H.L. 129, to the effect that if a person built on land under the mistaken belief that he was entitled to it, and the real owner while

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aware of what was happening took no steps to prevent the erection of the building, then equity would intervene to prevent the real owner from asserting his title to the land so taken. In the present case there is a finding by the learned trial judge that the respondent entered into possession in September, 1967. In the Statement of Claim the appellants alleged that the respondent by its servants and agents entered the land and took possession thereof in September or October 1967 and thereafter the respondent commenced construction of an electric power station on the land. I have been unable to find from the evidence exactly when the construction of the station itself began; but it seems a fair inference that it was commenced not long after the entry of the surveyors and engineers on the land in September or October, 1967. Not until the issue of the present Writ on the 3rd October, 1968 did the appellants raise any objection to the work being done by the respondent on the land. The negotiations which took place between the parties during that period related solely to the question of compensation. In these circumstances it might well be considered that in accordance with the equitable doctrine cited, the respondents would be entitled to retain the land upon which they have built, subject to the payment of appropriate compensation. Counsel for respondent was however not prepared to consider this suggestion; and as this aspect of the matter was not argued by either party at the hearing of the appeal, I am not in a position to consider it further.

Regarding No. 1 above, the relevant legislative provision is contained in Section 136(1) of the Towns Ordinance which provides that the Council may make an application to the Governor-in-Council only if the Council is unable to purchase suitable land by agreement and on reasonable terms; and in this case the Council so certified in its application. But the evidence shows little if any effort to purchase the land on reasonable terms. The Council had a valuation made on the basis of the land being used as a dairy farm, though it had been made perfectly clear to the Council that the appellants had purchased the land for subdivision. This valuation assessed the land at $220 per acre. The appellants offered to sell 50 acres at the eastern end of their land at $400 per acre; and later offered 40 to 50 acres at the western end at $600 per acre. The Council refused to negotiate but said, in effect, either you sell at our price or we will acquire compulsorily through the Governor-in-Council. A subsequent valuation by a highly qualified valuer made

at the request of the appellants in September, 1970 assessed the value at $2,000 per acre as at the date of the notice to treat; and stated in his evidence that he regarded that valuation as conservative.

In view of the evidence I would have no hesitation in holding that the appellants were prepared to sell at a reasonable price; and the Council accordingly was not justified in reporting to the Governor-in-Council that it was unable to purchase at a reasonable price.

Counsel for the appellants contended that the inevitable legal consequences of the misleading of the Governor-in-Council must be that the compulsory acquisition was invalid. In support of his argument Counsel cited the case of Banks v. Transport Regulations Board (1968) 119 C.L.R. 222 at p.241 in which the High Court of Australia set aside a decision of the Governor-in-Council; and he quoted Barwick C.J. in that judgment:

> "Of course certiorari will not go to the governor-in-council but that does not deny that the proceedings of the governor-in-council in performance of a statutory function may not be void and in an appropriate case be so declared."

In that case a decision of the Board to revoke a taxi licence was based on erroneous grounds, and it was held that a writ of certiorari would issue to the Board to quash it notwithstanding that it had been approved by an order of the Governor-in-Council. Here, in Counsel's submission the decision of the Governor-in-Council was based on erroneous grounds - namely, that the Council could not purchase the lands required on reasonable terms - and therefore by the same reasoning the decision of the Governor-in-Council could be and should be quashed. The argument is attractive but does not, in my view, take into account the difference in circumstances between this and the Banks case. At no stage, prior to the issue of the writ in October 1968 was any objection raised by the appellants to the acquisition of part of their land by the Council. The only dispute between the parties was over the matter of price. Accordingly in my view it would not be appropriate to set aside the approval of the Governor-in-Council in toto on this ground. It may well be one of the considerations to be taken into account when the amount of compensation payable to the appellants is being assessed.

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The matter of the failure of the Council to define accurately the boundaries of the land it desired to acquire, and of the land included in the compulsory acquisition authorised by the Governor-in-Council, was argued very fully before this Court by Counsel on both sides. I do not however find it necessary to express an opinion as to the legal consequences of the Council's failure in this respect, in view of the conclusion to which I have come with regard to No. 6.

I turn now to No. 3, that is to say the Council's failure to gazette and advertise the notice. Under Section 5 of Crown Acquisition of Lands Ordinance (Cap. 119) notice must be given to the "registered proprietors of the said lands and to the mortgagees, encumbrancees and lessees thereof or to such of them as shall after reasonable inquiry be known to him". As appellants were not registered proprietors, mortgagees, encumbrancees or lessees it would appear that notice to them personally would not have to be given under section 5.

Under section 7(4) all notices served under this Ordinance shall be inserted once at least in the Gazette and in a newspaper circulating in Fiji. It is common ground that no such advertisement took place in this case. The question then arises as to what will be the legal consequence of failure to comply with section 7(4).

The first point to consider is whether the requirement in section 7(4) is mandatory or directory. The learned primary Judge held that the "requirements of advertising in the Ordinance are directory and not mandatory and I am not prepared to hold the acquisition invalid on this ground".

My own view is that the requirements of section 7(4) <u>are</u> mandatory. The object of the section would appear to be to ensure that all persons having an interest in the land - including, as in this case, the equitable owners - receive notice of the intended acquisition and can then take such steps as they deem necessary to protect their interests. It is to be noted that the provisions of section 5 do not include all persons having such an interest in the land as to render it equitable that they should have notice.

Even, however, if the requirements of section 7(4) are held to be directory only, the passage quoted by the learned primary Judge from <u>Scurr</u> v. <u>Brisbane City Council</u> (1973) 47 A.J.L.R. 532 is strictly relevant to the present case:

" It is well established that a directory interpretation of a statutory requirement still necessitates, as a condition of validity, that there should be substantial compliance with the requirements."

Here there is no suggestion of any such substantial compliance. The obligation under the section was ignored completely by the respondent.

With regard to the legal consequences following the failure to comply with section 7(4), it was argued on behalf of the respondent that the provisions of section 8 of the Ordinance make it clear that the obligation to advertise concerns, not the acquisition of the land, but the resulting claims for compensation. Counsel said:

"The requirement as to the publication of the notice is intended as no more than a condition precedent to the settlement of the question of compensation in a case where no claim has been lodged. "

In my view there is nothing in section 7(4) directly or inferentially linking it only to claims for compensation. As I have said I feel that section 7(4) was designed to ensure that all persons having an interest in the land should have notice of the proposed acquisition, so that they might be in a position to protect those interests generally and not only in the matter of compensation.

The important point to be determined is: What is the legal effect of failure to comply with the obligation under section 7(4)? Appellants relied heavily on the judgment of the Privy Council in Saunby v. Water Commissioners (1906) A.C. 110 where on page 115 their Lordships say:

"In this instance the Commissioners have not proceeded in accordance with the directions of their Act; and consequently the appellant has not lost his ordinary right of action for the trespass on his property. "

Counsel for the respondent points out that the statute in Saunby's case provides that, as a condition precedent to the taking of land, the acquiring authority should first survey the land required. In Counsel's contention, it cannot be held that

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the failure to advertise would entail the same consequences as a failure to "survey, set out and ascertain the land required". It can, I think, properly be contended that the legislative provision in Saunby's case is, at least in its object, markedly different from that in issue here. In my view it is necessary to examine the basic purpose of the statute concerned. In Saunby's case the enactment is clearly intended to ensure that the landowner should know exactly what land the Commissioners are seeking to acquire. The object of section 7(4) of the Crown Acquisition of Lands Ordinance is to ensure that all persons having an interest in the land which the Council wishes to acquire should have notice of the steps the Council proposes to take. The object of the former enactment cannot be fulfilled unless the provision quoted is complied with; and this failure on the part of the Commissioners was held to give the landowner a right of action for trespass against the Commissioners. Non-compliance with section 7(4) however need not in my view, be necessarily fatal; if for example it can be shown that all interested parties have in fact received notice of the Council's intention. It is common ground that direct notice was given by the Council to the appellants; and they cannot now be heard to say that they have in any way been prejudiced by the failure to advertise and gazette that notice.

No doubt it was most reprehensible that the Council should ignore its statutory obligation under section 7(4), and in certain circumstances the Council's disregard of that obligation might well have been sufficiently serious in its consequences to result in the invalidation of the compulsory acquisition. Those circumstances however, in my opinion, do not exist here.

With regard to No. 4 some question arises as to whether the consent of the Subdivision of Lands Board is necessary for the cutting off of portion of appellants' land and transfer of title to it to the Council. The learned primary judge held that this was not necessary as the Ordinance did not apply to compulsory acquisition. Section 6 of the Subdivision of Land Ordinance provides that any application for the approval of the Board shall be made by "a person who desires to subdivide land". In the present case there is no suggestion that the owner desired to subdivide it. An application was made to the Subdivision of Lands Board by the respondent Council

and approval was granted on terms, according to the evidence of Mr. Knuckey the surveyor, inter alia that a 40 feet road should be constructed to the satisfaction of the Board, and that the approval was valid for two years. This meant, according to Mr. Knuckey, that the road work had to be done within two years and a deposited plan registered within that time. This approval was given on the 18th July, 1968. At the hearing of the case in September, 1974 Mr. Knuckey testified that the road had not yet been completed according to the specifications. The conditions upon which the approval was granted were thus not complied with; and in Counsel's submission this nullified the conditional consent given by the Board. Counsel for the respondent argued that there was no obligation on the part of the respondent Council to apply for the Board's consent, and consequently the fact that the terms attached to the consent had not been fulfilled would not affect the Council's title to the land. Moreover, Counsel drew attention to section 18(1) of the Subdivision of Land Ordinance which provides that failure to comply with the provisions of the Ordinance renders the person responsible liable to a monetary penalty only, and does not in any way invalidate the dealing in the land. This argument in my view had merit, and I would hold that the failure of the respondent Council to comply with the terms of the Board's conditional approval cannot result, of itself, in upsetting the compulsory acquisition of the land.

With reference to No. 5 it is not disputed that the Council during the negotiations with the appellants had given an undertaking that in the event of their acquiring the land they desired for a power station the Council would construct an access road serving the balance of the appellants' property. The learned primary Judge in the course of his judgment says:

> "I accept the evidence of Surveyor Knuckey that he was instructed to survey the access road so as not to abut on plaintiffs' land, and in the absence of refutation it is difficult not to draw the inference from that evidence that the Council had formed the intention of dishonouring their undertaking to give plaintiffs access. "

At the hearing of the appeal before this Court Counsel for the respondent stated:

> "I am authorised to give an undertaking to the Court that in the event of this appeal being

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dismissed, the Council will pay to the appellants $11,000 as reparation for the failure of the Council to abide by the understanding with regard to the access road. The Council has so resolved."

There appears therefore no doubt that the appellants have a remedy against the Council under this head; but such remedy must in my view be in the nature of compensation and not such as to entitle the appellants to have the compulsory acquisition set aside on that ground.

There remains for consideration No. 6 under which I conclude that the appellants are entitled to some relief, though not to the complete invalidation of the acquisition of the land by the Council. The authority given by the Governor-in-Council was to acquire 20 acres for the purpose of a power station. The letter forwarding this authority contains a second paragraph to the effect that the Governor-in-Council would be prepared to consider an application for the compulsory acquisition of a larger area of land for other purposes e.g. industrial. No such further application was made. In a letter from the Council's solicitors to the Chief Secretary, Government written on 8th September, 1966 it was stated:

"The site would be used exclusively for erection of buildings in connection with the power house and all the purposes incidental thereto."

The Council has in fact erected not only a power station but also three blocks of two-storey flats and one block of single-storey flats. The contention of the appellants is that so much of the purported compulsory acquisition as relates to an unauthorised purpose is invalid. The learned primary Judge held that the building of the flats was a purpose ancillary to the main purpose of supplying electricity; and that therefore no part of the acquisition could be invalidated on the ground that the Council had exceeded the authority given to it. It is certainly true that the Governor-in-Council did not specifically include the erection of flats in the terms of its approval. It is at least arguable that the Council acted without authority in erecting the flats. However, I feel that there are reasonable grounds for the learned primary Judge's finding that the building and housing accommodation for the staff

was a purpose ancillary to the erection of the power station.

One more important point arises with regard to the actual use made by the Council of the land in issue. The authority given by the Governor-in-Council covers an area of 20 acres for the purpose of a power station. After being in possession for over 7 years the only portion of the land occupied by the Council is, according to the evidence, 1.64 acres. Of this area .59 acre is taken up by the power station and 1.05 acres by the flats and the gardens surrounding the flats. It may well be that the Council has in mind to extend the present power station building in the future, but there is no evidence to that effect. It is therefore difficult to avoid the conclusion that in taking over 20 acres - more or less - the Council is laying claim to a substantially greater area than is required for the purpose set out in the application to the Governor-in-Council and formally approved.

In the course of his argument in reply learned Counsel for the respondent argued that what the Council had put on the land was within the Council's powers; and that if the Court held that the land taken was in excess of the area needed for this purpose, then any such acquisition would be invalid only to the extent that it was not reasonably required for the purposes laid down.

This to my mind was a reasonable submission. I think this Court must hold that the area of 20 acres was substantially in excess of the area reasonably required by the Council for the erection of a power station, plus possibly, other buildings which, in the primary Judge's phrase, could be ancillary to the general purpose.

The judgment in Attorney-General v. Pontypridd Urban District Council (1906) 2 Ch. 257 on which Counsel for the appellants strongly relied in his argument under this heading, does not decide that the acquisition of the land or any part of it, was invalidated by the use of part of it for an unauthorised purpose namely, the erection of a refuse destructor. The Court of Appeal issued an injunction prohibiting the Council from using any part of the land for a refuse destructor although the erection of the destructor had commenced some months previously. The application of that judgment to the

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present would appear to be this: that a council acquiring land under a statutory authority is not entitled to use that land for any other purpose than that specifically set out in the authority. Applying that principle, which I think this Court should do, we should have to hold that the respondent Council may not use the land acquired for any other purpose than that of the erection of the power station; with perhaps the buildings which have been found to be ancillary to that purpose. As has been stated the Council, after seven years in occupation, has made no use whatever of that part of the land outside the 1.67 acres above referred to; no evidence has been given that any further occupation of the land may well be required for that purpose in the future.

In the result I would hold that the approval of the Governor-in-Council should be set aside, not in toto, but to the extent that it covers a greater area than that required by the Council for the specific purpose for which that approval was granted. No doubt it would be reasonable to allow the Council to retain a certain area surrounding the actual buildings. To avoid sending the matter back to the Court below for the assessment of the area I would fix that at what was originally offered to the Council as a gift by the appellants, namely 5 acres. The remaining 15 acres should remain the freehold property of the appellants. The appellants would be entitled to compensation for the 5 acres acquired by the Council. The question whether the appellants would be entitled to compensation in respect of the Council's failure to carry out its undertaking as to road access would be one of the matters that could be taken into consideration by the Court when compensation is being assessed.

As the appellants would have substantially succeeded on this appeal, I would order that their taxed costs of the appeal and in the Court below be paid by the respondents.

(Sgd) J. A. MARSACK

JUDGE OF APPEAL

Suva.

18th February, 1977

Certified True Copy

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IN THE FIJI COURT OF APPEAL
CIVIL JURISDICTION
No. 44/75

BETWEEN MUKTA BEN and SHANTA BEN Appellants

AND SUVA CITY COUNCIL Respondent

Appeal from the judgment of Stuart J.

Counsel: K.H. GIFFORD Q.C. (of the Australian bar) and Tapoo for the Appellants
T.E.F. Hughes Q.C. (of the Australian bar) and Jamnadas for the Respondents

Judgment:

JUDGMENT OF O'REGAN J.

The facts and the issues involved in this appeal are set out in the judgment of Sir Trevor Gould V.P., which I have read and I will not repeat them.

The land which the respondent purported to take compulsorily under the powers invested in it by the Towns Ordinance (Cap. 106) is outside the boundaries of the city of Suva. The appellants submitted both in the Court below and this Court that the purported taking was ultra vires the Ordinance.

Section 15 of the Suva Electricity Ordinance (Cap. 87) which was first enacted in 1920 provided that the respondent was :

> " . . . authorised subject to the approval of the Governor in Council to exercise the powers of the Crown acquisition of Lands Ordinance for the acquisition of such land as they may require for the purpose of the works hereby authorised."

Section 3 deals with the works authorised. It provides :

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"It shall be lawful for the Council to acquire construct operate . . . works within and for a distance of four miles beyond the boundaries of the city of Suva."

In my opinion (but subject to what later appears), these provisions were sufficiently wide to authorise the Council (subject to the approval of the Governor in Council and to compliance with the provisions of the Crown Acquisition of Lands Ordinance) to acquire compulsorily land for the purpose of erecting a power station within a distance of four miles beyond the boundaries of the city.

The Council, however, did not seek to exercise its power pursuant to the Electricity Ordinance. It made application expressly pursuant to the Towns Ordinance the relevant provisions of which it becomes necessary to consider. Section 132 empowered the Council:

" . . . with the approval of the Governor in Council whether alone or in conjunction with the Government or any other statutory public body, and whether within or without the boundaries of the town -
(a) promote or establish and maintain public utility services;
(b) construct and maintain any public works which in the opinion of the Council may be necessary or beneficial to the town."

It was common ground that this section was sufficiently wide to confer power to construct a power station.

Section 133 provides :

"(1) A town council may for the purpose of any of their functions under this or any other law by agreement acquire whether by purchase, lease, exchange any land whether situate within or without the boundaries of the town.

(2) Subject to the consent of the Governor in Council . . . a city council may

(a) acquire whether by way of purchase, lease, exchange or otherwise, any land whether situate within or without the boundaries . . . and to lay out building plots upon or otherwise

subdivide such land for the purpose of housing schemes or for the purpose of factory, residential, industrial business or workshop sites, and

(b) sell, let or otherwise dispose of any such plots or subdivisions of land and any buildings thereon."

Section 136 deals with compulsory acquisition and prescribed prerequisites and procedures. It provides :

"If a Council are unable to purchase by agreement and on reasonable terms suitable land for any purpose which they are authorised to acquire land the Council may represent the case to the Governor in Council and if the Governor in Council is satisfied, after such inquiry, if any, as he may deem expedient, that suitable land for the said purpose cannot be purchased on reasonable terms by agreement and that the circumstances are such as to justify the compulsory acquisition of the land for the said purpose and that the said purpose is a public purpose within the meaning of the Crown Acquisition of Lands Ordinance, he may authorise the Council to acquire the land compulsorily."

The contrast between this section and s.133 to which Mr. Gifford invited notice is that the powers conferred by both subsections of s.135 authorize purchase "within or without the boundaries" whereas s.136 is silent on the topic. He argued that by application of the "expressio unius" maxim and by reason of the territorial limitation of power in a local body (unless expressly extended by statute) the power conferred by s.136 could be exercised only in respect of land within the boundaries of the City. The power station, is some 3½ miles outside the boundaries. In support of his submission, Mr. Gifford cited McCurrie v. Naria (1900) 2 W.A.L.R. 15; Taylor v. Harris (1953) V.L.R. 105; Collins v. Willoughby Municipal Council (No. 2) (1967) 14 L.G.R.A. 256; and Horners Co. v. Barlow (1688) 3 Mod. Rep. 158.

