Privy Council Appeal No. 2 of 1953

Phillip Rice - - - - - - - - - - *Appellant*

v.

The Commissioner of Stamp Duties - - - - - *Respondent*

Phillip Rice - - - - - - - - - - *Appellant*

v.

The Commissioner of Stamp Duties - - - - - *Respondent*

Consolidated Appeals

FROM

THE FIJI COURT OF APPEAL AND THE SUPREME COURT OF FIJI

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 23RD FEBRUARY, 1954

Present at the Hearing:

LORD COHEN
SIR LIONEL LEACH
MR. L. M. D. DE SILVA

[*Delivered by* LORD COHEN]

This appeal raises a question as to the liability of the appellant under the Death and Gift Duties Ordinance (Chapter 151 of the 1945 Edition of the Laws of Fiji) to gift duty in respect of an absolute gift by the appellant to his wife made on the 14th March, 1951.

Before going into the facts in greater detail it will be convenient to refer to the relevant provisions of the Ordinance. It is divided into five parts dealing respectively with: (1) Estate Duty, (2) Succession duty, (3) Assessment and collection of estate and succession duty, (4) Gift duty and (5) Miscellaneous.

None of the provisions of Part I are relevant to any question their Lordships have to decide. Section 15 of Part II which deals with valuation of contingent interests for purposes of succession duty is made applicable to the valuation of contingent interests of beneficiaries for the purposes of gift duty by section 46 of Part IV. Section 15, subsection (1), provides as follows:—

> "For the purposes of succession duty every contingency affecting the succession shall be deemed to have determined in the manner in which, in the opinion of the Commissioner, it probably will determine, and the succession shall be valued and succession duty assessed and paid accordingly."

Subsection (2) of the section gives a right of appeal to the Supreme Court by way of case stated from any decision of the Commissioner under subsection (1) as if the decision was the determination of a question of law. It further provides that if no such appeal is commenced within thirty days, the decision of the Commissioner is to be final and conclusive.

The only section in Part III to which it is necessary to refer is section 30 which imposes on every administrator the obligation within six months of the grant of administration of delivering to the Commissioner a statement in writing in the prescribed form containing the prescribed particulars with respect to the interests of the several successors of the deceased.

Their Lordships turn now to Part IV. Under section 34 a duty is imposed on every gift as defined by section 35. Section 35 defines gift as meaning any disposition of property (as defined by section 37) which is made otherwise than by will, whether with or without an instrument in writing, without fully adequate consideration in money or money's worth.

Section 37 defines " disposition of property " in very wide terms including amongst other things " (*b*) creation of a trust ". Their Lordships pause here to observe that in view of this wide definition it is clearly possible that the interest of a donee under the gift may be made contingent.

Section 42 as amended exempts from gift duty any gift the value of which together with the value of all other gifts made at the same time or within twelve months subsequently or previously does not exceed £1,000 in value

Section 45 fixes the rate of gift duty at 5 per cent. per annum.

Section 46 on which much of the argument in this appeal turned is in the following terms:—

> "(1) For the purpose of computing the value of a gift the interests of beneficiaries, so far as those interests are affected by any contingency, shall be valued in the same manner as the contingent interests of successors in the case of succession duty, and the provisions of Part II of this Ordinance with respect to reassessment, payment of deficient duty and refund of duty paid in excess shall extend and apply accordingly to gift duty with all necessary modifications.
>
> (2) Subject to the provisions of this Part of this Ordinance the value of a gift shall be deemed and taken to be the present value thereof at the time of the making of the gift."

Section 51 as amended provides in subsection (1) that within one month after the making of any gift the value of which is not less than £1,000, or the value of which added to the value of any other gifts made by the donor within twelve months previously amounts to not less than £1,000, the donor shall deliver to the Commissioner a statement in the prescribed form, verified by statutory declaration in the prescribed form and manner, and containing all such particulars with respect to the gift or gifts as are necessary to enable the Commissioner to determine whether the same is or are dutiable and to assess the duty thereon, if any, and that the Commissioner shall thereupon proceed to assess and recover gift duty accordingly. Subsection (3) provides that after the delivery of the aforesaid statement it shall be the duty of the donor, and of every beneficiary or trustee of a beneficiary, to furnish the Commissioner with such additional evidence as he reasonably requires for the purposes of this Ordinance with respect to the gift.

