

IN THE FIJI COURT OF APPEAL
Appellate Jurisdiction
Civil Appeal No. 8 of 1980

Between:

ISLAND AIR EXPRESS INTERNATIONAL Appellant

and

MAL DI TESTA INCORPORATION First Respondent

and

N.P. URICHUK Second Respondent

and

GRAND PRIX NATURAL GAS LIMITED Third Respondent

Hearing: 15th February 1980

Judgment: 18th February 1980

A.K. Singh for the Appellant
P. Knight for the Respondent

JUDGMENT

This is a motion for leave to appeal to Her Majesty in Council from the judgment given on the 14th February 1980 by myself as a single Judge of Appeal refusing an injunction restraining the first respondent from exporting certain salvaged lead from Fiji; and for an interim injunction pending the hearing of the appeal.

The facts in so far as they are ascertainable have already been dealt with in my judgment on the former application and do not need to be repeated here.

In my view there is no jurisdiction to grant leave to appeal to Her Majesty in Council from a judgment of one judge of the Court of Appeal. Section 20 of the

Court of Appeal Ordinance, under which any one judge of the Court may in certain circumstances exercise the powers of a Court of Appeal, has this proviso:

" If any party is aggrieved by the exercise of such power, the applicant or the party aggrieved shall be entitled to have the matter determined by the Court as duly constituted for the hearing and determining of appeals under this Ordinance."

Mr. Singh contends that this provision gives the aggrieved party an option as to the tribunal before which the appeal should be heard; the use of the word "may" indicates that he is not bound to go to the Court of Appeal. I regret that I am unable to accept this contention. The word "may" certainly gives him an option; but in my opinion this is an option whether to appeal to the Court of Appeal or to lodge no appeal at all.

For these reasons leave to appeal to Her Majesty in Council will not be granted. The interim injunction will also be refused on the grounds which are set out in the judgment already given on the prior application.

W. S. S. S.

JUDGE OF APPEAL

18th February 1980