Mr. Hughes submitted that s.136 of the Towns Ordinance conferring, as it did, power to the respondent to acquire compulsorily land "for any purpose which they are authorised to acquire land" was sufficiently wide to encompass the provisions in that behalf contained in sections 3 and 15 of the Suva Electricity Ordinance. Section 15, he submitted conferred power to acquire

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land compulsorily for the purposes of the works authorised by s.3 - "works within and for a distance of four miles beyond the boundaries of the city of Suva". This submission, in my opinion, overlooks that the power conferred by s.136 is exercisable, only in respect of land which a council is unable to purchase by agreement. The Electricity Ordinance does not confer power on the respondent to purchase lands by agreement. In my view, therefore s.136 does not relate to works authorised by s.3 of the Electricity Ordinance.

In my opinion, s.136 applies only to instances where a council is unable to purchase by agreement any lands that it is authorised to acquire by subsections 1 and 2 of s.133. Both subsections refer to land "whether situate within or without the boundaries". Subsection 1 expressly refers to acquisition "by agreement". Subsection 2 deals with methods of acquisition which necessarily involve agreement. I conclude, therefore, that s.136 gave the necessary power to the respondent to acquire compulsorily land outside its boundaries.

The learned trial Judge held that the words "or otherwise" in s.133(2) were intended by the Legislature to confer power of compulsory acquisition. Mr. Hughes did not seek to support that part of His Lordship's judgment and accordingly I say no more of it save that, in my view, there was warrant for his not doing so.

In view of the stress laid by the respondent of the inter-relation of the Electricity Ordinance with the Towns Ordinance in this head of the argument, I record that I am inclined to the view that s.15 of the former was impliedly repealed on the enactment of the latter. If this be not so, we have the absurd situation where there co-exist powers to acquire land for the one purpose with one authorising such within four miles of the city boundaries and the latter any distance outside such boundaries and the one authorising the exercise of the power in accordance with the powers of the Crown Acquisition of Lands Ordinance (subject to the approval of the Governor in Council) and the latter subject also to the additional and more onerous requirements prescribed by s.136. I am mindful that the Suva Electricity Ordinance is a special Act and the Towns Ordinance is general. I think, however, that the maxim "generalia specialibus non derogant" notwithstanding, the palpable absurdity which results if s.15 is left subsisting lead to the conclusion that it has been

repealed by implication. The maxim is not of universal application. In Pellas v. Neptune Marine Insurance Co. (1879) 5 C.P.D. 34, 40, Bramwell L.J. observed that "a general statute may repeal a particular statute". In Great Central Gas Consumers Co. v. Clarke (1863) 13 C.B. (N.S.) 838, Pollock C.B. (at p.840), in holding that a provision in a private act limiting the price of gas was impliedly repealed by a subsequent public act allowing a higher price, said :

> "Although that section is not in terms repealed, yet it becomes a clause in a private Act of Parliament quite inconsistent with a clause in a subsequent public Act. That is sufficient to get rid of the clause in the private Act".

I think that the same considerations apply in the present case.

This point, however, was not argued before us and for the present purposes I make nothing of it. I advert to it only because a deal of the argument proceeded on the footing that the two provisions co-existed and to proffer the opinion that such is not the case.

Section 136(1) provides that the Council on fulfilment of the conditions therein set forth "may represent the case to the Governor in Council". It therefore is invested with a discretion in the matter.

Professor de Smith in the section of the third edition of his book dealing with the question of excess or abuse of discretionary power conferred by statute on local or other authorities has pointed out, at p.281, that :

> "If the source of authority relied on is statutory, the courts begin by determining whether the power has been exercised in conformity with the express words of the statute and may then go on to determine whether it has been exercised in a manner that complies with certain implied legal requirements. In some contexts they have confined themselves to the question whether the competent authority has kept within the four corners of the Act and whether it has acted in good faith. Usually they will pursue their inquiry further and will consider whether the repository of a discretion, although acting in

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good faith, has abused its power by exercising it for an inadmissible purpose or on irrelevant grounds or without regard to relevant considerations or with gross unreasonableness."

Before the Council "may represent the case" a condition precedent must be fulfilled. It must be "unable to purchase on reasonable terms suitable land for any purpose for which they are authorised to acquire land". The fulfilment of that condition requires that the Council must consider and decide a question of fact entrusted to it for decision by the ordinance. In Manakau City v. Attorney-General ex relatione Burns (1973) 1 N.Z.L.R. 25, the Court of Appeal of New Zealand, was concerned with the exercise of powers to dispose of land originally taken at the instance of a local authority for a local public work but no longer required for such. The power was contained in subs. (1) of the Public Works Act 1928, the part of which relevant for present purposes reads :

"If it is found that any land ..... acquired at any time under this or any other Act or Provincial Ordinance or otherwise howsoever for any public work is not required for that public work, the Governor-General may . . . . cause the land to be sold under the following conditions :

(a) A recommendation or memorial as the case may be . . . . shall be laid before the Governor-General by . . . . the local authority at whose instance the land was taken . . . "

Turner P., at p.31, had this to say:

"I will begin by summarizing what I conceive is the effect of the subsection, insofar as it deals with land originally taken at the instance of a local authority for a local public work.
(1) As a prerequisite of the operation of the section it must be found that land taken for such a work is no longer required for that work.
(2) It is implicit in the section that the person and the only person entrusted by the statute with the function of 'finding' on this matter is the local authority at whose instance the land was taken."

He went on to say (at pp.32, 33) :

"In finding the land not required for the public work the Council was in my opinion doing no more than deciding a question of fact entrusted to it for decision by the statute. It was not exercising a power. The determination of this question of fact by the Council is no doubt a pre-requisite to the exercise, by someone else, of further powers given by the section; but in deciding whether the land is or is not required . . . I am of opinion that the Council is doing no more than decide a question of fact. It may of course be said that whether it is required is a matter of opinion quite as much as one of fact; but in so far as this may be so it is the opinion of the Council which will decide the matter, and whether the Council has such an opinion is again a question of fact."

In the same case (pp. 36, 37) Richmond J., cited with approval the last sentence of the passage from Professor de Smith's work (supra). He held that "it is implicit in the section that it is empowering of the local authority to present a memorial to the Governor General if it finds that any land taken under the Act for any public work is not required for that public work". After eliminating from consideration bad faith on the part of the Council, he went on to say :

"In these circumstances, the "finding" of the Council as to the land in question could in my opinion only be attacked either (1) by showing that the members of the Council did not honestly address their minds to the question whether or not the land was still required for recreational purposes and arrive at an honest judgment or (11) possibly, on the grounds that no reasonable Council could arrive at such a conclusion."

In the present case, the appellants have expressly acquitted the respondent of acting in bad faith.

The only resolution of the respondent on the question was passed at a meeting held on 26 July 1966. It reads:

"It was resolved that Messrs Graham and Coy be requested to offer the owners of Cs.T 8315 and 8316 £110 per acre for the land required and in

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the event of non acceptance to take whatever action is necessary to have the land compulsorily acquired."

The negotiations and correspondence which preceded this resolution were conducted on the footing that the respondent would provide road access to the appellants' remaining land. The respondent, no doubt, would in the course of its works have had to provide road access to its power station but what additional costs would have been involved in providing such road access to the appellants' land and its bearing on the effective cost of acquiring the appellants' land, were never considered.

The respondent neither before the resolution nor before its submission to the Governor in Council sought or obtained a valuation of the appellants' land. It had in its possession a valuation made of comparable adjoining land by Mr S.A. Tetzner, Registered Valuer, on 15 January 1964, - that is, two and a half years before the date of its resolution - in which the land was valued at £75 per acre. That valuation records that no potential subdivisional value had been ascribed because in the opinion of the Valuer the land was too remote from proper access to have such.

The respondent called no evidence as to its acts in this aspect of the case and accordingly the only material concerning them before the Court was that recorded in correspondence and minutes. There is no record of the advice of Mr Tetzner having been sought as to the relationship between the value he placed on comparable adjoining land in 1964 and the value of the subject land in 1966. On 26 October 1966, the respondent's solicitors in a letter to the Director of Lands adverted to the topic. They wrote :

"Re value of the land. In 1964 Mr Tetzner gave the City Council a valuation of the land in C.T. 7423 which is adjacent to the area proposed to be taken. That also is a dairy farm, very similar to those conducted on the other land. Mr. Tetzner's valuation was in respect of the land under grass, comprising 36 acres - was £75 per acre. We spoke to Mr Tetzner recently in regard to the two areas in question and he considered that they would be about the same value and that £300 asked by the owner of Title 8316 was ridiculous.

We enclose an original stamped agreement between Sukhichand and Mukta Ben and Shanta Ben dated 22 July 1964 for your perusal. You will note that an estimated area of 88 acres was sold for £8100 on terms, the vendor retaining about six acres for his house site which is shown on the plan you already have. This sale price works out at approximately £92 per acre.

We therefore offered £110 per acre, being an advance over £92 per acre, which the Council considered to be the ultimate price they could offer. The dairy farm land in that area is worth no more than £100 an acre today, having regard to the use it is now put, which £100 an acre is an increase on Mr Tetzner's valuation two years ago. So it was considered £110 was the limit to which the Council could go and this was done in order to attract the vendor and allow something for displacement. It was pointed out to the vendors that the balance areas in the title would be considerably increased in value due to the Council erecting a Power Station there and giving good road access, thus enabling the vendors to subdivide.

Mr Warren is acting for the vendor of C.T. 8316 and there is no hope of a compromise, and indeed the Council would not give any more than £110 per acre, which it considers is above the market price."

Later in the same letter, the solicitors for the respondent wrote :

"We also mentioned to you that it was considered that Sambula/Vatuwega is expanding rapidly and the growth of Suva is towards Nausori, and that eventually that area along the road to Nausori will become a suburb of Suva, and the proposed site for this power station will be more or less in the centre of Suva and its environs."

The attitude and approach of the respondent can be gleaned from this letter. There was no evidence that the conversation between its author and Tetzner preceded the respondent's resolution of 26 July 1966 or if it did that the burden of it was conveyed to the respondent before the resolution was passed. The letter demonstrates

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that the question as to whether the subject land could be "purchased by agreement on reasonable terms" was approached - if approached at all - having regard to the use to which the land was being put and this notwithstanding that "it was considered that the area was expanding rapidly". This latter factor was obviously of greater moment than either the appellants or the respondent realised. The values given by the Valuers at the trial demonstrate that. Considering the situation, however, as at 26 July 1966 (the date of the respondent's resolution) it is beyond peradventure that the respondent took no proper steps to inform itself as to what was a reasonable price to pay for the land. I think that, in failing so to do, it deprived its members of the opportunity of addressing their minds to and of making a judgment upon the question, insofar as it related to the subject land, set for their consideration by the Ordinance namely whether the subject land could be acquired by agreement on reasonable terms. I am, therefore, of the view that the condition precedent to its representing the case to the Governor in Council was not fulfilled.

In Banks v. Transport Regulation Board (Victoria) (1968) 119 C.L.R. 222, the High Court of Australia had to consider section 31 of the Transport Regulation Act 1958 (Vict.) which, insofar as it is of present moment, provided :

> "(1) No decision of the Board . . . revoking . . . any such licence shall have any force or effect until such decision is reviewed by the Governor in Council : . . . .
>
> (2) In reviewing any decision as aforesaid the Governor in Council may by order within six months of the Board giving a decision
>
> (a) approve the decision of the Board
>
> (b) disapprove the decision of the Board
>
> (c) make any determination in the matter which the Board might have made - and every such order shall be given effect to as soon as may be by the Board."

Barwick C.J. (p.240) had this to say as to this provision :

"It is quite clear that the Act by s.31 contemplated that there should be an effective review by the Governor in Council of the Board's decision . . . . . The statute therefore placed upon the Governor General in Council an obligation to consider the matter for himself and reach a conclusion, upon all the material available to the Board, whether or no the Board's decision should be approved or disapproved or whether the circumstances called for some other action on the part of the Council within s.32(c) . . . . That Council was by the statute given both the power and the duty to consider the matter for itself."

I interpolate that the Board's decision to revoke a particular licence - a decision which was ultimately held to be void - had been approved by the Governor in Council. Barwick C.J. observed (p.241) :

"Of course, certiorari will not go to the Governor in Council but that does not deny that the proceedings of the Governor in Council in performance of a statutory function may be void and in an appropriate case be so declared."

And, again, at p. 242 :

"If the decision of the Board be void, as I think it is, its approval by the Governor in Council does not, in my opinion, prevent the Court from quashing it."

In the instant case, s.136 of the Towns Ordinance ordained two steps. The first, the taking of a decision by the respondent and the exercise of a power to "represent the case"; the second the Governor in Council making a decision on the substantive issue on the criteria therein laid down. In the Banks' case, the situation was significantly different. Again two separate steps were laid down. The first, that the Board make a decision on the substantive issue; the second that the Governor in Council conduct an effective review of the Board's decision. In the Banks' case, the first step was declared void. It was held that "so to do does not directly impinge upon the ineffective action of the Governor in Council in having approved it". - per Barwick C.J. at p.242. The learned primary Judge in the present case expressed himself as loathe to go so far as to declare the decision of the Governor in

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Council invalid without the Attorney General being a party to the action. In so doing he, I think with respect, wrongly distinguished Banks' case and overstated the effect of the observations in that behalf of the High Court of Australia in Brettingham Moore v. St Leonards Corporation 1969 A.L.J.R. 343. In my view, the latter case is clearly distinguishable on the facts, inasmuch as the case dealt with preliminary points of law one of which sought answer to a question as to whether or not a statutory Commission was bound to observe the rules of natural justice. The case did not touch a question as to the actions of the Governor in Council. Indeed the stage had not been reached where the Council had set about the exercise of its functions. It was in relation to the future conduct of the proceedings that Barwick C.J. remarked on the question as to whether or not the Attorney General should be a party. It seems to me that in this case if the first step, as I have termed it, falls, the decision of the Governor in Council must needs fall with it. That, I think, is the burden of the decision in Banks' case which I respectfully follow.

If my decision as to the first step were otherwise, the submissions of the appellants that the Governor in Council had neglected to observe the rules as to natural justice would next have fallen for consideration. My views as to such submission can be shortly stated.

The requirements of the Ordinance were that the Governor in Council be "satisfied, after such inquiry, if any, as he may deem expedient," that :

(a) that suitable land for the purpose cannot be purchased on reasonable terms by agreement;

(b) that the circumstances are such as to justify the compulsory acquisition of the land for the purpose;

(c) that the purpose is a public purpose.

The matters encompassed by the requirements set out in paragraph (b) and (c) could not affect adversely the appellants and indeed it was not so suggested. The same, I think, must be said for the general aspect of the matters involved in paragraph (a) viz. the availability of suitable land for purchase. It is in respect to the particular land - the appellants' land - and the question as to whether it could or could not be purchased "on reasonable terms by agreement" that the

submission falls to be considered.

On this question, I look first to the Ordinance itself. This I do in compliance with what Lord Hailsham of St Marylebone L.C. referred to in Pearlberg v. Varty 1972 1 W.L.R. 534 at p. 540 as "the general proposition that decisions of the Courts in particular statutes should be based in the first instance on a careful, even meticulous construction of what that statute actually means in the context in which it was phrased". The Ordinance decrees that the Governor in Council "may authorise" if he "is satisfied after such inquiry, if any, as he may deem expedient." The words "if any" connote that there may be an inquiry or there may not be one. The inquiry may be "such" as the Governor in Council "may deem expedient". Whether or not there is any inquiry and if so, the nature of the inquiry, then, is left by the Legislature for the determination of the Governor in Council.

But that does not conclude the matter. Whatever the prescription of the statute, the general requirement of fairness may superimpose a further requirement giving any persons affected opportunity "for correcting or contradicting any relevant statement prejudicial to their view". - Board of Education v. Rice 1911 A.C. 179, 182; Coles v. Matamata County - N.Z. Court of Appeal 69/74; 30 April 1976 (unreported). The Governor General in Council did not enlarge the inquiry to include an opportunity to the appellants to be heard and the question is whether he should have done so. The answer to that question depends on the further question whether the circumstances of the case, the nature of the inquiry, the rules under which he was acting and the subject matter being dealt with so required. - Russell v. Duke of Norfolk 1949 1 A.E.R. 109, 118. The failure of the respondent to address itself to the question it had to resolve before representing the case and the resultant deficiences in the material it submitted to the Governor in Council tend to cloud this issue. The appellants submitted that had they been heard they could well have corrected those lacks. That may well be so, but to consider such factors is to import material provided by hindsight which, despite its conscientious inquiries, was not available to the Governor in Council. Such matter, in my view, cannot properly be taken account of in judging the propriety of the conduct of the Governor in Council.

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In many of the cases to which we were referred on the topic, the rights of the party aggrieved were gravely affected and save for a review of the decision by the Courts, such party was left without redress. - Delta Properties Pty Ltd v. Brisbane City Council (1955) 95 C.L.R. 11; De Verteuil v. Knagg (1918) A.C. 557; Lower Hutt City Council v. Bank (1974) 1 N.Z.L.R. 545 are examples of cases in that category. In the present case, the appellants' right to compensation and their right to be heard thereon are provided for by the Ordinance.

It seems to me that, having regard to the nature of the topics prescribed by the Ordinance, upon which the Council was to be satisfied before exercising its discretion to authorise the compulsory acquisition of the land, no element of unfairness such as to require the Council in its inquiry to go beyond the prescription of the statute, manifested itself. I think that the primary Judge was right in rejecting the appellants' submissions on this aspect of the case.

I pass to a consideration of the contents of the notice to treat and the statutory requirements as to notice of it. The approval of the Governor in Council was "of the compulsory acquisition of 20 acres at the eastern end of C.T. 8316". The approval thus did not precisely define the metes and bounds of the land.

The respondent's notice of acquisition was served on Sukhichand, the registered proprietor of the land, and on the appellants. It followed the form prescribed in the schedule to the Ordinance. It called upon "Any person claiming to have any right or interest in the said land . . . within three months from its date "to send to the Town Clerk a statement of his right and interest". It was in respect of "the land described in the schedule hereto . . ." The description of the land in the schedule was :

> "All that piece of land containing 20 acres situate at the eastern end of Certificate of Title 8316 being part of the land known as "Narvoce" (part of) and being part of the land contained in Certificate of Title No. 8316 in the district of Suva on the island of Vitilevu as delineated on the sketch plan hereinafter appearing."