Section 57 provides that if a donor makes default in delivering within one month the statement required by section 51 to be so delivered, the Commissioner may thereupon proceed to assess and recover the duty payable on the gift in the same manner as if the statement had been duly delivered.

Section 59 provides for an appeal to the Supreme Court of Fiji from the assessment of the Commissioner. So far as material it is in the following terms:—

> " 59.—(1) Any administrator who is dissatisfied in point of law with any assessment of death duty made by the Commissioner, and any donor who is dissatisfied in point of law with any assessment of gift duty so made, may, within thirty days after notice of the assessment has been given to him, deliver to the Commissioner a notice in writing requiring him to state a case for the opinion of the Supreme Court.
>
> (2) The Commissioner shall thereupon state and sign a case accordingly setting forth the facts, the question of law to be decided and the assessment made by him, and shall deliver the case so signed to the administrator or donor (hereinafter referred to as the appellant).

(3) The appellant shall, within fourteen days after receiving the case, transmit the same to the Registrar of the Supreme Court, and the Registrar shall thereupon enter the case for hearing at the next sitting of the Court and shall give notice thereof to the appellant and to the Commissioner.

(4) On the hearing of the case the Supreme Court shall determine the question submitted, and the Commissioner shall thereupon assess the duty payable in accordance with that determination.

(5) The Supreme Court may, if it thinks fit, cause the case to be sent back to the Commissioner for amendment, and thereupon the case shall be amended accordingly and the Court shall thereupon proceed to hear and determine the question so submitted."

Section 60 subsection (1) empowers the Commissioner to hold an inquiry for the purpose of obtaining information respecting any claim for duty under the Ordinance and to summon before him and examine on oath touching any matter which is relevant to any claim for duty all persons whom the Commissioner or any other person interested requires to be so called and examined. Subsection (2) of the section provides that on any such inquiry the Commissioner shall be deemed to be vested with all the powers which may be conferred on Commissioners under the Special Commissioners Ordinance. That is a reference to the Special Commissioners Ordinance, Chapter 99 of the Laws of Fiji which enables the Governor to delegate to all Commissioners powers like to those vested in the Supreme Court

(*a*) for compelling the attendance of witnesses and the production of documents ;

(*b*) for administering oaths or affirmations to witnesses and compelling them to give evidence ;

(*c*) for the punishment of contempt if committed in the presence of any Commissioner when engaged in taking evidence in pursuance of the objects of the commission.

Section 61 gives the Commissioner a right to inspect books, records, registers etc., in the custody or possession of public officers and other persons and bodies corporate.

Section 66 deals with valuation for the purposes of duty under the Ordinance and so far as material is in the following terms:—

" 66.—(1) For the purpose of assessing death duty or gift duty, if the Commissioner is not satisfied as to the value as stated by the administrator or donor, as the case may be, of any portion of the dutiable estate of the deceased or any portion of the subject of a gift, he may determine it either by agreement between himslf and the administrator in the case of death duty or between himself and the donor in the case of gift duty, or in the event of a failure to agree, by a valuation made by an official valuer appointed under the Stamp Duties Ordinance.

. . . . . .

(3) Any administrator in the case of death duty, or any donor in the case of gift duty, or the Commissioner in either case, may, within one month from the date upon which a valuation by an official valuer is communicated to him, appeal by way of originating summons against such valuation to the Supreme Court."

Section 67 provides that subject to the provisions of section 66 the value of any property shall, for the purpose of assessing any duty under the Ordinance, be ascertained by the Commissioner in such manner as he thinks fit

Section 68 enables the Commissioner to claim payment of further duty in any case where he considers too little has been paid.

Section 69 provides that any duty under the Ordinance may be recovered on behalf of the Crown by action in his official name in any Court of competent jurisdiction against any person liable to pay the same.

Turning now to the facts, the subject matter of the gift was a policy of insurance on his own life for £1,000 which the appellant had taken out with the Australian Mutual Provident Society on the 19th July, 1939. The policy entitled the assured to participate in any surplus which might be distributed as reversionary additions to participating policies.

On the 14th March, 1951, the appellant assigned to his wife absolutely the policy together with all bonuses already accrued and all future bonuses which might thereafter accrue thereon.

