IN THE FIJI COURT OF APPEAL

Appellate Jurisdiction

Civil Appeal No. 7 of 1984

Between:

RATU SIR KAMISESE MARA K.B.E.	Appellant
and	
FIJI TIMES AND HERALD LIMITED	First Respondent
GARRY BARKER	Second Respondent
VIJENDRA KUMAR	Third Respondent

M.H. McHugh Q.C. (of the New South Wales Bar), G.P. Lala & M. Patel for the Appellant

B.N. Sweetman for the Respondents

Date of Hearing: 23rd July, 1984
Delivery of Judgment: 27th July, 1984

JUDGMENT OF THE COURT

O'Regan, J.A.

The appellant is the Prime Minister of Fiji. The first respondent is the owner of the "Fiji Times" and the second and third respondents respectively are the publisher and the editor of that newspaper.

This appeal and the action for damages for defamation which preceded it have their genesis in a letter to the Editor of the "Fiji Times" which purported to have been written by one Rakesh Chandra Sharma to whom - despite the doubts which have arisen as to the existence

of any person of that name - we will refer as "the author".

The letter reads as follows :

1. "Sir, Senator Inoke Tabua's insensitive remarks about deporting certain Fiji Indian leaders is unbecoming of a man who is the Prime Minister's nominee in the Senate.

2. The sad thing really is that the Prime Minister has not seen it fit to rebuke the Senator for his outburst which is not conducive to the promotion of multiracialism in the country.

3. It is worth remembering that in 1974, Mr. Sakiasi Butadroka was castigated by the Alliance Party of which he was then a member, and ostracised by the majority of the people of Fiji for his similarly racist outburst. Will Senator Tabua face a similar situation?

4. Unfortunately, Senator Tabua's brand of racism is becoming all too familiar now. It seems to become the pattern for all and sundry to make derogatory remarks about Indians, apparently under the illusion that the Indians will not retaliate. It is a dangerous self-deception, for any community however divided, selfish and insecure, can take insults only to a certain degree.

5. In this case, if Senator Tabua or anyone else thinks that Indians can easily be deported to another country, they are deluding themselves. There cannot be another Uganda in Fiji for obvious historical and economic reasons.

6. In addition, the Fiji Indians have made more than their share of contribution to the country, which they will not give up easily. It will be more fruitful to stop talking about deporting people and living in a make-believe world and think seriously about how both Fijians and Indians can live together, to work towards solutions of problems facing us now.

7. Mr Jai Ram Reddy has been the target of the Alliance wrath in recent weeks. He has been one person singled out as having insulted Fijian people.

8. Some correspondents in this column have exposed the raucuosness of his argument in relation to the 4 Corners programme. It needs no further comment.

9. Another incident that Senator Tabua was no doubt thinking of when he made his outburst was the 'toilet' remark. Mr. Reddy made that remark in the heat of the moment, about another politician, rather than about a high Lauan chief.

10. It is sad that such a simple fact cannot be realised by the people of this country. It is not Mr Reddy's problem if Ratu Sir Kamisese Mara wants to mix his traditional and modern political roles.

11. Ratu Sir Kamisese portrayed himself as the injured party, insulted by Mr Reddy. But let us pause for a moment and go back to the first day of campaigning for this election. It was April 28 I believe, when both the Coalition and the Alliance launched their campaigns in Nausori.

12. It was in Koroqaqa on the very first day of campaigning that Ratu Sir Kamisese promoting the candidature of Senator Kuar Battan Singh spoke disparagingly of Mr Sharda Nand as 'atta baba' a contemptous reference to Mr Nand's involvement in the Flour Mills of Fiji Case.

13. Is that not character assassination of a man who had been proven not guilty by the due process of law.

14. Who planted hecklers in Coalition meetings, who slipped in filthy notes beneath doors in Lautoka? Who has talked of the Russian connection without producing a shred of evidence?

15. No, the story is different from the one the Alliance would have the public of Fiji believe. We like to think of ourselves as living in a democratic country, so let us observe the rules of the game.

16. Let us not obfuscate issues by confusing ritual with reason, principles of ascribed status with the fundamental principles of democracy. It is sad that people of Senator Inoke Tabua's wisdom use the highest forum of debate in the country to make racial statements to appeal to a section of Fiji's population, or to get a renewal of a Senate seat.

17. I think the citizens of this country surely deserve more than this. We should do something about it. "

The numbers opposite the first line of each paragraph do not appear in the published material. We have inserted them for ready reference.

The plaintiff pleaded that the letter in its natural and ordinary meaning conveyed the following defamatory imputations of him:

"(a) The plaintiff was of the view that Fijian Indians should be deported.

(b) The plaintiff as Prime Minister appointed one Senator Inoke Tabua who in turn as his nominee in the Senate has made disparaging remarks about Fijian Indians and such were being attributed to him personally in his position as the Prime Minister of Fiji.

(c) That the plaintiff was dishonest.

(d) That the utterances of Senator Inoke Tabua in the Senate were under the direction of the plaintiff.