The eastern boundary on the sketch shows the high water mark of the sea - not as it was at the date of

the notice but as it was depicted on the plan of the land drawn on C.T. 8316 and thus as it was when the survey plan (from which the plan on the title was taken) was made. The northern and southern sides of the sketch plan are part of the northern and southern boundaries of the plan on the title. The western side of the sketch - the porported boundary between the land to be taken from the appellants and the land they would retain - appears to be at right angles to both the northern and southern bounds of the land to be taken. That, however, was not possible as those boundaries are not parallel. Its length is not given. Its bearings to the northern and southern bounds are not shown. The lengths of the northern and southern bounds are not shown. In fact no dimensions of any of the boundaries are shown. Within the bounds are printed the words "20 acres to be acquired". It was common ground that it was possible to survey off 20 acres at the eastern end of the land in question. Such a survey would involve a definition of the actual high water mark on the eastern boundary and the plotting of the western boundary so as to enclose 20 acres. That could, however, be done in many different ways. Twenty acres could be enclosed for instance by a straight line at various angles from say the northern boundary or by two lines meeting at different angles at different distances from the northern and southern boundaries or by a curved line. Even if an attempt were made to plot the western boundary as near as may be to the sketch plan in the notice of acquisition such could be done with only one extremity of it at right angles to a side boundary and it would be an arbitrary decision to decide which one. Furthermore, the western boundary required to enclose 20 acres of the land, could not be placed with accuracy until the high water mark at the eastern side was defined. It follows, therefore, that neither the notice of acquisition nor the plan accompanying it defined the metes and bounds of the land which the respondent purported to take. The notice of acquisition contained the folowing provision :

> "And notice is hereby given that the Suva City Council intends to enter into possession of the said land at the expiration of eight weeks from the date of this notice. Any person who shall wilfully hinder or obstruct the Suva City Council or any person employed by it from taking possession of the said land is liable

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under the provisions of the above Ordinance to imprisonment for three months or to a fine of twentyfive pounds or to both - such imprisonment and fine."

Having regard to the lack of definition of the land in the notice, how, one may well ask, could the respondent take possession "of the said land" and how could "any person" avoid hindrance and obstruction of such.

In Haynes v. Haynes (1861) 30 L.J.Ch. 578, 581 Kindersley V.C. said :

"I consider that a notice to treat constitutes the relation of vendor and purchaser to a certain extent, and for certain purposes that some of the consequences flowing from an actual contract might also flow from a notice to treat. The particular lands are fixed : . . . . if the company and the landowner after the notice come to an agreement that is an enforceable contract."

Lord Watson in Tiverton & North Devon Railway Co. v. Loosemore (1884) 9 A.C. 480, 503 referred to the parties to a notice to treat being placed by the notice "in a position analogous to that of vendor and purchaser".

Assuming for the moment, that subsequent to service of the notice the appellants and respondent had agreed as to price but later for some reason, became at odds, the notice to treat and the agreement as to price would ex facie constitute a binding contract which could be enforced by specific performance. In my view, in the circumstances here obtaining the uncertainty as to the metes and bounds of the land would preclude a decree for specific performance being granted. It would be impossible, too, to perfect such a contract by conveyance or transfer without further agreement as to metes and bounds by the parties. These considerations, I think, impel acceptance of Mr Gifford's submission that the notice did not define the land to be taken and that the purported authorization was accordingly void for uncertainty. For reasons which will later appear I am of the view, however, that such in the present case is not fatal.

The respondent served the notice to treat on the appellants (who were at the date of service equitable owners of the land by virtue of their agreement for sale and purchase) and on Sukhichand, the registered

proprietor. Section 3 of the Crown Acquisition of Land Ordinance (Caput 119) provides that notice shall be given to the registered proprietor, mortgagee, encumbrancees and lessees. There is no statutory requirement that notice be given to equitable owners. The respondent submitted that notwithstanding its having served them, the appellants were not within the category of persons required to be given notice and that accordingly they lack locus standi to challenge the acquisition. The primary Judge was disposed to think that the term "registered proprietor" should be construed widely to include equitable owners. I find myself unable to agree with such a construction. The term "registered proprietor" in jurisdictions where the Torrens system of land tenure operates both by statutory definition and inveterate construction denotes the holder of the legal estate as opposed to and distinct from the holder of an equitable interest and any derogation from that in any context would give rise to untold difficulties.

Subsection 2 of s.6 of the Fiji (Constitution) Order 1966 provides :

> "Every person having an interest in or right over property which is compulsorily taken possession of or whose interest in or right over any property is compulsorily acquired shall have a right of direct access to the Supreme Court for :
>
> (a) the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right and the amount of any compensation to which he is entitled and
>
> (b) the purpose of obtaining prompt payment of that compensation."

This provision clearly embraces the equitable owner. I am constrained to say that this solemn declaration of his right of "direct access to the Supreme Court for the determination of the legality of the acquisition" of his property would have but an empty and hollow ring if those invested with power to take land compulsorily might lawfully leave him to find out by his own devices of their depredations upon his lands or encroachments upon his rights.

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The respondent clearly knew that the appellants were the equitable owners of the land. It had treated with them as to purchase of the lands and related matters.

Having regard to the provisions of the Constitution Order and the respondent's notice of the appellants' interest in the land, and of their right to be compensated, the respondent, in my opinion was obliged to give them notice. The notice prescribed required any person claiming right or interest to send a statement of it and of any claim in respect of it within three months of its date. Section 6, although it refers to the "person aforesaid" - that is, a person in one of the categories listed in s.5, makes a general provision for the taking authority to enter and take possession of the lands. The rights of an equitable owner in possession are thus affected. By virtue of the provisions of S.8 time runs "from the service and publication as aforesaid of such notice". I leave aside, for the moment, the matter of publication. For present purposes, it suffices to note that "service . . . of such notice" is one of the elements in the calculation of the time within which a claimant is to lodge a claim. If he does not lodge it within the time stipulated, the process of determining the quantum of his compensation can be proceeded with in his absence and without his being heard.

Sections 5, 6, 7 and 8 prescribe a code of procedure to be adopted by the acquiring authority in an exercise which manifestly affects the rights of all persons with both legal and equitable interests in the land. In my view those sections do not provide a complete code as to the procedure. I think that the principles discussed in Furnell v. Whangarei High Schools Board 1973 2 N.Z.L.R. 705, 717 are of application. Adherence by the respondent to the provisions of s.5 only, would give "scope for unfairness" and I think that the provisions of that section must be supplemented. The code is not "one that has been carefully and deliberately drafted to prescribe procedure which is fair and appropriate" (Furnell's case, supra) and I think "the justice of the common law will supply the omission of the legislature" - Cooper v. Wandsworth Board of Works (1863) 14 C.B.N.S. 180, 194.) In my view, the appellants were properly served with the notice to treat and I reject the submission that they lacked locus standi.

Subsection 4 of s.7 of the Crown Acquisition of Lands Ordinance provides :

"All notices served under the provisions of this ordinance shall be inserted once at least in the Gazette and in a newspaper circulating in Fiji."

The respondent caused neither of these things to be done. The appellants contend that the words "all" and "shall" render the provision mandatory and that non compliance with it invalidates the purported compulsory acquisition. They cited in support of this submission Scurr v. Brisbane City Council (1973) 47 A.L.J.R. 532; Corporation of Parkdale v. West (1887) 12 App. Cas. 602; North Shire Railway Company v. Pion (1889) 14 App. Cas. 612 and Saunby v. Water Commissioners of the City of London (Ontario) (1906) A.C. 110. The respondent, on the other hand, submitted that the provision was merely directory.

With regard to the cases cited by the appellants and indeed the host of other cases there are on the topic I think it appropriate to allude to the observations of Lord Penzance in Howard v. Bodington (1877) 2 P.D. 203 where, after referring to the fact that many cases had been cited to him, he said :

"Since the matter was argued I have been very carefully through those cases, but upon reading them all the conclusion at which I am constrained to arrive is, that you cannot glean a great deal that is very decisive from a perusal of those cases. They are on all sorts of subjects. It is very difficult to group them together and the tendency of my mind, after reading them is to come to the conclusion which was expressed by Lord Campbell in the case of Liverpool Borough Council v. Turner (1860) 29 L.J. (Ch.) 827 . . . . His Lordship said this : 'No universal rule can be laid down for the construction of statutes, as to whether mandatory enactments shall be considered directory only or obligatory, with an implied modification for disobedience. It is the duty of the Courts of justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be construed."

In New Zealand Institute of Agricultural Science v. Ellesmere County 1976 1 N.Z.L.R. 630 Cooke J. who delivered the judgment of the Court of Appeal described the terms "mandatory" and "directory" as lacking precision. He

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said (at p.636) :

> "Nevertheless, it is generally understood that the broad distinction is between a nullity and a mere irregularity . . . Whether non compliance with a procedural requirement is fatal turns less on attaching a perhaps indefinite label to that requirement than on considering its place in the scheme of the Act or regulations and the degree and seriousness of the non compliance."

On this topic I think sections 5, 7 and 8 must be looked at together and the scheme and scope of them considered. They have to do with notice to persons affected by the proposed compulsory acquisition of the land. Section 5 decrees categories of persons to be served. Section 7 provides for the mode of service on persons other than Corporations and on Corporations (ss.1 and 2). Subsection 4 of s.7 provides that all notices so served shall be advertised. Sections 5 and 7, in essence, make provision for due notice to parties affected. That is their whole purpose and scope.

The appellants were given notice and indeed they acted upon it by filing a claim pursuant to s.8.

Professor de Smith 3rd Edn. 1973 p.123 in a passage cited with approval in Grey v. Choyce (1975) 1 W.L.R. 422, after citing part of the passage from Howard v. Bodington printed above, said :

> "Furthermore, much may depend upon the particular circumstances of the case in hand, although 'nullification is the natural and usual consequence of disobedience' breach of procedural or formal rules is likely to be treated as a mere irregularity if the departure from the terms of the Act is of a trivial nature or if no substantial prejudice has been suffered by those for whose benefit the requirements were introduced, or if serious public inconvenience would be caused by holding them to be mandatory, or if the Court is for any reason disinclined to interfere with the Act or the decision that is impugned."

In my opinion, it is clear that the appellants have suffered no substantial prejudice by the failure of the respondent to comply with s.7(4). If "substantial compliance" is a prerequisite to my holding that the failure does not invalidate the

subsequent steps taken by the respondent (see Howard v. Secretary of State for the Environment (1975) Q.B. 235 and Scurr v. Brisbane City Council (1973) 47 A.L.J.R. 532) we have in this case personal service of the notice to treat which more than meets that requirement.

The appellants submitted also that the respondent's submissions to the Governor General in Council as to the access road and its conduct generally in relation to the access road vitiated both its application to the Governor in Council and the Governor in Council's purported approval of the compulsory acquisition, and precludes the respondent from relying on such approval. In my view, the appellants' submissions in all aspects touching upon the question of access to their land are misconceived. This I hasten to say, is not to say that the strictures of the learned primary Judge as to the respondent's conduct in respect of it were not without warrant. The provision of the access road loomed large in the attempts of the parties to reach an agreement for sale and purchase. It was a condition of all the various offers and counteroffers except the initial offer of a gift of five acres by the appellants. It was not a condition of the respondent's resolution as to its final offer but in fact its solicitors again included such a condition in the formal offer made pursuant to such resolution. That offer, of course, was rejected. The negotiations were then at an end and the conditions attaching to the various offers were thereafter irrelevant. The respondent next put in train the process of acquiring the land compulsorily. It seems to me that it was not only beyond the power of but also impracticable for the respondent to apply for approval to take the land subject to a condition that appellants' adjoining land be serviced by a road. It was likewise beyond the power of the Governor in Council to approve a taking of land subject to such a condition. It was beyond the power of both of them because s.136 of the Towns Ordinance goes no further than to authorise the respondent to make its application to acquire land and no further than to authorise the Governor in Council to authorise the acquisition of such. It was impracticable for both for the reason that the proposed access was over land not owned by either the respondent or the appellants and its route was not defined. If the authorization had been made subject to a condition as to access, any contract concluded by a subsequent agreement as to compensation, would lack certainty and would be incapable of enforcement. If an authorisation

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had been so given the route of the access road would require subsequent agreement between the appellants and the respondent and in the event of disagreement it seems to me that it would be beyond the powers of the Governor in Council to make any decision for the resolution of such. It is true that the Governor in Council in pursuing his inquiries, through his delegate, the Director General of Lands, sought details of the access to both the subject land and the remainder of the appellants' land and that such inquiry evoked the reply :

> "Re access. The Electrical Engineer has shown alternative routes. Route A through adjacent Crown land and Route B marked red along the boundaries of the second area out of Title 8315 to be acquired. This would entail the acquisition of the existing private road from the owners, and coming along the strip or right of way already shown on the plan.
>
> It was agreed with the owner of Title 8316 that if the Council acquired the area out of the title that a road would be provided to give access to the balance area."

As to the second paragraph of this passage, the evidence disclosed no such an agreement. It disclosed no more than that such was a term of various offers none of which was accepted.

On 24 October 1967, the respondent's solicitor delivered a survey plan to appellants' solicitor with a request that it be signed by the appellants. On being requested so to do, the appellants' attorney instructed their solicitor to borrow from respondent's solicitor a locality map which he had seen previously and upon which there were some markings as to the position of a proposed access road to the subject land and its relation to the remainder of the appellants' land. The map was provided. On 26 October 1967 the survey plan, executed by the appellants was returned to the respondent's solicitor with a covering letter which stated :

> "It has been signed by our clients without prejudice to their claim for compensation and on the understanding that it is the council's intention to establish access from Kings Road to the 20 acres by means of a public road as shown red on the map returned herewith, portion of which will run along and touch the northern boundary of our clients'

land for a distance of about 18 chains."

The respondent made no reply to this letter. At some time subsequently it took a decision to lay the road in a different position. When such a decision was made, the respondent did not deign to inform the appellants of it. Later, the respondent altered the survey plan to show the position of an access road in a position different from that described in the letter of 26 October 1967. The alteration was made without reference to the appellants. Local bodies, fortunately, do not usually conduct their business in this fashion.

The letter of 26 October 1967 was clearly an attempt by the appellants to ensure that the access road to the power station serviced the residue of their land. From their point of view, this was commercially advantageous. The legal consequences of the respondent accepting and acting upon the survey plan without commenting upon or disavowing "the understanding" may fall for consideration in other circumstances. It may give rise to rights and to remedies. It may be a basis for the appellants amending their formal claim for compensation or submitting a new claim. In passing I observe that the failure of the respondent to advertise pursuant to s.7(4) of the Crown Acquisition of Land Ordinance may have left the door open for such. Be all that as it may - and none of those questions arise for consideration in these proceedings - I do not think that the validity of the acquisition is affected by the respondent's conduct in these matters. True, there was a reference to such access in the respondent's submissions to the Governor in Council. That, it appears to me, resulted from a confusion by the solicitor for the respondent between a term in an offer and a term in a contract. The events commencing with the letter of 26 October 1967 and subsequent to it, in my view, give rise to considerations of their own but do not touch the validity of the notice of acquisition. I accordingly agree with the learned primary Judge that the submissions of the appellant on this aspect of the case must be rejected.

The appellants submitted that the respondent having erected workers' flats on the land taken, the purported acquisition was for purposes beyond those authorised by the Governor in Council. The burden of their submissions on this point is fully traversed in the judgment of the learned primary Judge and I will not repeat them. I content myself by saying that I agree with his conclusions. The appellants relied

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strongly upon Attorney-General v. Pontypridd Urban District Council (1906) 2 Ch. 257. In that case, the respondent acquired land compulsorily for an electricity station under the Electric Lighting Acts. Before the formalities were completed it resolved to erect and set about erecting a refuse destructor on the land. In a later action, it was restrained from so doing. The two purposes were quite distinct from each other. In the present case, the compulsory acquisition was authorised for a power station. That power, in my view, encompasses the power to do all such acts and things as may be necessary for and incidental to it. The Pontypridd case itself is authority for that - (op cit. p.264 and p.265). Whether the erection of workers' accommodation on the site falls within the description of necessary and incidental matters is an issue of fact which the learned Judge decided in the affirmative. I think that the evidence justified his so doing.

After the service of the notice to treat, the appellants registered the memorandum of transfer to them of the whole of the land purchased from Sukhichand and a duplicate Certificate of Title in their names was issued by the Registrar of Titles on 16 October 1967. Section 18 of the Land Transfer Act 1971 provides :

> "Every duplicate instrument of title duly authenticated under the hand and seal of the Registrar . . . . shall unless the contrary be proved by the production of the register or a certified copy thereof, be conclusive evidence that the person named in such instrument or in any entry therein as seized of or as taking an estate or interest in the land described in such instrument is seized or possessed of such land for the estate or interest so set aside . . . "

It was open to the respondent to lodge a caveat against the title giving notice of its rights pursuant to the Notice of Acquisition. It did not do so until 24 December 1968 - that is subsequent to the registration of the transfer to the appellants.

The legal effect of registration under the Torrens system of land tenure has been long settled - Assets Co Ltd v. Mere Roihi 1905 A.C. 176; Waimiha Sawmilling Co Ltd v. Waione Timber Co. Ltd.; Fraser v. Walker 1967 N.Z.L.R. 1069 (J.C.). The principles they establish and settle are well known and need not be restated.

The appellants contended - and rightly - that they have an indefeasible title to the land. They contend further that their acquisition of such title vitiated the notice to treat. Mr Gifford put it that if the respondent had rights thereunder, "it has slept on them and has allowed the registration of the transfer with full knowledge that it was being requested." In developing this limb of his argument, he submitted that if the respondent was to take the land lawfully it should have served a fresh notice on the appellants after they perfected their equitable interest by registration.

In my opinion, the argument advanced overlooks the fact that the respondent has made no attack upon the appellants' title. I think that in essence the appellants' position qua the respondent is no different from what it would have been had they been on the register at the date of service of the notice to treat. The notice placed on the parties "in a position analagous to that of vendor and purchaser" (Tiverton and North Devon Railway Co. v. Loosemore; Haynes v. Haynes both supra) and that situation obtains whether the person served is merely an equitable owner or holds the legal estate. It seems to me to remain unaltered when, as here, the equitable owner, subsequent to the receipt of notice, perfects his interest by registration. I accordingly reject the submission.

Section 5 of the Subdivision of Land Ordinance (Cap. 118) provides :

> "Notwithstanding the provisions of any other law for the time being in force no land to which this Ordinance applies shall be subdivided without the prior approval of the Board."

"Subdivide" is defined in s.3. So far as the definition is material, it reads :

> "Dividing a parcel of land for, sale conveyance transfer lease sub-lease mortgage agreement partition or other dealing or by procuring the issue of a certificate of title . . . in respect of any portion of land or by parting with possession of any part thereof or by depositing a plan of subdivision with the Registrar of Titles under the last mentioned ordinance."