On the 17th March his solicitors forwarded the Deed of Gift to the Commissioner in order that it might be stamped under the Stamp Duties Ordinance, stating that the present value of the insurance policy surrendered did not exceed the sum of about £400, and that accordingly the Deed would not attract gift duty. It should be observed that if gift duty were payable no stamp duty would be payable on the Deed of Gift having regard to the provisions of section 52 of the Death and Gift Duties Ordinance.

The Commissioner duly stamped the Deed and returned it to the appellant's solicitors under cover of a letter dated 3rd April, 1951. In that letter he added that for the purpose of record he would be grateful if the appellant would complete the attached form (being the form prescribed pursuant to section 78 of the Death and Gift Duties Ordinance) and provide him with a certified copy of the Deed of Gift.

The appellant's solicitors wrote to the Commissioner on the 10th April, 1951 saying that the Commissioner had misconstrued the provisions of section 51 of the Death and Gift Duties Ordinance since it was only when the value of a gift was not less than £1,000 that the declaration had to be made.

On the 4th May, 1951 the Commissioner replied agreeing that unless the gift, with other gifts, exceeded £1,000, the donor was not obliged to deliver a statement in the prescribed form. He explained his reasons for asking for completion of the statement and concluded his letter with a request to be informed of the policy value, the amount of any bonus which had accrued at the date of the gift, and whether it was the appellant's intention to pay the premiums and keep up the policy. To this letter the appellant's solicitors replied on the 14th May stating that they had not the exact figures available and referring the Commissioner to the Fiji agents of the Insurance Company for the details he required. They added that it was the appellant's intention to pay the premiums and keep up the policy. The Commissioner applied to the Agents in question and was informed by them that the surrender value of the policy was at that date £306 12s. Further correspondence ensued but the appellant persisted in his refusal to file a statement under section 51 of the Death and Gift Duties Ordinance. Accordingly on the 25th September the Commissioner gave notice that he had assessed the gift in question for gift duty at £57 15s. 6d. as being 5 per cent. on "Policy value plus accrued bonuses £1,155 12s. 0d.".

The appellant was dissatisfied in point of law with this assessment and on the 9th October, 1951 gave notice to the Commissioner requiring him to state a case in accordance with section 59 of the Death and Gift Duties Ordinance. The Commissioner complied with this request on the 25th January, 1952. In that case stated he set forth the facts which their Lordships have summarised and in paragraph 12 stated that he had made the assessment as in his opinion he was entitled to do by virtue of the provisions of sections 57 and 68 of the Death and Gift Duties Ordinance.

The questions of law to be decided by the Supreme Court were stated in paragraph 16 of the case which reads:—

> "(A) Had the respondent in the circumstances aforesaid any jurisdiction to make the assessment of duty referred to in paragraph 12 hereof;
>
> (B) If so, what was the value of the said gift, at the date on which it was made, for the purposes of the Ordinance?

(C) Is the said gift, or the said deed, liable to gift duty, if any, and if so what amount? "

The matter came before the Chief Justice on the 28th April, 1952. He gave judgment answering the three questions as follows:—

(*a*) The respondent had jurisdiction to make the assessment of duty referred to in paragraph 12 of the case stated:

(*b*) The value of the gift for the purposes of the Ordinance must be computed by the Commissioner under subsection (1) of section 46.

(*c*) The deed is liable to the duty assessed by the Commissioner namely, £57 15s. 6d.

In his judgment he pointed out that there was no dispute between the parties either as to the surrender value at the time of the gift, or as to the amount which would become due on the fully paid up policy on the death of the donor, meaning thereby, as their Lordships think, as to the amount which would have been due under the policy on the assumption that the appellant had died immediately after making the gift. The Chief Justice stated the issue to be decided by him in these terms "whether the true value of the gift for the purposes of the assessment of duty is to be taken as the present value at the time of the gift, or whether the interest is contingent interest, in which case the Ordinance requires the value of the gift to be computed by the Commissioner in the terms of subsection (1) of section 46 and section 15." He came to the conclusion that the interest of the beneficiary was affected by a contingency, the contingency apparently being that the amount which the donee would receive in respect of the policy on the death of the donor would depend on whether the premiums were paid up during the rest of the life of the donor or the policy was surrendered at some earlier date.