The appellants contended that there was an

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obligation on the respondent to obtain the consent of the Subdivision of Land Board to the subdivision which they submitted was involved in the compulsory acquisition; that it failed to do so and that its failure invalidated the compulsory acquisition. The argument submitted dealt in depth with the question whether or not the appellants' land was subdivided but no authority was offered for the proposition that if it was the acquisition was invalidated by the failure to obtain the consent of the Board. In my view, none of the words "sale, conveyance, transfer lease sublease mortgage agreement partition" are apt to describe the effect of the notice to treat. "Other dealing" falls perhaps for separate consideration but in my view those words do not encompass the compulsory taking. "Dealing" in the context involves consensual treating and there was nothing such. The issue of a certificate of title was not procured. A plan of subdivision was prepared by the respondent but it was of the appellants' land and it required their signature before it could be presented for deposit. Practical considerations may have moved the respondent to have it prepared but, in my view, there was no legal obligation upon it to do so. When the appellants signed the plan it became their plan of subdivision of their land it seems to me that any obligation to obtain consent of the Board would necessarily have been with them and not with the respondent. The ultimate vesting of the land in the respondent depends upon presentation to the Registrar of Titles of a certified copy of any judgment or order of the Court made under the provisions of section 8 of the Crown Acquisition of Lands Ordinance. In such event, the Registrar of Titles is required to register "the respondent as proprietor and issue a certificate of title according to the judgment or order." - s.8. Until that is done, the appellants and respondent are "in a position analagous to that of vendor and purchaser". The "parting with possession of any part" of the land by Sukhichand or by the appellants - if they did part with possession - may fall within the prescription of the section. If it does - and I refrain from expressing any opinion thereon - it seems to me that the obligation thereby created to seek the approval of the Board was their obligation.

In my view, there was no legal obligation on the respondent to seek or obtain approval of the Subdivision of Lands Board and accordingly I think the

submission fails. The fact that it did in due time apply for such consent is in my view irrelevant to the present issue. I repeat that practical considerations and not legal requirements may have moved it so to do.

It remains to consider the respondent's submission that the appellants are estopped from challenging the validity of the purported compulsory acquisition or any acts done in pursuance of it.

As early as October 1964, the appellants evinced a keenness to have the then proposed power station erected on the land they had acquired from Sukhichand. On 14 October 1964 their solicitors wrote to the Town Clerk first mentioning that appellants had been disposed to make a gift of some five acres of such land for the purpose (which they had by then come to know was insufficient) and expressing a willingness to treat for the sale of 50 acres. In that letter it was stated that they, appellants, envisaged "subdividing and developing the property for residential, and if permitted, industrial use". There is nothing to suggest that the suggested gift had its genesis in altruism or public spirit. The erection of a power station on part of the land would likely hasten the day when permission for industrial use of adjoining land would be granted. On 22 April 1966 when the question of sale had been re-opened with them the appellants wrote :

> "Our clients regret that they would not be willing to sell the whole 90 acres 2 roods to the Council, as they contemplate subdividing the western end of the property for industrial use, subject of course, to such use having town planning approval. They think that it is likely to be approved if the Town Planning Board permits part of the property to be used for an electric power station."

On 13 May 1966, appellants made an offer of sale of part of the land to the respondent. A term of such offer was that the respondent obtain town planning approval of the balance of appellants' land for heavy industrial use.

On 17 August 1966 appellants after rejecting a counter-offer made by the respondent went on to say :

> "As there seems to be no prospect of further negotiations on price, the Council will

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presumably now proceed with a compulsory acquisition."

On 24 October 1967, appellants' having received the notice of acquisition gave notice of their interest and made their claim for compensation. The notice, inter alia, stated :

> "We claim compensation at the rate of £400 per acre, computed on the surveyed area for our estate in fee simple in the land affected by the said Notice of Acquisition."

The italics are mine.

On 25 October 1967, the solicitors for appellants wrote to respondent's solicitors:

> "With reference to your letter of 25th July last, we confirm our advice, that in order to simplify the claims, we have registered the transfer from sukhichand to Mukta Ben and Shanta Ben and the mortgage back .. ... "

The italics again are mine.

It was about that time their attorney signed the survey plan prepared by the respondent defining the mates and bounds of the land and establishings its "surveyed area" for it was on the next day, 26th October 1967, they returned it so signed to the respondent's solicitors. The covering letter is printed above and its contents discussed. For present purposes it suffices to say that appellants set their hand to a plan defining the land and making possible the computation of the compensation that might be assessed on a acreage basis.

In my view, all these matters constitute both words and conduct on the part of the appellants which justified the respondent in believing as facts that the appellants accepted the validity of the notice of acquisition and that the land to be taken was that contained in the plan subscribed by them in October 1966. On 19 September 1968, the appellants for the first time challenged the validity of the compulsory acquisition and on 4 October 1968 served

their writ in the present action. In the meantime, the respondent had set about preparatory work on the site and incurred a deal of expense prior to the intimation that the validity of the acquisition was under challenge. I pay no present regard to the work done and the expense incurred since notice of such challenge. However it is beyond gainsaying that if the appellants' contentions in the present case are sustained it acted to its prejudice in doing the work and incurring the expense of it prior to such challenge. I think that these facts bring the case within the dictum of Lord Birkenhead in Maclaine v. Gatty 1921 1 A.C. 376, 386 :

> . . ."Where A has by his words or conduct justified B in believing that a certain state of facts exists, and B has acted upon such belief to his prejudice, A is not permitted to affirm against B that a different state of facts existed at the same time. Whether one reads the case of Pickard v. Sears 1837 6 Ad. & El. 469, or the later classic authorities which have illustrated this topic, one will not, I think, greatly vary or extend this simple definition of the doctrine."

On the same topic Spencer Bower on Estoppel by Representation (2nd Ed.) p.218 has this to say :

> "Where any act, transaction, or proceeding is, by words or conduct or inaction, represented or treated as valid and regular, the representor is estopped, as against the representee, from afterwards setting up its invalidity or irregularity . . . . . a party may so conduct himself in respect of the orders and proceedings of a local or public authority as to raise the implication of his having recognized their legality, in which case he is estopped, as against that authority, from subsequently questioning such legality."

I consider, therefore, that the appellants are estopped from setting up the invalidity of the respondent's acquisition by reason both of its non-compliance with the requirements of s.136 of the Towns Ordinance and the lack of definition of the land in its notice of acquisition.

In the result, I am for the dismissal of the

In the Fiji Court of Appeal

appeal with the consequences as to costs proposed by the Vice-President. The respondent's cross-appeal was withdrawn at the hearing. It, too, must be dismissed with costs.

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(Sgd) O'REGAN J.

No. 13
Order dismissing Appeal and Cross-Appeal dated 18th February 1977

No. 13

ORDER DISMISSING APPEAL AND CROSS-APPEAL

IN THE FIJI COURT OF APPEAL

Civil Appeal No. 44 of 1975
Action No. 213 of 1968

On Friday, the 18th day of February 1977

BETWEEN: MUKTA BEN (d/o Bhovan)
SHANTA BEN (d/o Bhimji) Appellants
(Original Plaintiffs)

A N D : SUVA CITY COUNCIL Respondent
(Original Defendant)

UPON READING the Notice of Appeal dated the 3rd day of October 1975, on behalf of the Appellants by way of Appeal from the Judgment of the Honourable Mr Justice Stuart given at the trial of this action on the 26th day of August 1975 whereby it was adjudged that Judgment be entered for the Respondent with costs

AND UPON READING the Notice of Cross-Appeal dated the 10th day of November 1975 on behalf of the Respondent contending that the said Judgment of the Honourable Mr Justice Stuart be varied on further grounds

AND UPON READING the said Judgment

AND UPON HEARING Mr K H Gifford Q.C. of Counsel on behalf of the Appellants and Mr T.E.F. Hughes Q.C. of Counsel on behalf of the Respondent

AND mature deliberation thereupon had

IT IS ORDERED that the said Judgment of the Honourable Mr Justice Stuart dated the 26th day of August 1975 be affirmed and that this Appeal and Cross-Appeal be dismissed with costs to be paid by the Appellants to the Respondent and by the Respondent to the Appellants respectively.

BY THE COURT

(Sgd)

CHIEF REGISTRAR

No. 13 Order dismissing Appeal and Cross-Appeal dated 18th February 1977.

No. 14

ORDER GRANTING LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL

No. 14 Order Granting Leave to Appeal to Her Majesty in Council 1st April 1977.

IN THE FIJI COURT OF APPEAL

Civil Appeal No. 44 of 1975
Action No. 213 of 1968

BETWEEN: MUKTA BEN (d/o Bhovan)
SHANTA BEN (d/o Bhimji) Appellants
(Original Plaintiffs)

A N D : SUVA CITY COUNCIL Respondent
(Original Defendant)

Before the Honourable Mr Justice C.C. Marsack, Judge of Appeal in Chambers
Friday the 1st day of April 1977

UPON READING the Notices of Motion for Leave to Appeal to Her Majesty in Council dated the 3rd day of March 1977 and for security for Costs dated the 8th day of March 1977 respectively AND UPON HEARING Mr C.D. Singh of Counsel for the Appellants and Mr C.L. Jamnadas of Counsel for the Respondent IT IS THIS DAY ORDERED that the Appellants be granted leave to appeal to Her

In the Fiji Court of Appeal

No. 14 Order Granting Leave to Appeal to Her Majesty in Council dated 1st April 1977.

Majesty in Council on the following terms:

(a) Appeal to be prosecuted with all due diligence,

(b) Appellants to lodge a bond to the satisfaction of the Chief Registrar of the Supreme Court of Fiji in the sum of $1,000.00 as security for costs within 28 days, and

(c) The costs of these Applications to be the costs in the cause.

BY THE COURT

(Sgd)

REGISTRAR

EXHIBITS

EXHIBITS

No. 15

No. 15 Bundle of Correspondence numbered 1 - 37

BUNDLE OF CORRESPONDENCE NUMBERED 1 - 37

No. 1

SUVA CITY COUNCIL

Town Hall
Suva, Fiji.

12th June, 1963.

Messrs. Grahame & Co.,
Mansfield Chambers,
165 Victoria Parade,
SUVA.

Dear Sirs,

Re LAND FOR POWER STATION

Council is investigating areas suitable for the possible extension of the Electricity Power Station and the most suitable site to date appears to be land in Samabula at the mouth of the Samabula River. This is

EXHIBITS

No. 15
Bundle of
Correspondence
Numbered
1 - 37

private property, Crown Grant No. 617, and is owned by the Trustees Executrix and Agency Co. Ltd., Melbourne.

Should Council obtain this site, an access to the property will be needed through Native Grant 8A owned by Fong Man Ching, alias Fong Ming Ting alias Ming Ting.

Council will be grateful if you could contact the owners of both titles and conduct preliminary negotiations for the purchase of Crown Grant No. 617 and the possible access through Native Grant 8A.

Yours faithfully

(Sgd) R. W. BALFOUR

TOWN CLERK

X X X X

No. 2

SUVA CITY COUNCIL

Town Hall
Suva, Fiji

12th August, 1963

Messrs. Grahame & Co.,
Mansfield Chambers,
165 Victoria Parade,
SUVA.

Dear Sirs,

I refer to my letter of the 12th June, 1963 concerning the acquisition of Samabula land for the extension of Council's Power Station.

Has any progress been made in this matter?

Yours faithfully

(Sgd) R. W. BALFOUR

TOWN CLERK

RWB/JF

EXHIBITS

No. 15
Bundle of
Correspondence
Numbered
1 - 37

No. 3

Mansfield Chambers,

7th November, 1963

Messrs Jagdeo Prasad,
Wasinu

Dear Sirs,

re: Your Land

We act for our client who is interested in your property and we would like to consult you thereon in order to make a proposal to you.

We shall be obliged if you or one of you could call in to see us at your earliest convenience to discuss the matter.

Thanking you,

Yours faithfully
GRAHAME & CO.

(Sgd) NOEL McFARLANE.

X X X X

No. 4

SUVA CITY COUNCIL

CIVIC CENTRE
SUVA, FIJI

6th March, 1964

Messrs. Grahame & Company,
Mansfield Chambers,
165 Victoria Parade,
SUVA.

Dear Sirs,

re: New Site for Electrical Undertaking C.T. 7243 - Jagdeo & Ors

I thank you for your letter of the 29th February, 1964.

No. 4 Continued

EXHIBITS

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The value placed on the properties by the owners appears to be out of proportion to the City Valuer's valuation.

As suggested in paragraph 7 of your letter, would you please offer the owners a figure based on Mr. Tetzner's valuation to ascertain if they are willing to negotiate on a reasonable level. Should the owners refuse to negotiate on this level Council will then decide whether to proceed to compulsorily acquire the land or to seek another site.

Yours faithfully

(Sgd) R. W. BALFOUR
TOWN CLERK

X X X X

No. 5

HEALTH OFFICE
SUVA, FIJI

9th March, 1964.

Messrs. Grahame & Co.,
Barristers & Solicitors,
P.O. Box 27,
SUVA.

Dear Sirs,

I am directed to inform you that proposal of the Suva City Council as contained in your letter Ref. No. 8626 of 21st February, 1964 was considered at a meeting of the Suva Rural Local Authority. The Local Authority has approved the proposal in principle subject to:-

(a) submission of details of the schemes, buildings etc. to the Local Authority for its approval and

(b) compliance with the Local Authority's conditions which may be stipulated while approving the detailed

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plans etc. Conditions imposed will be particularly from the Public Health viewpoint.

Yours faithfully,

(Sgd)

Secretary,
Suva Rural Local Authority

c.c. The Secretary Town Planning Board.

X X X X

No. 6

GRAHAME & CO.

Mansfield Chambers
165 Victoria Parade,
Suva, Fiji

REF NO
8626
Mc/jc

10th March, 1964.

The Town Clerk,
Civic Centre,
SUVA.

Dear Sir,

New Site for Electrical Undertaking
C.T. 7243 - Jagdeo & Ors. (Your ref. 7/9/8)

We have your letter of the 6th instant. We have seen the owners and discussed the matter further with them, and sounded them out at the figure of £10,000. We explained that their idea of value was far too high.

However, they are not willing to negotiate at the level suggested by us, and we do not think it is worth while pursuing the matter with them.

Council will now have to decide whether it wishes to proceed, as advised in our previous letter.

Yours faithfully,
GRAHAME & CO.

(Sgd) NOEL McFARLANE

No. 7

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REF NO.
8626
Mc/jc

Mansfield
165 Victoria Parade

10th March, 1964.

The Town Clerk, Civic Centre,
SUVA.

Dear Sir,

New Site for Electrical Undertaking
C.T. 7243 - Jagdeo & Ors. (Your ref. 7/9/8)

We have your letter of the 6th instant. We have seen the owners and discussed the matter further with them, and sounded them out at the figure of £10,000. We explained that their idea of value was far too high.

However, they are not willing to negotiate at the level suggested by us, and we do not think it is worth while pursuing the matter with them.

Council will now have to decide whether it wishes to proceed, as advised in our previous letter.

Yours faithfully,
GRAHAME & CO.

(Sgd)

X X X X

No. 8

Office of the Town Planning Board
Department of Lands, Mines and Surveys
Suva, Fiji

6th April, 1964.

Messrs Grahame and Company,
Barristers & Solicitors,
Mansfield Chambers,
165 Victoria Parade, S U V A

Dear Sirs,

Re: Suva City Council Power House

I acknowledge receipt of your letter of the

No. 8 Continued

EXHIBITS

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21st February and have to inform you that the subject land, C.T. 7243 is within the Suva Rural Town Planning Area over which development control is exercised by the Suva Rural Local Authority. I have referred the matter to that Authority which will advise you upon the enquiry in due course.

Yours faithfully,

(Sgd)

Secretary,
Town Planning Board.

X X X X

No. 9

EXCERPT FROM MINUTES OF THE SPECIAL MEETING OF THE WORKS & ELECTRICITY COMMITTEES HELD IN THE COUNCIL CHAMBER, CIVIC CENTRE, AT 4.45 P.M. ON FRIDAY, 10TH APRIL, 1964

3. LOCATION OF NEW SITE FOR POWER STATION

File 7/9: Because of the increasing demand for electricity, and as space in the existing Power House is so limited as to restrict the type of plant required to be installed, the Committee discussed the need for a new Power Station site. The site considered most suitable is an area of land on the northern side of the Samabula River on the shore of Laucala Bay.

RECOMMENDED that in view of the deadlock that has been reached in negotiations with the owners of the land, Council's solicitors be instructed to take the necessary action for compulsory acquisition.

ADOPTED BY COUNCIL AT MEETING
Held on 28 April 1964.

No. 10

EXHIBITS

SUVA CITY COUNCIL

MEMORANDUM

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From ELECTRICAL ENGINEER
To TOWN CLERK
Subject NEW POWER STATION 26th May, 1964.

The requirements of the site for the new Power Station are :

(1) adequate foundations preferably soapstone over an extensive area;

(2) area exposed to prevailing breeze;

(3) minimum area of 50 acres;

(4) site free from risk of flood or landslide;

(5) site to have adequate access;

(6) an adequate supply of cooling water (near sea, if possible);

(7) site as near as possible to centre of anticipated load development.

In addition, the Station will be required to operate in parallel with the existing Power Station and cable capacities must be adequate to allow this function. As a consequence, this is effected by the distance between the Stations. For example -

At the 4 mile site first chosen the cost of a suitable 11,000 volt cable and pilot cable would be approximately £5,000 per mile or £20,000 for the 4 miles.

At 7 miles a larger size cable would be needed the estimated cost being £7,000 per mile or £45,000 to £50,000 for the total distance. Beyond 7 miles it would probably be necessary to use 33,000 volt transmission for which cables would cost £15,000 per mile.

If the station is located where sea transport can be used for fuel the cost would be approximately 2/- per hundred ton per mile which would not materially alter costs. Road transport on the other hand would

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probably cost 2/- per five ton per mile.

In view of the unsuitability of the 4 mile site due to the restriction imposed within the 1½ mile radius of the Vatuwaqa Receiving Station other sites in this area have been investigated but none which is suitable have sea water available for cooling.

The 80 acres mentioned in /18 comprises part of C.T.8136 which is a 94 acre block. The section of this block near the Kings Road would be suitable but is approximately a quarter of a mile inside the restricted area. In addition, there would possibly be some difficulty in obtaining access. A block which is on Kings Road 7 miles from Suva would also be suitable but involves the additional expense mentioned earlier.

A site offered at the lower end of Milverton Road is adjacent to the Low Cost Housing Estate and would also be unsuitable.

Two other blocks on the western side of Kings Road at 4 miles have not yet been inspected but in each case the size is smaller than that required.

The use of any of these locations would involve cooling towers and the latter two would probably require road transport for fuel transportation.

(Sgd) L.J. SMITH
ELECTRICAL ENGINEER

X X X X

No. 11

NOTICE OF CAVEAT FORBIDDING ANY DEALING

Registrar of Titles' Office, Suva
10th August 1964.

No. 88277

Sir,

I have the honour to notify you, in terms of Section 129 of the "Land (Transfer and Registration) Ordinance Cap. 136", that a Caveat has been lodged by MUKTA BEN (F/N Bhovan) and SHANTA BEN (F/N Bhimji) forbidding

No. 11 Continued

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Registration of any dealing with reference to the land comprised in C.T. 8316, Part of LOT 2 on D.P. 1941, until this Caveat be withdrawn by the Caveator or by the order of the Supreme Court, or unless such dealing be subject to the claim of the Caveator, or until after the lapse of twenty-one days from the date of the service of notice by you at the following address:

Yours faithfully,

(Sgd)
Registrar of Titles

To Sukhichand (F/N Sitaram)
C/- Munro, Warren, Leys & Kermode
Solicitors,
Suva.

X X X X

No. 12

MUNRO, WARREN, LEYS & KERMODE
Barristers & Solicitors

148 Victoria Parade,
Suva, Fiji.

14th October, 1964

The Town Clerk,
SUVA

Dear Sir,

re Site For Power House

With reference to the writer's discussion with you and the Electrical Engineer on the 13th instant, we confirm that we act for Mr Jethalal Naranji, whose wife and sister-in-law have agreed to buy from Mr. Sukhichand approximately 90 acres of his land comprised in C.T. No. 8316, being Lot 2 on D.P. 1941, less about 4 or 5 acres at the western end of the property where Mr Sukhichand has a substantial house.

As the writer explained, our clients, in the belief that 5 acres might be sufficient land for a site for the Council's proposed new power house, were prepared to offer the Council a gift of such an area, at such

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part of the abovementioned property as was best suited to the Council's requirements. You explained that the site will have to contain from 50 to 70 acres, depending on the nature of the country and how much of the site can be used.

You also said that Mr. Sukhichand's property had been under offer to the Council but that the offer had been withdrawn before you had fully investigated whether or not it could be used, it being less than 1½ miles from the radio stations at Samabula.

Our clients have asked us to inform you that they are prepared to enter into negotiations with the Council for the sale of 30 acres or so of the abovementioned property, if it is of use to the Council for a power house site. They envisage subdividing and developing the property for residential, and, if permitted, industrial use.

Yours faithfully,
MUNRO, WARREN, LEYS & KERMODE

(Sgd)

X X X X

No. 13

25th January, 1965.

The Hon. A.C. Reid, C.M.G.,
Secretary for Fijian Affairs & Local Government,
c/o N.L.T.B. Building,
SUVA

Dear Sir,

For some considerable time the Council has been faced with the problem of finding a new site for a second power station. For technical reasons, it is desirable that the new station be placed within reasonable distance of the present Station, as well as in a position that is central to the area it has to service.

No. 13 Continued

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This, naturally, limits our choice of a site to a fairly restricted area.

The Council has been considering two sites; one on the bank of the Samabula River and the other in the sloping country below the main Reservoir area and west of the Fiji Military Forces Camp. We are experiencing difficulty in obtaining the land west of the Camp and, further, we are not altogether satisfied with this particular area. The second choice of land, that opposite the Samabula River, is ideal as there is little subsoil and a very good soapstone foundation throughout. Furthermore, the owners are prepared to negotiate with Council for the sale of the property.

Council back in June 1963 commenced negotiations to purchase a suitable site, and on the 28th April, 1964, because of a deadlock in our negotiations with one of the landowners, resolved that Council's Solicitors be instructed to take the necessary action for compulsory acquisition.

Up to this stage, Council had completely overlooked a restriction that existed in the area as far as commercial undertakings were concerned. This restriction, affecting all the land within a mile and a half radius of the Radio Station at Suva Point, was imposed by the Postmaster-General to protect the radio installation from electrical interference. Council did not fully accept this restriction and in a letter dated 27th February, 1959, to the Director of Lands informed Government of the Town Planning & Subdivision of Land Committee's recommendation viz:

(1) That the Council considers that such wireless installations should be placed only in areas where any necessary restrictions will not prejudice obvious future development; in other words, in undeveloped places outside a municipality and where neighbouring areas can be made subject to restrictions before the installations are constructed and without hardship to those in the area.

(2) That the Council considers that the land owners and the Council have every justification for protesting against the application for restriction at this late date, as it must have been obvious, when the installations were planned, to those with the necessary technical knowledge that restrictions might be necessary. Further, the obvious course

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of development of the Suva area was ignored when only such a small move as that from Samabula to Vatuwaqa was made; and it apparently meant nothing to those concerned that, by these installations, development of an area approximating 20% of the City would be tied up and owners of neighbouring lands prejudiced accordingly.

(3) That the fact that, rightly or wrongly, these important and costly installations are now in the area is a situation that the Council seems to have no option but reluctantly to accept, to the extent that, if any future applications for rezoning any of the area for industrial purposes are received the representations of the Director of Lands will have to be borne in mind. On the practical side this means that such applications for rezoning would have to be refused; but the Council prefers at this stage not to change the zoning to some special industrial-free zone but to leave the zoning as it stands at present.

(4) That although the present situation has to be accepted, Government should be asked to make certain that no further or increased development in the City area of installations of this nature is made without the Council being first consulted as to any additional restrictions, or restricted areas, likely to result from such installations; further that Government be asked to commence planning now for the ultimate moving of the installations to an undeveloped area outside the City, even though it may be many years before this takes place - it being understood that overseas most installations of this type are in undeveloped and controllable zones well away from municipal centres; and that in furtherance of this object, Government be asked not to extend or enlarge any rights of occupancy of the land used by existing installations beyond their present tenure.

Since then, Council has endeavoured to co-operate although, I must admit, had overlooked the question of the restriction as did the Town Planning Board and the Postmaster-General's Department when they allowed the Fiji Tobacco Company and Tip Top Ice Cream Co. (Fiji) Ltd. to build in the restricted zone. The Rewa Co-operative Dairy Company was also allowed to build in the area although, in this case, Council was not

concerned as this installation was outside the boundaries of the City. It is quite obvious, however, that the Council has never been in favour of the restriction and has, in fact, felt that in the case of Vatuwaqa flats, this land lends itself to light industrial development and is not likely to be used as a residential area because of the cost that would be involved in reclaiming land from what is virtually a swamp area.

Naturally, when it became known that Council intended building a power station within this area, protests were lodged by the Postmaster-General, Cable & Wireless Limited and the Royal New Zealand Air Force and we have since had several discussions with the various departments involved, the latest discussion being that held in the Postmaster-General's office on the 3rd December, 1964, when Council was represented by the writer, the Electrical Engineer and Town Clerk, Cable & Wireless Limited by Mr. Fulton and the Posts & Telegraphs Department by the Postmaster-General and the Chief Engineer, Mr. Peck. During the course of the discussion, Mr. Peck pointed out that even land outside this restricted radius could prove unsatisfactory from their point of view if it was in the path of a beam from one of their directional antennae, and he promised to investigate the site west of the Military Camp to find out whether the construction of the power station on this site would adversely affect the Receiving Station. We have not yet received his further comments.

As I mentioned earlier, the siting of the power station is restricted to within a relatively close proximity to the existing station by the necessity to be able to operate the two stations in parallel. This could only be satisfactorily achieved by having a large capacity cable or cables between the two stations, and that too great a distance would necessitate an increase in the voltage of the interconnecting cables, as well as increase the administrative difficulties. In view of the fact that the Communications Engineers have the opinion that underground cabling may radiate interference under certain conditions, any increase in voltage on cables in the vicinity of the Receiving Station could then increase the general interference noise level. The alternative of routing high voltage cables away from this area would result in additional cost to Council.

It is considered that in the vicinity of the

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No. 13 Continued

Receiving Station the existing restriction on industrial development will not prevent a gradual increase in the cumulative effect of electrical noise as other development takes place in the area. An increase in only domestic installations, with the resultant increase in switching functions and in the use of electrical appliances and discharge lighting can only have a detrimental effect, as would the replacement of the incandescent street lighting with the more efficient forms of gaseous discharge lighting now available. Therefore, if the area is to be safeguarded from future interference, it would become necessary for Government to now restrict the area further and stop any form of development whatsoever. Should this course be followed, Government could well find itself facing a tremendous compensation bill for it would, in fact, render the land useless for any form of development.

I have read with interest that Cable & Wireless Limited have handed over their radio installation and its operation to the Postmaster-General and we know the Air Force has officially closed and are rapidly moving out of the area. Therefore, this restricts the number of parties to Central Government and Local Government for it was generally agreed at our meeting with the Postmaster-General and Cable & Wireless Limited that the main concern in connection with intereference was with the radio site and not so much the cable installation.

I am of the opinion, therefore, that the only solution to the problem is for Government to re-site its Radio Receiving Station in an area where it is not likely to be interfered with in the future and that they should consider moving the installation over the next five years.

If they would agree to this, it would allow Council to carry on its development in the area for it would take us the best part of four years to build our station and then install the generating equipment for we have decided when ordering the first of the 3,000 Kw plant to now place this in the present station in Suva and so allow us the extra time to plan and build the new station. Council at no time has been satisfied by Government or Cable & Wireless Limited that its station would interfere with the Radio Receiving Station. In fact, our own Electrical Engineer is of the opinion that there will be no increase in the level of interference. He has had

No. 13 Continued

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informal correspondence with Council's Consultant Engineer, Mr. G.B. Lincolne of Lincolne, Demaine & Scott, Melbourne, covering this matter and a copy of a reply which he has received is attached to this letter.

In view of the above, and as time is running out, I would greatly appreciate your taking this matter up with the Postmaster-General and the Colonial Secretary. Possibly, we could answer any queries you might have when we meet on Tuesday, 2nd February 1965.

When we discussed the whole question with the Postmaster-General and Mr. Peck, although they did not say so in as many words, they left me with the impression that they, too, considered that Government will in the not too distant future have to look to other sites well away from any areas that are likely in the foreseeable future to be developed so causing interference to their installations.

Yours faithfully,

(C. A. Stinson)
MAYOR

c.c. The Manager,
Cable & Wireless Ltd.,
Mercury House,
SUVA.

The Postmaster-General,
General Post Office,
SUVA.

X X X X

No. 14

Attention: Mr. Warren 19th April, 1966.

Messrs. Munro, Warren, Leys & Kermode,
Solicitors,
SUVA

Dear Sirs,

Suva City Council and C.T. 8316

We refer to the recent telephone conversation in reference to the Council's desire to purchase land for a

EXHIBITS

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new power site for their electrical power house at Vatuwaqa.

We understand that your clients Mukta Ben and Shanta Ben have agreed to purchase from Sukhichand an area of about 88 acres being part of the above land, but the actual sale completion has been held up due to a difficulty of getting a registered easement over the next door land.

You are aware of the history of this matter and the delays due to the Government previously prohibiting Council from acquiring land nearer the sea. Now that the restriction has been uplifted after two years, the Council is anxious to acquire a site suitable for the power house as soon as possible.

Therefore we should be obliged if you would put the Council's application to your clients at an early date, and we shall be obliged to know whether your clients are willing to sell the whole of the land in the title, excluding the part retained by Sukhichand and if so at what price. The Council of course would pay cash subject to getting a clear title and a registered easement.

Your clients, we know, have experienced difficulty in getting an easement, and it may be that your clients would wish the Council to take over the question of the acquisition of an easement.

We shall be glad to have your clients' views on this as soon as possible.

Thanking you,

Yours faithfully
GRAHAME & CO.

(Sgd)

No. 15

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MUNRO, WARREN, LEYS & KERMODE
Barristers & Solicitors

Mercury House
148 Victoria Parade
Suva, Fiji

22nd April, 1966

Messrs. Grahame & Co.,
Solicitors,
SUVA

Dear Sirs,

Your Ref. No. 8626 - MC/jc
Mukta Ben and Shanta Ben - Suva City Council

We acknowledge receipt of your letter of 19.4.66 and have discussed it with Mr. Jethalal Naranji, the attorney of our clients.

Our clients are buying from Mr. Sukhichand 90 acres 2 roods being Lot 2 on D.P. 2957 and being part of C.T. 8316 and are ready to take title. A transfer has been executed but registration is held up pending execution of an Easement of Right-of-Way over C.T. No. 6345 which is owned by Mr Sukhichand and his brother Mr Chanik Prasad.

Our clients regret that they would not be willing to sell the whole 90 acres 2 roods to the Council, as they contemplate subdividing the western end of the property for industrial use, subject of course to such use having town planning approval. They think that it is likely to be approved if the Town Planning Board permits part of this property to be used for an electric power station.

We attach a copy of the plan on C.T. 8316. Our clients offer to sell the eastern portion of Lot 2, which is edged red and should be roughly 50 acres, on the following terms:

1. Price - £200.0.0. per acre, computed on the surveyed area. Terms of payment to be the subject of further negotiation if agreement on other points is reached.

2. Survey- the Council to do all necessary surveys at its expense.

EXHIBITS

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3. Access -

(a) the vendors would provide without cost the land necessary for a road through the residue of Lot 2, connecting the existing bridge over Wainivula Creek with the land offered for sale. The Council should meet all the cost of forming and maintaining this road, which should be so sited, designed and constructed that it may be used to advantage by our clients in connection with their proposed subdivision of their residue of Lot 2.

(b) In view of the reluctance which Mr Chanik Prasad has so far shown to joining in with Mr Sukhichand in the grant of a registered right-of-way easement over C.T. 6345 for the benefit of Lot 2 D.P. 2957 and in view of the fact that C.T. 6345 serves only to provide the abovementioned bridge with access to King's Road, it is suggested that, if the Council agrees to buy from our client as abovementioned, it should agree to have C.T. 6345 acquired for the purposes of a public road.

4. Possession - The land offered to the Council is in use by Mr Sukhichand as a dairy farm and he is entitled to possession until the 30th June 1967, but possession may be obtained earlier by our clients giving him six months notice and paying him the balance of the purchase money owing to him.

5. The vendors would expect the Council to pay all the legal costs and expenses of a contract of sale, transfer of title and incidental legal matters necessary to complete the sale, including the vendors' solicitors' costs.

Whether earlier possession of the land or some of it might be negotiated with Mr Sukhichand we cannot say at this time.

We would be happy to discuss further points with you at any time so as to reach some decision as speedily as possible.

Yours faithfully,
MUNRO, WARREN, LEYS & KERMODE

No. 16

EXHIBITS

SUVA CITY COUNCIL

MEMORANDUM

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From ELECTRICAL ENGINEER

To TOWN CLERK

Subject POWER STATION SITE - SAMABULA

11th July, 1966

During the recent visit of Council's Consultant Engineer I took the opportunity of visiting the proposed power station sites at Samabula, which are shown on the accompanying Sketch Plan.

SITE 'A'

The site 'A' originally considered required the purchase or acquisition of the 72 acres comprising CT. 7243. The advantages of this site, which is outlined in blue, are :-

1) It is well isolated from existing and possible future domestic development.

2) It would permit considerable expansion in the future.

It was initially considered that this site would permit the use of sea water as a cooling medium. Experience has shown since that date that the Laucala Bay waters and the Samabula River can become quite dirty during floods and heavy rain particularly in the Rewa Delta. This matter then needs to be given careful consideration, and cooling towers may prove both more desirable and more economical.

SITE 'B'

The site 'B', considered as an alternative when the block CT.8316 was offered to Council, has the following advantages over site 'A' :-

1) It is further away from the radio receiving station at Vatuwaqa.

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No. 16 Continued

2) It is closer to the Kings Rd. Since all feeders from the Power Station would be routed towards the King's Road, the additional distance to site 'A' of approximately half a mile would result in an additional cost of between £2,000 and £3,000 per feeder, as well the recurrent cost of the losses in the additional length of cable, although these losses would be small. It would be necessary to initially install two cables from the new station.

3) The Wainivula creek could be utilised to supply make-up water for the cooling water system which would use cooling towers.

The site 'B' would be entirely suitable for the new station provided sufficient land was obtained so that adequate isolation could be maintained from existing and future development in the immediate vicinity of the area. The area shown on the plan is the minimum considered necessary. The use of this site would require the acquisition of a section of CT.8315 and a section of CT.8316. If the section of Crown Land projecting into CT.8316 can also be obtained, then the acquisition of a larger section of each block to form the larger area outlined in red would be advantageous in permitting greater future expansion. The section of CT.8315 on the western side of the existing roadway, and bordering on the Samabula River should be included as this would permit the construction of suitable facilities for the transport of fuel oil to the site by water transport. It may be necessary to allow for a roadway on the southern side of the section to permit access to the unacquired sections of the land.

FUTURE DEVELOPMENT

On the present assessment of load increase the new station will be required to be in operation by mid 1969. It is expected that diesel generation will be used for Suva and its environs for the next twenty years, when it would be necessary to turn to steam generation. By that time small atomic stations may have become an economic proposition.

I have discussed these matters with Council's Consultant Engineer, and we would suggest that the

No. 16 Continued

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Electricity Authority be requested to acquire for Council the site 'B' as outlined in red, as this would be the more economical site to develop initially. The site 'A' as outlined in blue would be a suitable alternative. In either case it will be necessary to acquire sufficient additional land for suitable access from the King's Road.

The reserving of the surrounding areas for industrial development would prevent domestic development from crowding too close to the Power Station.

(Sgd) ELECTRICAL ENGINEER

X X X X

No. 17

SUVA CITY COUNCIL

Civic Centre
Suva, Fiji

27th July, 1966

Messrs. Grahame & Co.,
Mansfield Chambers,
165 Victoria Parade,
SUVA.

Dear Sirs,

Power Station Site - Samabula

Your letter of the 21st July, 1966 was referred to full Council for consideration.

I am instructed by Council to request that you offer the owners of C.T. 8315 and 8316 £110.0.0. per acre for the land required for the Power Station site which is shown as outlined in red on the plan at /67 on this file.

In the event of this offer being refused by the owners, would you please take whatever action necessary to have the land compulsory acquired.

Yours faithfully,

(Sgd) R. W. BALFOUR
TOWN CLERK

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No. 18

Attention: Mr. Warren

Messrs. Munro, Warren, Leys & Kermode
Solicitors,
SUVA

12th August, 1966.

Dear Sirs,

Suva City Council re Mukta Ben & Another

We refer to your letter of the 13th May and subsequent telephone conversation, and have now received further instructions from the Suva City Council.

1. The Council regards the value placed on the land by your client is very high, and after careful consideration, having regard to prevailing prices, considers that £110 per acre is a fair and reasonable price today for such land having regard to its present use, and therefore we are instructed to offer that rate for approximately 40 acres of land more or less out of your client's total. The area of course would be subject to survey.

2. The Council would form the public road access to the western end of your client's land.

3. We note the requirement in regard to possession of the land and arrangements would have to be made with Mr. Sukhichand.

4. All legal costs would be paid by the Council, including costs of survey and the transfer of title and balance title for your client.

5. Zoning: The Council does not consider that there is any obligation on it to obtain Town Planning approval for the use of the balance of your client's land for heavy industrial use, and we are instructed to say that that is a matter for your client to take up with the relevant authority.

We shall be glad if you will put the above before your client and let us know his answer as soon as possible, as the Council now wishes definitely to proceed.

If your client cannot accept the above price, then we are instructed to serve the appropriate notice of

No. 18 Continued

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acquisition and proceed compulsorily to acquire and use the procedure set out in the Ordinance.