The appellant being dissatisfied with this decision gave notice of appeal to the Court of Appeal on the 13th May, 1952. When the matter came before the Court of Appeal on the 18th August, 1952, the Solicitor General who appeared for the respondent raised the question whether there was any right of appeal under section 11 of the Court of Appeal Ordinance which provides:—

> "that an appeal shall lie in any cause or matter, not being a criminal proceeding to the Court of Appeal from a single Judge of the Supreme Court of Fiji sitting in first instance *inter alia* in the following cases namely (*a*) from all final Orders, judgments and decisions . . . ."

He argued that the Chief Justice was not sitting in first instance, but was hearing an appeal from an assessment of the Commissioner. The Court of Appeal upheld his submission ending their judgment by saying: "however desirable it may be that an appeal should lie to this Court, we think that we are bound to hold, on the wording of the section quoted above (section 11) that no appeal lies to this Court from a decision of a single Judge of the Supreme Court under section 59 of the Death and Gift Duties Ordinance, Chapter 151." Accordingly they held that the Appeal Court had no jurisdiction to entertain the appeal and ordered the appellant to pay the Commissioner's costs.

On the 12th September, 1952 the Court of Appeal gave leave to the appellant to appeal to this Board from this Order. In pursuance of this leave the appellant gave notice of appeal but before that appeal could be heard he applied on the 21st April, 1953, to this Board for leave to appeal against the judgment of the Supreme Court. Leave was granted but without prejudice to the right of the Commissioner to maintain that the case ought to be sent back to the Fiji Court of Appeal if that Court had jurisdiction to hear it. It was also directed that the two Appeals be consolidated and heard together.

When the matter came before their Lordships on the 18th January, 1954, Mr. Le Quesne for the Commissioner did not ask that the case should be sent back to the Fiji Court of Appeal and was content that their Lordships should deal with the matter on its merits. Accordingly their Lordships will proceed to deal first with the appeal from the Supreme Court of Fiji dated 28th April, 1952.

The foundation of the judgment of the Chief Justice is that the relevant provisions of the Death and Gift Duties Ordinance under which the matter falls to be decided are sections 46 and 15. These sections only become relevant if the interests of beneficiaries are affected by a contingency. In the present case their Lordships are satisfied that the interest of the donee is an absolute interest unaffected by any contingency. The amount which the donee will ultimately receive as the result of the gift will no doubt depend, as the Chief Justice pointed out, on whether the donee surrenders the policy or the premiums continue to be paid until the death of the donor. But in their Lordships' opinion this uncertainty as to the amount which the Insurance Company will ultimately have to pay cannot produce the result that the interest of the donee in the subject matter of the gift is affected by a contingency. Their Lordships derive support for this opinion from the observations of Viscount Simon in *D'Avigdor-Goldsmid* v. *Inland Revenue Commissioners* (1953) A.C. 347. In that case their Lordships had to consider the rights of an assignee of a life policy and his Lordship said at p. 361 "A life policy is a piece of property which confers upon the owner of it the right, if certain conditions continue to be satisfied, to claim and be paid the policy moneys on the death of the person whose life is assured. These rights therefore belonged to the appellant from 1934" (the year of the assignment) "and were the beneficial interest in the policy which belonged to him from that moment. When the death occurred he held those rights and the quality of these rights was not changed by the death, which was merely the occasion when the rights were realised".

The learned Chief Justice appears to have been influenced by the fact that in the course of the correspondence the donor intimated his intention to keep up the policy by paying the future premiums thereon. But this is only a statement of intention to make further gifts in the future. It cannot amount to a gift. The donee would be unable to compel the donor to fulfil that intention and their Lordships are unable to see how this statement of intention can constitute a gift of the future premiums or import any contingency into the absolute gift.

Their Lordships think that the value of the gift for the purpose of the Ordinance is the present value. It necessarily follows that the value of the gift was below £1,000, that the appellant was under no obligation to make a statement under section 51, and that accordingly the respondent had no jurisdiction to make an assessment under either section 57 or section 68 of the Death and Gift Duties Ordinance. Accordingly the answers to the questions submitted in the case stated should have been:—

(*a*) that the respondent had no jurisdiction to make the assessment under either section 57 or section 68;

(*b*) does not arise:

(*c*) the gift was not liable to any gift duty.