Thanking you,

Yours faithfully,
GRAHAME & CO.

(Sgd)

X X X X

No. 19

Mr. Chanik Prasad,
NASINU

Dear Sir,

Suva City Council
re: Your C.T. 8315

We refer to the conversation with you some months ago in reference to the possible purchase of land out of your title by the Council for a site for the power house for its electrical undertaking.

The Council has now instructed us to proceed, and after consideration considers the value of your land as at present to be £110 an acre, and we are instructed to enquire whether you are willing to sell an area to be determined on at that rate.

You made an inspection of your land with the Electrical Engineer, and I understand he pointed to you the approximate boundary of the area proposed to be taken. If any agreement is reached, then of course a survey would be made of the actual area to be taken, and the price calculated after survey.

This is a preliminary enquiry, and if we cannot agree upon price, then we have to inform you that the Council proceeds to exercise its powers and serve a notice of acquisition and then compulsorily acquire the land according to law.

Your early attention to this matter would oblige.

Yours faithfully,
GRAHAME & CO. (Sgd)

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No. 20

MUNRO, WARREN, LEYS & KERMODE
Barristers & Solicitors

Mercury House
148 Victoria Parade
Suva, Fiji

17th August, 1966

Messrs. Grahame & Co.,
Solicitors
SUVA.

Dear Sirs,

8626 Mc/jc - Suva City Council and Mukta Ben and Shanta Ben

We thank you for your letter of 12th August, which has been carefully considered by our clients. They instruct us to say that they find the Council's offer of £110 per acre for about 40 acres at the western end of their property quite unacceptable. Considering the potential of this property, not its present use, they regard the offer as quite unrealistic.

As there seems to be no prospect of further negotiation on price, the Council will presumably now proceed with a compulsory acquisition.

Yours faithfully,
MUNRO, WARREN, LEYS & KERMODE
(Sgd) D.J. WARREN

X X X X

No. 21

8th September, 1966

The Hon. the Acting Chief Secretary
Government Buildings,
SUVA.

Dear Sir,

Re: Suva City Council - Acquisition of land for new Site for Power Station

As you know the Suva City Council has been

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contemplating the acquisition of a suitable site for the erection of a new power station, which is very necessary due to the expansion of its electrical undertaking and the restricted area in which it is not operating in Suva.

Over three years ago the Council investigated areas likely to be suitable and finally decided on a site at Vatuwaqa. This year on behalf of the Council we have been negotiating with Messrs. Munro, Warren, Leys & Kermode, Solicitors for Mukta Ben f/n Bhovan of Suva, the wife of Jethalal Niranji and Shanta Ben f/n Bhindi of Suva the wife of Sunderjee Niranji the owners of approximately 88 acres being the balance of the land comprised in Certificate of Title No. 8316. These two owners only purchased the land in question in July 1964 for the sum of £8,100.0.0. The Council's officers have inspected the area and the Council decided that it would like to purchase approximately 40 acres out of the site for its new power station area.

On taking up negotiations however, the owners ask a price of £300 an acre. This was considered highly excessive in view of the fact that the Council had in 1962 an earlier valuation of the adjoining property from Mr. Tetzner, and in view of the fact that the owners themselves had purchased the land for about £90.0.0. an acre.

After consideration, we offered to the owners £110 an acre for approximately 40 acres subject to survey, but that has been refused and as the owners' Solicitors say there seems no prospect of any further negotiations. There is little likelihood of the owners agreeing to reduce their price much below £300, and we have advised the Council, having regard to knowledge of the land and of valuations in that area that £110 is a reasonable market price today. The land is used as a dairy farm as is the land on each side.

We enclose an office sketch taken from a plan supplied by the Chief Electrical Engineer.

We are now instructed to take steps compulsorily to acquire the land on behalf of the Council, and for that purpose require the consent of the Governor in Council under Section 137 (1) of the Local Government

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(Towns) Ordinance Cap. 78.

We are instructed by the Council that no other suitable land can be purchased on reasonable terms, and that this area is most suitable for the purposes of the Council. We are also informed that the matter is now urgent, as the Chief Electrical Engineer wishes to have buildings erected by the end of 1967 and the installations made during 1968.

By virtue of Subsection 2 of Section 137 Cap. 78, the Crown Acquisition of Lands Ordinance Cap.140 applies, and the purpose of the acquisition by the Council for a power house site is a public purpose within the meaning of the Crown Acquisition of Lands Ordinance (see definition of "public purposes" (a) for exclusive Government or for general public use). For the word "Government" substitute the word "Suva City Council" use.

The site would be used exclusively for erection of buildings in connection with the power house and all purposes incidental thereto.

We shall be glad if this application could be put before the Governor in Council at an early date so that the authorisation for the Council to acquire the land compulsorily may be given.

A notice of intention under Section 6 of the Crown Acquisition of Land Ordinance will then be served upon the owners after the expiration of three months from the service of notice, if there is no agreement as to the amount of compensation be paid for the land, which is not likely, then the dispute is referred to the Supreme Court for determination.

You will appreciate that the Council is anxious to proceed with this matter with expedition, and we shall be glad of your co-operation.

Would you kindly let us know if you require any further information.

Yours faithfully,
GRAHAME & CO.

(Sgd)

No. 22

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LANDS AND SURVEY DEPARTMENT
SUVA, FIJI

19th September, 1966

Messrs. Grahame & Co.,
Barristers & Solicitors,
P.O. Box No. 27,
S U V A.

Dear Sirs,

Your letter No. 8626 of the 8th September, 1966, to the Acting Chief Secretary in connection with the Suva City Council's application for the Governor-in-Council's authorisation to acquire land under Cap 140 for the purpose of a new Power Station has been forwarded to this office for attention.

2. It would seem inappropriate in this particular instance for Council to proceed under the provisions of Section 137 of the Local Government (Towns) Ordinance. Moreover, by virtue of Notice No. 669 in the Royal Gazette dated 21st June, 1966, Part IV and Sections 49 and 71 of the Electricity Ordinance 1966 (No. 20 of 1966) have not been brought into force. If they had been brought into force, Council would have been required to proceed under Section 31 of that Ordinance. In the circumstances, it would appear that the Council's application for permission to acquire the land compulsorily must be dealt with under Section 15 of the Suva Electricity Ordinance.

3. In order that the request can be submitted to the Governor-in-Council under Section 15 of the Suva Electricity Ordinance, will you please let me have the following :-

(a) a plan showing clearly,

(i) the 88 acres of land which you state the present owners purchased for £8,100 in 1964;

(ii) the 40 acres which the City Council wish to acquire;

(iii) details of access to the 40 acres and

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the access which would be available to the balance of the 88 acres. (The sketch plan which accompanied your letter does not show this information clearly);

(b) what other sites, if any, Council has investigated for the new Power Station;

(c) full details of the reasons why City Council consider it necessary to acquire as much as 40 acres for a Power Station;

(d) if the 40 acres will not be wholly utilised to accommodate a new Power Station what other uses the Council propose to put the land;

(e) whether or not the relevant Rural Local Authority and/or the Town Planning Board has been consulted on Council's proposal to use this particular land for a Power Station, and if so, what were their observations;

(f) whether or not the Council has obtained an assessment of the value of the 40 acres from a professional valuer in terms of 1966 land prices, and if so, what this amounts to;

(g) whether or not any attempt has been made to reach an agreement on a compromised price somewhere between Council's offer of £110 an acre and owner's demand of £300 an acre;

(h) whether or not the owners have raised any objection to Council's proposal to use the 40 acres as a Power Station site. In other words, whether or not it is reasonable to conclude that the only point of disagreement between the parties is the matter of price to be paid for the land;

(i) if the price to be paid is the only point of disagreement between the parties, has any consideration been given to reaching a settlement by means of arbitration?

Yours faithfully,

(Sgd)

Director of Lands

No. 23

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24th September, 1966

The Town Clerk
Suva City Council
SUVA.

Dear Sir,

Acquisition of Land at Vatuwaqa for Power Station Site

We made an application in writing to the Colonial Secretary to obtain the Governor in Council's approval to the acquisition of land, and now have a letter from the Director of Lands asking for further information - some of which we can answer ourselves, but the following requires attention by the Chief Electrical Engineer :

1. What other sites, if any, Council has investigated for a new Power Station?

2. Full details of the reasons why the City Council considers it necessary to acquire as much as 40 acres for a Power Station. On this point we have informed him that we are also considering acquiring the adjacent 40 acres.

3. If the 40 acres will not be wholly utilised to accommodate the new Power House, what other use the Council proposes with the land?

We shall be glad to have your early reply to supply the information to the Director of Lands.

Yours faithfully,
GRAHAME & CO.

(Sgd)

c.c. The Chief Electrical Engineer

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No. 24

SUVA CITY COUNCIL

Civic Centre,
Suva, Fiji

4th October, 1966

Messrs. Grahame & Company
Solicitors
Mansfield Chambers
Victoria Parade
S U V A

Dear Sirs,

ACQUISITION OF LAND AT VATUWAQA FOR
FOR POWER STATION SITE

I refer to your letter of the 24th September and forward the Engineer's comments on the points raised:-

1. Other Sites Investigated.

1. CT 7243 - Mouth of Samabula River. This is a suitable alternative to the CT 8316 site. Memo 7/9/67.

2. Mouth of Tamavua River, adjacent to Delainavesi Road - rejected because of noise echo in Tamavua Valley.

3. Rubbish Dump at mouth of Tamavua River - difficult foundations.

4. Old Rubber Plantation approximately 1 mile up Lami River. Native land, susceptible to flooding.

5. DP 2736 - Old Quarry, north western shore of Nubulekaleka Bay - insufficient area.

6. Bilo Point adjacent to Draunibota Island. Difficult access. Away from probable centre of gravity of load expansion.

7. Industrial Area - Walu Bay - behind Brewery - rejected by Government, as this area is required for industrial purposes.

8. CT 8522 - 9 acres - between Wainivula Road and Waimarama River. Insufficient area and is in centre of domestic area development.

No. 24 Continued

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9. Namadai - difficult site to supply with fuel

10. CT 8895 - Tamavua River at Wailoku - unsuitable area.

11. CT 3213 - Nasinu adjacent to Nasinu River. Too far from existing station for adequate paralleling control. Would be extremely expensive to interconnect.

2. An area of 40 acres was considered to be the minimum which should be obtained, to allow for future expansion, the provision of suitable storage areas for stores and fuel, suitable working areas for maintenance, and for running ancillaries such as water cooling towers etc., and adequate isolation of the station from existing and future development in the immediate vicinity of the area. Owing to the undulating nature of the topography of the particular area, the most suitable position for the station building is near the southern boundary of the portion of CT 8316. The purchase of this site together with the portion of CT 8315 required will permit the siting of the station virtually in the centre of the whole block thus acquired. The section of CT 8315 adjacent to the Samabula River would enable the installation of fuel oil handling and storage facilities, and permit fuel oil deliveries to be made by barge from Suva. This would be very much cheaper than using road transport.

It is possible that some living quarters may be provided on the perimeter of the area for the housing of breakdown and shift staff.

3. It was hoped that some industry could be established immediately adjacent to the station which could use waste heat in the form of steam. This could materially reduce the cost of the electricity supply.

Yours faithfully,

(Sgd) R. W. BALFOUR

TOWN CLERK

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No. 25

26th October, 1966

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The Director of Lands,
Government Buildings,
SUVA.

Dear Sir,

Suva City Council re Acquisition of Land for Site for Power Station (Your ref. 19/111)

We refer to your letter of the 19th ult. and to a subsequent interview this month with you at which the Chief Electrical Engineer and the writer were present.

We now supply the particulars required by your letter as follows:-

1. Nine copies of plan showing the proposed acquisition of land out of the two titles, C.T.8316 and 8315 with proposed roads A and B.

   The proposed acquisition is of 40 acres out of each title.

2. Re: Access. The Electrical Engineer has shown alternative routes. Route A through adjacent Crown land and Route B marked red along the boundaries of the second area out of Title 8315 to be acquired. This would entail the acquisition of the existing private road from the owners, and coming along the strip or right-of-way already shown on the plan that you have.

   It was agreed with the owner of Title 8316 that if the Council acquired the area out of the title that a road would be provided to give access to the balance area.

3. In reply to (b), (c) and (d) in your letter, we enclose copy of information supplied by the Chief Electrical Engineer, Mr. Smith.

4. We are informed that the Local Authority and the Town Planning Board have no objection.

5. Re the value of the land. In 1964 Mr. Tetzner gave the City Council a valuation of the land in C.T. 7243, which is adjacent to the area proposed

to be taken. That also is a dairy farm, very similar to those conducted on the other land. Mr. Tetzner's valuation was in respect of the land under grass, comprising 36 acres - was £75.0.0 per acre. We spoke to Mr. Tetzner recently in regard to the two areas in question, and he considered they would be about the same value and that £300 asked by the owner of Title 8316 was ridiculous.

We enclose an original stamped agreement between Sukhichand and Mukta Ben and Shanta Ben dated 22nd July, 1964 for your perusal. You will note that an estimated area of 88 acres was sold for £8,100 on terms, the vendor retaining about 6 acres for his house site, which is shown on the plan you already have. This sale price works out at approximately £92 per acre.

We therefore offered £110 an acre, being an advance over £92 per acre, which the Council considered to be the ultimate price they could offer. The dairy farm land in that area is worth no more than £100 an acre today, having regard to the use to which it is now put, which £100 an acre is an increase on Mr. Tetzner's valuation two years ago. So it was considered £110 was the limit to which the Council could go, and this was done in order to attract the vendor and to allow something for displacement.

It was pointed out to the vendors that the balance areas in the title would be considerably increased in value due to the Council erecting a Power Station there and giving good road access, thus enabling the vendors to subdivide.

Mr. Warren is acting for the vendor of C.T. 8316, and there is no hope of a compromise, and indeed the Council would not give any more than £110 an acre, which it considers is above the present market value.

There is no objection to the Council's proposal to acquire by either owner, but each wants as much as possible, so that the only point of disagreement is one of price.

The owner of C.T. 8315, whom we know well, discussed the matter with us and with the City Electrical Engineer went out on the site to see what area the Council

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proposed to acquire, but we could not come to any agreement with him as to price, having offered the same rate of £110 per acre. He thought the 40 acres were worth much more than that, being aware of the request of £300 an acre from the adjacent owner. The owner of C.T. 8315 claimed that he could get £15,000 for the whole of his land in the title. There the matter rested, but he had no objection to the acquisition, it being purely a disagreement as to price. He also is well aware that he could subdivide the balance of the land once the Council acquired portion of it.

All legal costs and out of pockets of acquisition, and transfer would be paid by the Council.

We have not considered settlement by means of Arbitration, and are of the opinion that the Council can only use the processes of law, which is in effect arbitration by a Judge.

As we pointed out to you the Electrical Engineer considers this is the most suitable site, and the Council must have room for expansion and requires the land proposed as a buffer area. We also mentioned to you that it was considered that Samabula/Vatuwaqa is expanding rapidly, and the growth of Suva is towards Nausori, and that eventually that area along the road to Nausori will become a suburb of Suva, and the proposed site for this power station will be really in another decade more or less in the centre of Suva and its environs.

It is virtually impossible to get any suitable land inside the present City boundary, and indeed it is far too congested.

We trust the above answers all your queries, and the information is helpful.

We shall be glad if you will put up your recommendations to the Governor in Council as early as possible, as the Council desires to move as quickly as possible in this matter.

Thanking you,

Yours faithfully,
GRAHAME & CO.

(Sgd)

No. 26

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LANDS AND SURVEY DEPARTMENT
Suva, Fiji

31st October, 1966

Messrs Grahame & Co.,
Barristers & Solicitors
P.O. Box No. 27
S U V A

Dear Sirs,

Proposed Acquisition of Land for
S.C.C. Electricity Undertaking :

I acknowledge receipt of your letter reference 8626 of the 26th October together with the copy of a statement by the Council's Chief Electrical Engineer, and nine copies of a locality plan.

2. Since the discussion in this office on the 19th October I have considered more closely the procedural implications of the application of Section 15 of the Suva Electricity Ordinance. I am advised that in considering an application by Council for approval to proceed under Section 15 of Cap. 87 the Governor-in-Council is not required to follow the legal procedure prescribed in Section 137 of the Local Government (Towns) Ordinance; e.g. when considering an application under Section 15 of Cap. 87 the Governor-in-Council is not obliged to conduct a specific enquiry such as is mentioned in Section 137 (1) of Cap. 78. Moreover, I am advised that under the present Membership system the correct procedure is for Council's application under Section 15 of Cap. 87 to be dealt with by the Office of Communication and Works.

3. In accordance with the above, I have today submitted copies of your letter of the 8th September, my reply No. LD.19/111 of the 19th September and your latest letter of the 26th October, 1966 and enclosures to the Secretary for Communications and Works for necessary action.

4. With regard to the nine copies of the locality plan which you submitted, I note that those do not show the 5 to 6 acre portion of C.T. 8316 which I have always understood was not to be acquired by your Council. You may wish to clarify this point with the Secretary, Communications and Works.

Yours faithfully

(Sgd) Director of Lands

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No. 27

3rd November, 1966

The Secretary,
Communication & Works
SUVA.

Dear Sir,

Suva City Council re Proposed Acquisition of Land at Vatuwaqa for Site for new Power Station

We act for the Council, and have been in communication with the Director of Lands in reference to the proposed acquisition of areas of land out of two freehold titles for the site for the new power station.

The Director of Lands has written to us a letter of the 31st October (his ref. 19/111) informing us that he has sent on relevant papers to you for necessary action, as such matters are now within your department.

We shall be glad if you could give this matter your urgent attention, as it is urgent so far as the Council is concerned, and we shall be happy to discuss any outstanding points with you or clarify any matters.

Thanking you,

Yours faithfully
GRAHAME & CO.
(Sgd)

X X X X

No. 28

MUNRO WARREN to SUKHICHAND

25th January, 1967.

Mr. Sukichand (F/n Sitaram)
Dairyman, NAGSINU
Dear Sir,

re Mukta Ben and Shanta Ben

We write to you under instructions from Mr. Jethalal

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Naranji, the attorney of Mesdames Mukta Ben and Shanta Ben to whom you agreed, by Memorandum of Terms of Sale dated the 22nd day of July 1964, to sell the land which has since been defined by survey as Lot 2 on D.P. No. 2957.

Clause 8 of the said Memorandum is as follows:

"8. The Vendor will at the time of transfer to the Purchasers of the title of the land hereby sold procure for the Purchasers a registered free and perpetual easement of right-of-way over the whole of the land now comprised in Certificate of Title No. 6345 (which is owned by the Vendor and his brother Sukhnend Chanik Prasad) for the benefit of the land hereby sold unless the land comprised in Certificate of Title No. 6545 has in the meanwhile been dedicated as or proclaimed to be a public road".

Despite the many requests of the purchasers you have so far failed to carry out your obligation under the said Clause 8 with the result that the purchasers are seriously prejudiced and have been unable to take title to the land sold by you to them.

We are instructed to demand immediate performance of the obligation under Clause 8, failing which our clients will hold you responsible for their loss and will be obliged to take action to protect their interests.

Yours faithfully,
MUNRO,WARREN, LEYS & KERMODE

X X X X

No. 29

Office of the Secretary for
Fijian Affairs & Local Government

N.L.T. Building,
Suva, Fiji

16th March, 1967

Sir,

Acquisition of Land for Power Station, Vatuwaqa

I am pleased to advise that on the 1st March, 1967, the Governor-in-Council agreed that in the terms of

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section 137 of the Local Government (Towns) Ordinance, Cap. 78, the Suva City Council be authorised to acquire 20 acres of land compulsorily for a power station. The Governor-in-Council considered that 20 acres was sufficient land for the purpose.

2. It is realised that 20 acres is substantially less than the area of land applied for and regarding the balance, the Governor-in-Council further agreed that it would be prepared to consider an application for the compulsory acquisition of a larger area of land on its merits for other purposes, e.g. industrial, within the terms of the Ordinance.

I am, sir,
Your obedient servant,

(Sgd)

Deputy Secretary for Fijian Affairs
& Local Government

The Town Clerk,
Suva City Council,
SUVA.

X X X X

No. 30

6. NEW POWER STATION SITE - SAMABULA

Letter from the Office of the Secretary for Fijian Affairs & Local Government advising that Council could proceed with the acquisition of the 20 acres of land for the new Power Station at Samabula was received.

CONFIRMED IN COUNCIL AT MEETING
HELD ON 28 MAR 1967

No. 31

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7th June 1967

The Deputy Secretary for Fijian Affairs
& Local Government,
Native Land Trust Board Building,
SUVA.

Dear Sir,

Suva City Council re Acquisition of Land at Vatuwaqa for Power Station Site (Your ref. 45/3/26)

We refer to your letter of the 16th March last to the Town Clerk informing him that the Governor in Council considered that 20 acres was sufficient land for the above purpose and that the Governor in Council agreed that the Suva City Council be authorised to acquire 20 acres compulsorily.

We presume that the 20 acres would be inside the area of 80 acres asked for by the Council.

After further consideration, we are now instructed by the Council that it would prefer to acquire the 20 acres at the eastern end, i.e. adjacent to the sea out of C.T. 8316. This area is further away from the Vatuwaqa Receiving Station than the first proposed area, although it is still within the 1½ mile limit. It is at present completely isolated and any development around the station could be controlled preferably as industrial. Also the area could be enlarged by reclamation in Laucala Bay. On the northern boundary is Native land, which we understand is under Crown Lease sub-leased for agricultural purposes, and adjacent to that is Crown land running through to the main Government road.

Exclusive of the 20 acres the Council would require an access road through the Native land and Crown land up to Kings Road. In addition, the Council would require a cable easement, and it is suggested that such easement could be along the northern boundary of the proposed site, i.e. the southern boundary of the Native and Crown land, but the Electricity Ordinance would probably give sufficient power to the Council for that purpose.

The enclosed sketch shows the proposed site

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hatched red. The suggested access road coloured brown, and the recommended cable easement coloured blue.

On behalf of the Council we now make an application for consent of the Governor in Council to acquire the area of 20 acres as shown on the plan, and also any necessary authority to acquire any part of the Crown land or Native land for the access road.

We are instructed that the 20 acres will provide a sufficient area for some years, but it is hoped in years to come that some part of the Native land will be required by the Council for expansion purposes. The site also has the advantage of sea access.

We are instructed by the Electrical Engineer of the Council that the matter has become urgent, as the Council would like to take possession by September in order to make any surveys and lay-out for buildings.

The site proposed is the extreme end of the dairy farm, and the acquisition should not materially interfere with the conduct of the farm. The owner had already asked much more than the Council was prepared to pay for what the land was worth, and the question of compensation would have to go to the Supreme Court for determination.

Therefore, the Council would be obliged to have power to give notice of intention. Council would be obliged if it could have the power to give less than three months' notice under Section 7 of the Crown Acquisition of Land Ordinance, Cap.140.

We suggest that a period of 14 days would be sufficient time for the owner to remove any cattle from the area. Thereafter the Council could make the necessary survey and put up dividing fences.

We should be obliged if you could give your early attention to this application.

Yours faithfully,
GRAHAME & CO.,

(Sgd)

No. 32

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Office of the Secretary for
Fijian Affairs & Local Government
N.L.T. Building
Suva, Fiji

18th July, 1967

Sir,

Acquisition of Land for Power Station Site

I am pleased to advise that the Governor-in-Council on the 5th July, 1967, signified his approval of the compulsory acquisition of the 20 acres of land on CT.8316 applied for by the Suva City Council under section 137(1) of the Local Government (Towns) Ordinance, being satisfied in accordance with the provisions of that subsection. In giving his approval, however, the Governor-in-Council expressed the view that the Suva City Council should give the owner of the land a longer period of notice of intention to acquire his land compulsorily than the 14 days proposed. I trust that your Council will be able to agree with this expression of view.

2. The Governor-in-Council also gave his approval to the compulsory acquisition of such land as is necessary, following either of the two routes proposed, to give access to the new power station site from the King's Rd. Following upon discussions (Balfour/Sanders/Williams) you have advised that the Council will follow the access route from the King's Rd. through the Kinoya Subdivision and further that the Council has agreed to provide a tar sealed surface of that portion of the access road from the King's Rd. through the Kinoya Subdivision to the border of the Crown land. The road will then pass through Native land on as direct a route as is practicable to the power station site.

I am, Sir,
Your obedient servant,

(Sgd)
for Acting Secretary for Fijian Affairs
& Local Government

The Town Clerk
Suva City Council
SUVA.

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No. 33

25th July, 1967.

The Town Clerk,
Suva City Council,
SUVA.

Dear Sir,

re: Acquisition of Land for Power Station Site

We enclose four notices for signing by you and return please.

We will then serve the registered proprietor, Sukhichand and the two purchasers, who are buying under a Sale and Purchase Agreement.

The negotiations will of course be carried on with Mukta Ben and Shanta Ben for whom Mr. D.J. Warren acts.

Would you please arrange with him for your Surveyor to go on the land.

Yours faithfully,
GRAHAME & CO.
(Sgd)

X X X X

No. 34

25th July, 1967

Messrs. Munro, Warren, Leys & Kermode
Solicitors,
SUVA.

Dear Sirs,

re: Mukta Ben & Shanta Ben

Confirming our telephone conversation, we informed you that the Governor in Council has signified his approval of the compulsory acquisition of 20 acres at the eastern end of C.T. 8316 by the Suva City Council.

We hand you herewith formal Notice of Acquisition in accordance with the Crown Acquisition of Land Ordinance. We are also serving a copy on Sukhichand, who is still the registered proprietor.

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1 - 37

You will note that the Council intends to enter into possession within eight weeks. This is necessary as the Council wishes to go ahead with the development of the site.

We have instructions to proceed with the necessary steps for compulsory acquisition, and that will mean taking out an Originating Summons under Section 9 of Cap. 140 if your clients do not finally agree to compromise.

The Town Clerk is arranging to have the area of 20 acres surveyed immediately.

Yours faithfully,
GRAHAME & CO.,
(Sgd)

X X X X

No. 35

MUNRO, WARREN, LEYS & KERMODE
Barristers & Solicitors

Mercury House
148 Victoria Parade
Suva, Fiji

25th October, 1967

Messrs. Grahame & Co.,
Solicitors,
SUVA.

Dear Sirs,

8626 Mc/jc - Suva City Council - Mukta Ben & or

With reference to your letter of 25th July last, we confirm our advice that, in order to simplify the claims, we have registered the Transfer from Sukhichand to Mukta Ben and Shanta Ben and the Mortgage back securing a balance of purchase price.

We enclose Notice of Claim by Mukta Ben and Shanta Ben as registered proprietors of the affected land. We will also be serving a Notice of Claim by Sukhichand,

EXHIBITS

No. 15
Bundle of
Correspondence
Numbered
1 - 37

No. 35 Continued

as occupier and Mortgagee of the land.

Yours faithfully,
MUNRO, WARREN, LEYS & KERMODE.
(Sgd)

X X X X

No. 36

MUNRO, WARREN, LEYS & KERMODE
Barristers & Solicitors

Mercury House
148 Victoria Parade
Suva, Fiji.

26th October, 1967

Messrs. Grahame & Co.,
Solicitors,
Suva.

Dear Sirs,

8626 Mc/jc - Suva City Council - Mukta Ben & Or

We return herewith the survey plan which Mr. McFarlane left with the writer on the 24th instant. It has been signed by our clients without prejudice to their claim for compensation and on the understanding that it is the Council's intention to establish access from Kings Road to the 20 acre area by means of a public road as shown red in the map returned herewith, portion of which will run along and touch the northern boundary of our clients' land for a distance of about 18 chains.

Yours faithfully,
MUNRO, WARREN, LEYS & KERMODE
(Sgd)

No. 37

EXHIBITS

No. 15
Bundle of
Correspondence
Numbered
1 - 37

MINISTRY OF URBAN DEVELOPMENT,
HOUSING AND SOCIAL WELFARE
P.O. BOX 2031,
GOVERNMENT BUILDINGS, SUVA,FIJI

30th January, 1973

The City Engineer,
Suva City Council,
SUVA.

Dear Sir,

re: Kinoya Road

I refer to our discussion (Singh/Ballentyne) of 19th January, 1973 on the above subject. Reference is also made to a letter 9/12/-/5 dated 26th September, 1972 from the Director of the Housing Authority.

It was agreed that an application was submitted by your Council on 2nd April, 1968 (SLB 27/1/1286) to the Sub-Division of Lands Board for sub-division of lot 2 DP 2957 -CT 8316 Kinoya for the construction of Kinoya Power Station. The Board approved the sub-division and one of the conditions being that the Council constructs the road to the satisfaction of the Board.

I will be grateful if this matter could be pursued by you so that the road could be dedicated and the Public Works Department could then take over the maintenance of the Kinoya Road.

Yours faithfully

(Sgd) (M. Singh)
for Permanent Secretary,
Urban Development, Housing and
Social Welfare

EXHIBITS

No. 16

No. 16
Appellants
Exhibit "A"
Notice of
Acquisition
and sketch
plan dated
27th July
1967

Appellants Exhibit "A"
Notice of Acquisition and sketch plan
Dated 27th July, 1967

CROWN ACQUISITION OF LAND ORDINANCE CAP. 140

NOTICE OF ACQUISITION OF LAND BY SUVA CITY COUNCIL FOR PUBLIC PURPOSES

NOTICE IS HEREBY GIVEN that the land described in the Schedule hereto being part of Certificate of Title No. 8316 is required by the SUVA CITY COUNCIL for public purposes absolutely, namely, for a site for the electrical power station.

Any person claiming to have any right or interest in the said land is required within three months from the date of this notice to send to the Town Clerk a statement of his right and interest and of the evidence thereof, and of any claim made by him in respect of such right or interest.

And notice is also hereby given that the Suva City Council intends to enter into possession of the said land at the expiration of eight weeks from the date of this notice. Any person who shall wilfully hinder or obstruct the Suva City Council or any person employed by it from taking possession of the said lands is liable under the provisions of the Ordinance abovementioned to imprisonment for three months or to a fine of twenty-five pounds or to both such imprisonment and fine.

DATED the 27th day of July 1967.

(Sgd) TOWN CLERK

To Mukta Ben (f/n Bhovan) of Suva.
Shanta Ben (f/n Bhindi) of Suva C/o Messrs. Munro, Warren, Leys & Kermode, Solicitors, Suva.
Sukhichand (f/n Sitaram) of Nasinu, Dairy Farmer.

THE SKETCH PLAN

(hereinbefore referred to)

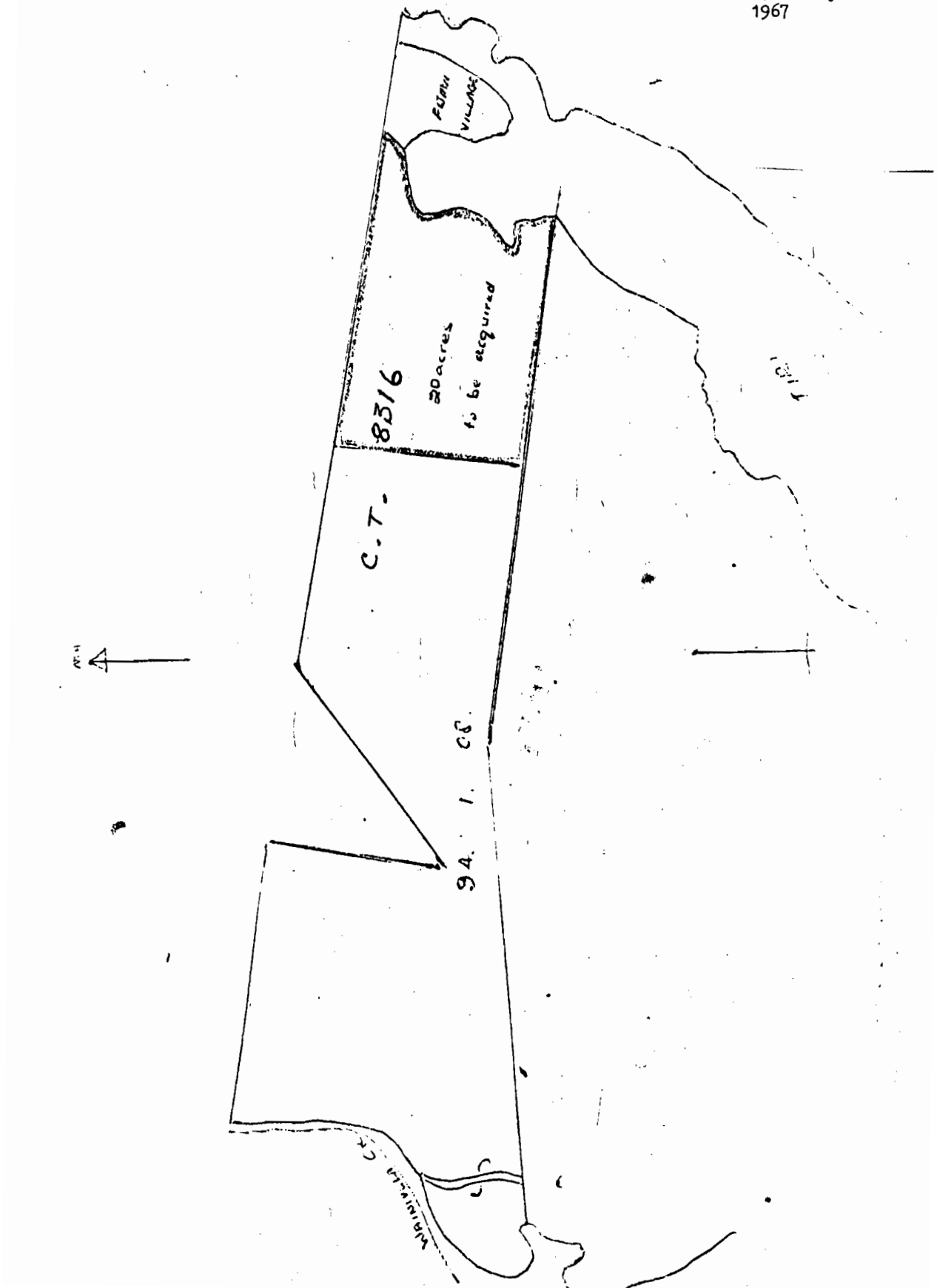
EXHIBITS

No. 16
Appellants Exhibit "A" Notice of Acquisition and sketch plan dated 27th July 1967

707.

THE SKETCH PLAN

(hereinbefore referred to)



EXHIBITS

No. 17

Appellants Exhibit "B"
Notice of Acquisition and sketch plan
Dated 27th July, 1967

No. 17 Appellants Exhibit "B" Notice of Acquisition and Sketch Plan dated 27th July 1967

CROWN ACQUISITION OF LAND ORDINANCE CAP. 140

NOTICE OF ACQUISITION OF LAND BY SUVA CITY COUNCIL FOR PUBLIC PURPOSES

NOTICE IS HEREBY GIVEN that the land described in the Schedule hereto being part of Certificate of Title No. 8316 is required by the SUVA CITY COUNCIL for public purposes absolutely, namely, for a site for the electrical power station.

Any person claiming to have any right or interest in the said land is required within three months from the date of this notice to send to the Town Clerk a statement of his right and interest and of the evidence thereof, and of any claim made by him in respect of such right or interest.

And notice is also hereby given that the Suva City Council intends to enter into possession of the said land at the expiration of eight weeks from the date of this notice. Any person who shall wilfully hinder or obstruct the Suva City Council or any person employed by it from taking possession of the said lands is liable under the provisions of the Ordinance abovementioned to imprisonment for three months or to a fine of twenty-five pounds or to both such imprisonment and fine.

DATED the 27th day of July 1967

(Sgd) TOWN CLERK

To: Sukhichand (f/n Sitaram) of Nasinu, Dairy Farmer.

THE SCHEDULE
(hereinbefore referred to)

ALL that piece of land containing 20 acres situated at the Eastern end of Certificate of Title 8316 being part of the land known as "Naivoce" (part of) and being part of the land contained in Certificate of Title No. 8316 in the district of Suva on the island of Vitilevu as delineated on the sketch plan hereinafter appearing.