Turning now to the appeal from the decision of the Court of Appeal it may be said that the question as to the jurisdiction of the Court of Appeal has become academic in view of their Lordships' opinion on the merits. But the matter was fully argued and raises a question of general importance. Moreover their Lordships must, in any event, deal with the costs of the proceedings in the Court of Appeal. For these reasons their Lordships think it right to express their opinion on the difficult question raised by the decision of the Court of Appeal. That question is whether or not the Chief Justice was sitting in first instance when on the 28th April 1952 he answered the questions put to him in the stated case.

Mr. Le Quesne for the Commissioner submitted that the answer to that question must be in the negative, and summed up his argument in the following two propositions.

"A Judge is not sitting in first instance if (1) as to any part of the case he is bound by conclusions previously reached by someone else; or (2) the procedure under which the case comes before him requires

its prior consideration by someone else with power to reach a decision which at the moment at which it is given is binding on the parties, at least if that consideration has to be a judicial consideration.

On the first part of this argument he referred us to the terms of section 59 which he said, as their Lordships think correctly, led to the conclusion that the appellant taxpayer is bound by the findings of fact in the case stated unless of course he is able to submit that there was no evidence to support the finding or the case is sent back to the Commissioner for amendment under subsection (5) of section 59. Their Lordships are, however, unable to accept this branch of Mr. Le Quesne's argument as conclusive in his favour since the only question before the Chief Justice was a question of law and if no other person or body had previously decided that question of law in a judicial capacity, their Lordships see no reason for concluding that the Chief Justice was not sitting in first instance so far as that question was concerned. It is of course true that the Commissioner had to make up his mind on the question of law for unless he answered the question in his own favour, he had no power to make an assessment. The real question for their Lordships' decision is whether in deciding it in his own favour he was acting in a judicial capacity.

Counsel were unable to refer to any authority directly in point but Mr. Le Quesne called attention to the decision of this Board in *Nakkuda Ali* v. *M. F. de S. Jayaratne* (1951) A.C. 66 where their Lordships had to consider the powers of the Supreme Court of Ceylon under section 42 of the Courts Ordinance (R.S. of Ceylon, 1938 C. 6) to grant and issue according to law a mandate in the nature of certiorari against the Controller of Textiles in Ceylon reversing his decision to cancel a licence granted by the Controller. Under that section a mandate could only be issued to " any District Judge, Commissioner, Magistrate or other person or tribunal " and the respondent submitted that the words " or other person or tribunal " in that context must be construed in accordance with the *ejusdem generis* rule and were confined to tribunals (or persons acting as tribunals) which are in the ordinary sense judicial bodies. Their Lordships agreed with the Supreme Court of Ceylon in rejecting this argument and held that regard must be had to the relevant rules of the English and Common Law in order to ascertain in what circumstances and under what conditions the Court could be moved for the issue of a prerogative writ.

Delivering the judgment of the Board Lord Radcliffe said (see p. 78) that the principle governing the jurisdiction of the Courts by way of certiorari was most precisely stated by Atkin L.J. in *Rex* v. *Electricity Commissioners* ((1924) 1 K.B. 171 at p. 205) as follows: —

> " the operation of the writs has extended to control the proceedings of bodies who do not claim to be, and would not be recognised as, courts of justice. Wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs."

He also cited a short passage from the judgment of Lord Hewart C.J. in *Rex* v. *Legislative Committee of the Church Assembly* ((1928) 1 K.B. 411 at p. 415) where he said

> " In order that a body may satisfy the required test it is not enough that it should have legal authority to determine questions affecting the rights of subjects ; there must be super-added to that characteristic the further characteristic that the body has the duty to act judicially."

Lord Radcliffe went on to point out that that characteristic was lacking in the matter then before the Board. In reaching this conclusion he stressed the facts that (*a*) the Controller of Textiles was taking executive action, not determining a question and (*b*) the regulation contained no procedure to secure that the licence holder should receive notice of the intention to revoke the licence and no provision securing that there must be an enquiry public or private before the Controller acts.