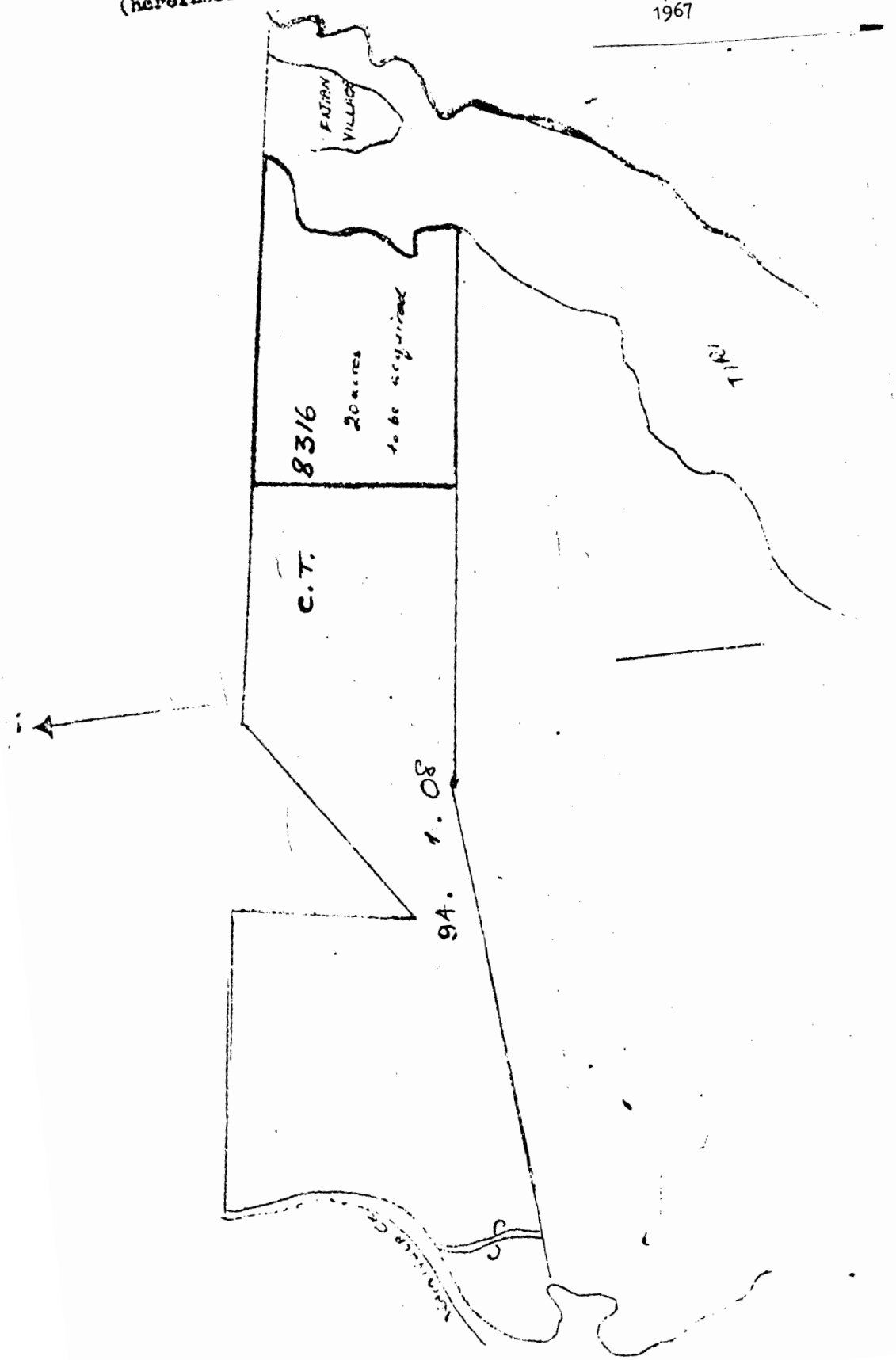
EXHIBITS

No. 17
Appellants
Exhibit "B"
Notice of
Acquisition
and Sketch
Plan dated
27th July
1967

THE SKETCH PLAN
(hereinbefore referred to)

710.

THE SKETCH PLAN
(hereinbefore referred to)



EXHIBITS

No. 18

Appellants Exhibit "C"
Response to Notice of Acquisition

No. 18
Appellants
Exhibit "C"
Response to
Notice of
Acquisition
dated 25th
October 1967

CROWN ACQUISITION OF LAND ORDINANCE

IN THE MATTER of a certain Notice of Acquisition of Land by the

SUVA CITY COUNCIL for Public Purposes dated the 27th day of July 1967

TO the Town Clerk,

SUVA.

TAKE NOTICE that I SUKHICHAND (Father's name Sitaram) of Nasinu Dairy Farmer claim to have the following rights and interests in the land described in the Schedule to the abovementioned Notice of Acquisition :-

(a) by virtue of the terms and conditions on which I sold to Mukta Ben (Father's name Bhovan) and Shanta Ben (Father's name Bhimji) Lot 2 on Deposited Plan No. 2957, of which the land affected by the said Notice of Acquisition is a part, I enjoy the use of the said land free of charge for the purposes of a dairy farm until the 31st day of December 1968 provided that such use may be terminated at an earlier date upon the said purchasers giving me six months prior notice and paying to me the balance of the purchase price of the said land, which is now £2,600.0.0.

(b) by virtue of the said terms and conditions I am entitled to remove from the said land all the buildings fences structures and other erections now thereon.

(c) I hold a registered first Mortgage of the said Lot 2 now securing the balance principal sum of £2,600.0.0.

I claim compensation arising from and in respect of the following matters:

The area of 20 acres acquired is used by me rent free and comprises the best and most fertile part of my farm, with the best pasture. It has on it a continuously flowing spring and a stream, which is the only permanent

natural source of water on my farm. I use it for watering some of my stock.

The loss of the area of 20 acres will make it necessary for me:

(a) to reduce my herd of cattle from 70 to 50 head, with consequential loss of earnings;

(b) to provide additional piped water for stock and to pay for water so consumed;

(c) to remove my fencing from the area acquired and to a rearrange my paddocks, entailing the moving of some fences and provision of new fencing.

I assess my anticipated loss as follows:-

(i)	loss of free use of 20 acres, having rental value of £3 per acre, for 1 year 3 months to 31st December		75. 0. 0.
(ii)	estimated additional expenditure on water		30. 0. 0.
(iii)	estimated expenditure on fencing:		
	600 posts @ 3/6 each	105.0.0.	
	15 coils barbed wire	75.0.0.	
	staples	10.0.0.	
	cartage of materials	5.0.0.	
	labour	65.0.0.	260. 0. 0.
	Compensation claimed		£365. 0. 0.

I also claim legal costs incurred by me.

DATED the 25th day of October 1967

(Sgd) SUKHICHAND

EXHIBITS

NO. 19

APPELLANTS EXHIBIT "D"
STATEMENT OF EVIDENCE OF IAN DUNCAN ROBINSON

No. 19
Appellants
Exhibit "D"
Statement of
Evidence
of Ian Duncan
Robinson

IN THE SUPREME COURT OF FIJI No. 213 of 1968

Between:

MUKTA BEN daughter of Bhovan
and SHANTA BEN daughter of Bhimji
Plaintiffs

- and -

SUVA CITY COUNCIL Defendant

STATEMENT OF EVIDENCE OF IAN DUNCAN ROBINSON F.C.I.V.

My name is Ian Duncan Robinson. I am of 247 Collins Street Melbourne, Victoria, Australia. I am a valuer and real estate consultant and a licensed real estate agent.

I have had 36 years of experience in valuation work.

I first commenced work with a real estate company in 1936. That Company is George Henderson Pty. Ltd., one of the major real estate companies in the State of Victoria, with an extensive practice in the sale and leasing of all kinds of urban property (industrial, commercial, residential and governmental) and in valuations. I was employed by that Company from 1936 to 1941 when I enlisted for active service in the Royal Australian Air Force.

Upon my return from active service, I was employed by the Department of the Interior, a Department of the Government of the Commonwealth of Australia. In that department I was responsible for the valuation, acquisition and disposal of real estate throughout the State of Victoria and the amount of property which I personally was responsible for in that way was to a value of several million pounds.

From 1959 until 1962, I held the office of District Valuer in the Taxation Department, another Department of the Government of the Commonwealth of Australia. My sphere of responsibility in the Taxation Department was

the whole of the State of Victoria. I was responsible for supervision of a staff of valuers and the work which I and my staff under me carried out included investigation and valuation of companies and their assets, as well as the valuation real estate.

In 1962, I resigned from the Taxation Department in order to commence practice as a consultant valuer and real estate consultant on my own account. I have continued in that practice ever since.

For a period of 14 years, terminating at the end of 1973, I was an independent lecturer of the subject of Principles and Practice of Valuation at the Royal Melbourne Institute of Technology. My responsibility in that subject was compensation.

The Institute for Valuers throughout the Commonwealth of Australia is the Commonwealth Institute of Valuers. This Institute has a Division in each of four States of Australia. I am a Fellow of that Institute and in the years 1970 and 1971 I was President of its Victorian Division.

In the State of Victoria, disputed claims for compensation are heard either by the Supreme Court of Victoria or by the Land Valuation Board of Review. Questions of valuation for rating purposes likewise go either to the Supreme Court of Victoria or to the Land Valuation Board of Review.

The Land Valuation Board of Review sits as a Board comprised of a Chairman and two members. The members for each case are selected from a panel of valuers appointed by the Governor-in-Council. I am a member of that panel and have been so since its inception in 1965. Members of that panel are appointed by the Governor-in-Council for a term of three years. I have been re-appointed upon the expiration of each of my three year terms. I have frequently sat as a member of that panel. The cases upon which I have sat for the assessment of compensation as a member of the Land Valuation Board of Review have included the assessment of compensation for land ripe for subdivision, land acquired by housing authorities, industrial land, rural land, commercial land, land acquired for governmental purposes, factory buildings and houses. The Land Valuation Board of Review handles cases of considerable magnitude and cases on which I have sat have included the assessment of compensation running into hundreds of thousands of

EXHIBITS

No. 19
Appellants
Exhibit "D"
Statement of
Evidence of
Ian Duncan
Robinson

dollars in particular cases.

In my practice as a consultant, I advise numerous of the major companies throughout Australia. I advise them in respect of the value of existing assets and the desirability or otherwise of and the value of properties intended to be purchased. I also advise in respect of their superannuation funds, my advice in that regard being as to the profitability or otherwise of particular companies in which they are contemplating taking shareholdings and as to their present and future prospects. Investments upon which I am asked to advise not infrequently run into millions of dollars. There are several companies which I am currently advising in respect of matters of $10,000,000 and more.

In my work as a consultant, I am continually carrying out work both for government, semi-government and local government bodies and for companies and private individuals.

Over the last five years I have carried out many valuations for the State Electricity Commission of Victoria. This Commission is responsible for the generation, reticulation and distribution of electric power throughout the whole of the State of Victoria (there is a very small number of local government bodies within the metropolitan area of Melbourne to which the State Electricity Commission sells electrical power in bulk for them to distribute but with that exception its distribution is State-wide). On behalf of the State Electricity Commission I have valued land for the extension of a major power house and have also valued sites for electricity transformer terminals and substations and transmission line easements.

From the time that I commenced practice on my own account in 1962, I have carried out valuations for the Country Roads Board of Victoria, and I in fact carry out some 80% of the valuations required by that Board. The Country Roads Board of Victoria is a government authority operating State-wide throughout Victoria and is responsible for major highways within the metropolitan area of Melbourne (the capital city of the State of Victoria), as well as for a wide variety of roads outside that capital city. On behalf of that Board I have carried out valuations of properties proposed to be acquired by it including acquisition for major freeways in the capital city and beyond it. I have had to value, on its behalf, land ripe for subdivision, land in the process of being subdivided, land actually subdivided, farms, factories, shops,

churches and schools.

In 1967 I was retained by the Country Roads Board of Victoria to carry out investigations for it into the effect of freeways on property values both in the United Kingdom and in the United States of America.

From time to time I carry out work for the Department of the Attorney-General of the State of Victoria and this work includes valuations in association with company investigations.

My work for the Gas and Fuel Corporation of Victoria includes the valuation of its properties and those properties include major plants and works areas. I have had to value plants and works areas as going concerns and I have also had to value them for the purpose of sale.

I have carried out valuations for local government authorities in respect of acquisitions for all types of local government purposes and valuations for sewerage authorities acquiring sites for sewerage treatment works. I have also carried out valuations for the Melbourne & Metropolitan Board of Works which is a semi-government body operating throughout the metropolitan area of Melbourne.

I am property investment consultant to the B.H.P. Staff Superannuation Fund. It is the superannuation fund for the Broken Hill Proprietary Company Limited which is the biggest public company in Australia. I am responsible for advising on the investment of several millions of dollars each year.

I am also the property investment consultant to the Staff Superannuation Fund of Shell Company of Australia Ltd. which is the biggest oil company operating in the Commonwealth of Australia.

Other companies which I act for consistently include such major companies as John Lysaght (Australia) Ltd., Humes Pipes Ltd., National Mutual Life Association, Smith Nephew Ltd. and Ciba-Geigy Ltd.

The State of Victoria has a Valuation Qualification Board which issues Certificates of Qualification. Those Certificates of Qualification either qualify the holders to carry out valuations throughout the whole of the State of Victoria or to carry out valuations in respect of particular parts of the State of Victoria.

EXHIBITS

No. 19
Appellants
Exhibit "D"
Statement of
Evidence of
Ian Duncan
Robinson

I hold a Certificate of Qualification for the whole of Victoria and have done so since those certificates were first issued.

The State of Victoria is a State which includes the capital city and various other cities ranging in size from 10,000 to 130,000 population. The capital city of Melbourne has a population of the order of 2,500,000 people. My work as a consultant also has included the carrying out of valuations throughout the whole of the State of Victoria.

In addition to carrying out valuations throughout the whole of the State of Victoria, I also carry out valuations in all other States of Australia. For example, in the State of New South Wales, I have carried out of the order of 50 valuations of major properties, the most recent being of a shopping centre to the value of $7,000,000.

The basic principles of valuation are of universal application. The principles which I apply in the carrying out of a valuation in the State of Victoria are the same which I apply in carrying out valuations in the State of New South Wales or in any other State of Australia. Both from my professional reading and from my discussions with valuers in the United Kingdom, I know that the principles of valuation which I apply throughout Australia are also the principles of valuation which are applied in the United Kingdom. I have been instructed to make valuations of the property in dispute in the present case. I have valued that property as at the date of the Notice to Treat. I have also valued it as at August, 1968, as at September, 1970 and as at May 1974.

As a consultant in real estate and valuation I am always interested to examine property values in other places. Each year from 1962 to 1967 I went on a cruise which included calling for a day at Suva. On each of those occasions I examined residential and commercial property values in the City of Suva. I also examined rentals to see the return which the properties were getting. Every year it was apparent that there was a continuing upwards trend in real estate values in Suva, and it was also apparent that the return on property investments in Suva was increasing.

From 1967 onwards I have gone on cruises twice a year and each of those cruises has included Suva. On each occasion that I have been in Suva on a cruise, I have continued my practice of looking at property values in Suva and at rental returns there. I found that I had no difficulty in applying in Suva the valuation principles which I apply throughout Australia.

EXHIBITS

No. 19
Appellants Exhibit "D" Statement of Evidence of Ian Duncan Robinson

APPELLANTS EXHIBIT "E" - LEDGER CARD

No. 20

Date	Reference	Particulars	Debit	Credit	Balance	Check Figure
		BALANCE B/F FROM FOLIO NO.:				
14FEB68	111	GEOLOGICAL SURVEY DEPT.	163. 6.0		163. 6. 0S	
23FEB68	150	CARTER REES AND ASSOCIATES	173. 9.0		336.15. 0S	
21MAR68	246	MUNRO WARREN LEYS & KERMODE	383.18.0		720.13. 0S	
13MAY68	392	P. CASH	1. 1.0		721.14. 0S	
16MAY68	399	CARTER REES & ASSC.	1,538. 4.6		2,259.18. 6S	
21JUN68	508	J.H.CARRUTHERS	1,248. 5.8		3,508. 4. 2S	
26JUN68	544	P. CASH	2.0		3,508. 6. 2S	
26JUN68	544	P. CASHA ADDITIONAL	1. 0.0		3,509. 6. 2S	
23JUL68	627	M.R. DAYAL & SONS	3,043.15.0		6,553. 1. 2S	
30JUL68	643	HUME INDUSTRIES LTD	746.19.1		7,300. 0.3S	(illegible)
6AUG68	679	ROADBUILDERS LTD	968. 6.8		8,268. 6.11S	
27AUG68	723	M.R. DAYAL & SONS	2,988.10.0		11,256.16.11S	
27AUG68	723	M.R. DAYAL ADDITIONAL	10		11,256.17. 9S	
27AUG68	725	CARTER REES	301. 9.0		11,558. 6. 9S	
27AUG68	729	ROADBUILDERS	1,123. 6.8		12,681.13. 5S	
27AUG68	734	GEN. FUND	305. 0.5		12,986.13.10S	
31AUG68	737	B.P. LTD.	8.4		12,987. 2. 2S	
28AUG68	748	STINSONS LTD	3.4		12,987. 5. 6S	
28AUG68	756	W & G LTD	25.16.0		13,013. 1. 6S	
28AUG68	756	W & G LTD. ADDITIONAL	9		13,013. 2. 3S	
4SEP68	771	P.CASH	6. 0.0.		13,019. 2. 3S	
13SEP68	800	ROADBUILDERS LTD	429. 6.2		13,448. 8. 5S	
26SEP68	814	BISH LTD	15.6			
26SEP68	819	GEN. FUND	3,045.10.1		(illegible)	
20SEP68	835	P. CASH	2. 0.4			
30SEP68	270	TSFR. TO 13/26		25.16. 9	16,470.17. 7S	
90CT68	883	CARPENTERS FIJI LTD	113.10. 5		16,584. 8. 0S	
160CT68	901	ROADBUILDERS LTD	57. 8. 3		16,641.16. 3S	
240CT68	919	GEN. FUND	2,05 .1 . 4		18,700. 8. 7S	
290CT68	926	HUME INDUSTRIES LTD	254.17. 8		18,955. 6. 3S	
		BALANCE C/F TO FOLIO NO. 2.				

No. 21

EXHIBITS

APPELLANTS EXHIBIT "F" - ACCOUNT

No. 21
Appellants
Exhibit "F"
- Account

968

ITEM	EXP. TO 31/8/68	EXP. SEPT/OCT	T O T A L
Site	$26,026.23	$ 17,553.62	$ 43,579.85
Building	4,860.00	71,084.39	75,944.39
Fuel System	92.69	231.74	324.43
Plant	NIL	333,950.44	333,950.44
	$ 30,978.92	$ 422,820.19	$ 453,799.11

KANDYA POWER STATION - CAPITAL EXPENDITURE

YEAR	SITE	BUILDING	FUEL SYSTEM	PLANT	CABLE POWER STATION/SUVA	COOLING SYSTEM	LIGHT INSTALLATION	STAFF QUARTERS	ROADS	TOTAL
1967	225.50									225.
1968	43,579.85	75,944.39	324.43	333,950.44						453,799.
1969	7,169.33	62,257.88	15,051.92	315,034.59	123,615.34	18,794.34	6,794.84	42,106.03		590,778.
1970	19,719.31	78,311.37	3,372.24	323,725.91	258.04	881.08	2,673.88	32,553.99		461,495.
1971	11,618.24	76,572.74	33.30	702,265.98		1,304.34	1,418.71	11,545.14		804,753.
1972	1,400.89	2,900.31	124.00	335,417.24				32,293.22		372,135.
1973				31,807.84				1,996.27	12,600.00	46,404.
	83,708.12	295,986.69	18,905.89	2,042,202.00	123,873.88	20,933.50	10,886.93	120,494.65	12,600.00	2729,591.

IN THE PRIVY COUNCIL

No. 19 of 1977

ON APPEAL

FROM THE COURT OF APPEAL OF FIJI

BETWEEN

MUKTA BEN (d/o Bhovan)
and SHANTA BEN (d/o Bhimji) — APPELLANTS

and

SUVA CITY COUNCIL — RESPONDENTS

RECORD OF PROCEEDINGS

Wray Smith & Co.,
1 King's Bench Walk
Temple
London
E.C.4

Solicitors for the Appellants

A.L. Philips & Co.
6 Holborn Viaduct
London
E.C.1

Solicitors for the Respondents