Mr. Le Quesne said that in the present case (*a*) the controller clearly had to determine the question of law before he could make an assessment, and (*b*) there could be no doubt that the taxpayer would receive notice of the Commissioner's intention to make an assessment since the duty was on the taxpayer to deliver the statement under section 51. Their Lordships have some doubt as to the correctness of this assertion since (*a*) the determination may be part of the administrative act, not a judicial determination and (*b*) if the Commissioner is proceeding under section 57, theoretically at any rate the first indication that the taxpayer may have of the intention of the Commissioner to make an assessment is when he receives a demand for the duty. Be that as it may their Lordships are unable to derive much assistance from the decision of this Board in the case cited. In certiorari cases it is clear that the power of the Court to issue the prerogative writ is not confined to cases where the order to which objection is taken was made by a court of justice in the sense in which that expression is ordinarily understood. In the present case their Lordships have to consider the meaning of the words "sitting in first instance" where they appear in a statute constituting a Court of Appeal. These words are, their Lordships think, plainly directed to limiting a litigant's right to appeal from one Court of Justice to another. Thus if a case originated in a Magistrate's Court and there was an appeal to the Supreme Court pursuant to section 35 of the Magistrate's Courts Ordinance, section 11 of the Court of Appeal Ordinance would have the effect that there could not be a further appeal to the Appeal Court. It was not intended to deprive a litigant who had not been heard in any Court of Justice except the Supreme Court of a right to appeal to the Court of Appeal. Can the decision of the Commissioner properly be described as that of a Court of Justice? Certain provisions of the Death and Gift Duties Ordinance suggest that in certain cases it should be so regarded. Thus in section 15 (2) it is provided that the Commissioner's decision under section 15 (1) shall be regarded as a determination of a question of law and that all the provisions of the Act therein after contained (semble meaning thereby section 59) should apply accordingly. Other provisions of the Ordinance e.g. sections 60 and 61 contain provisions for enquiry and securing to the Commissioner access to relevant documents. Mr. Le Quesne relied particularly on section 60 (2) importing the provisions of the Special Commissioner's Ordinance to which their Lordships have already referred. Moreover section 59 seems to imply that the Commissioner's findings of fact will be binding on the taxpayer if there was any evidence to support them.

All these provisions undoubtedly indicate that the Commissioner has some of the powers which he might be expected to possess if he were exercising judicial functions. On the other hand there are plainly absent certain provisions which are usually regarded as essential to the due administration of justice in a Court of Justice. Thus there is no provision indicating any right of the taxpayer to present to the Commissioner either orally or in writing any argument on any question of law. Indeed the Commissioner may reach his decision on the question of law on evidence obtained by him under section 60 or section 61 of which the taxpayer knows nothing. It must also be borne in mind that if the Commissioner's determination is to be regarded as the decision of a Court of Justice, this means that he has been the Judge in his own cause. An executive officer can no doubt be made a Judge in his own cause, but if there is an ambiguity in the Statute their Lordships must lean against a construction which would have this effect. In these circumstances it seems to their Lordships impossible to hold that the decision of the Commissioner on a question of law can be regarded as the decision of a Court of Justice. If it is not, it necessarily follows that the decision of the Supreme Court on a question of law under section 59 of the Ordinance is the first judicial decision on the point and is therefore subject to appeal to the Court of Appeal.

There is one other matter to which their Lordships should refer. Mr. Quass for the appellant argued that the dispute between the parties was a dispute as to value and that accordingly this dispute could only

be resolved by a reference to a valuer under section 66 of the Death and Gift Duties Ordinance. Their Lordships are unable to accede to this submission. In the first place as the Chief Justice pointed out the real dispute is not as to value at all. Secondly section 66 only becomes applicable if the Commissioner is not satisfied as to the value *as stated* by the Administrator or Donor. Reading the Ordinance as a whole their Lordships think that " stated " must mean stated in the manner required by the Act i.e. in accordance with section 30 in the case of an administrator or section 51 in the case of a donor. Accordingly section 66 can have no application where the administrator or donor has refused to furnish the statement required by section 51.

For these reasons their Lordships will humbly advise Her Majesty that both appeals should be allowed and that it be declared that the respondent had no jurisdiction to make the assessment of duty referred to in paragraph 12 of the case stated and that the gift therein mentioned was not liable to any gift duty. The respondent must pay the costs of the appellant in the Courts in Fiji and before this Board.

(20254) Wt. 8267—24 100 3/54 D.L.

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Printed by HER MAJESTY'S STATIONERY OFFICE PRESS,
DRURY LANE, W.C.2.

1954