(e) That the plaintiff was a racist in so far as he possessed an enmity against Fijian Indians.

(f) That the plaintiff was a bigot in so far as he had a dislike for Indians.

(g) That the plaintiff was a racist and unfit to lead the Fijian population as the Prime Minister.

(h) That the plaintiff was a troublemaker and nothing short of a political activist who stooped to the lowest forms of political agitation.

(i) That the Prime Minister was align with the man who had racist policies and/or attitudes and accordingly became vicariously identified as adopting and/or promoting and in fact supporting the attitudes of Senator Inoke Tabua.

(j) That the plaintiff as a tribal chief of his people was a man who was unfit in the circumstances to lead them and the rest of the population in his office as Prime Minister in view of his racist overtones and attitudes to certain sections of the multi-cultural society of which he was Prime Minister.

(k) That the Prime Minister was, as Leader of the nation, prepared to restrict the democratic process by moving any political opposition through the means and or subterfuge of deportation so as to restrict any political dissent and/or opposition thereby meaning that he was prepared to defeat and/or restrict the democratic process from operating within the sovereign and democratic state of Fiji.

(l) That the Prime Minister is racially prejudice and unfit for office because he nominated Senator Inoke Tabua to the Senate being a person who is also racially prejudice and intolerant.

(m) That the Prime Minister is unfit for office and to be a Member of the Parliament because he cheated in the elections by resorting to unfair and improper electioneering tactics.

(n) That the Prime Minister is unfit for the office and to be a Member of Parliament because he was a party to character assassination by making false allegations against a political candidate.

(o) That the Prime Minister is unfit for office and to be a Member of Parliament because he behaved unfairly at the election by behaving in an improper manner in that he planted hecklers in coalition meeting and slipped filthy notes beneath doors in Lautoka.

(p) That the Prime Minister is unfit for office because he was undemocratic and did not obey the rules applicable to democratic society.

(q) The plaintiff is a hypocrite because he does not believe his expressed views of a multi-racial society. "

The learned Judge in the Court below found that words in the letter in their ordinary and natural meaning conveyed the imputations set out in paragraph (n) above. He does not appear to have considered paragraphs (k), (l) and (q) and he held that the imputations contended for in all the remaining paragraphs had not been established. As to the imputations set out in paragraph (n), he upheld the respondents' defence of fair comment and dismissed the appellant's action.

The appellant's appeal to this Court was advanced on the following grounds :

"1. THE Learned Trial Judge erred in failing to hold that the words contained in the published letter were defamatory of the Appellant in their natural and ordinary meaning.

2. THE Learned Trial Judge erred in holding that the requirement of Order 82 Rule 3(3) was mandatory in that it required a reply to be filed setting out necessary particulars of malice and that in the absence of such a reply particulars of malice could not be led in evidence.

3. THE Learned Trial Judge erred in holding that the language used in the published letter was within the ambit of fair comment.

4. THE Learned Trial Judge erred in holding that the defence of fair comment had been made out on the basis that such a finding was against the evidence and the weight of the evidence.

5. THE Learned Trial Judge erred in holding that the defence of fair comment had been made out on the basis that the matter upon which the defence was pleaded was not comment and was factually incorrect.

6. THE Learned Trial Judge erred in failing to allow the plaintiff to amend the Statement of Claim in the course of the trial.

7. THAT the Learned Trial Judge erred in finding that the material complained of did not bear one or more of the imputations set out in paragraphs (a), (b), (c), (d), (e), (g), (h), (i), (l), (m), (n), (o), (p) of paragraph 5 of the Statement of Claim.

8. THAT the Learned Trial Judge erred in failing to find that the words contain a true innuendo that 'the plaintiff is a hypocrite because he does not believe his expressed views of a multi-racial society' (paragraphs 7 and 5(q) of the Statement of Claim).

9. THAT the Learned Trial Judge erred in assuming that 'the average reader of the 'Fiji Times' has some education including a fair knowledge of the public institutions of his country'.

10. THAT the Learned Trial Judge misdirected himself by stating that the imputations set out in paragraph 5 (a), (b), (c), (d), (e), (f), (g), (i), (j) of the Statement of Claim were disposed of by his findings that Senator Tabua was a free agent able to express his own views and that he was speaking his own mind and that the published letter could not be understood to mean that what was said by him was under the direction of the plaintiff.

11. THAT the Learned Trial Judge was in error in stating that he could not imagine that any member of the public believes that the Senate consists of persons whose sole function is to echo the views of the persons or institutions who nominated them for appointment.

12. THAT the Learned Trial Judge erred in refusing to accept that the allegations that members or supporters of the Alliance Party engaged in reprehensible practices did not reflect on the reputation of the plaintiff as leader of the Party.

13. THAT the Learned Trial Judge erred in holding that no one reading the published letter would conclude that the Prime Minister had cheated at the elections and that the words used were incapable of bearing that or any other defamatory meaning.

14. THAT the Learned Trial Judge erred in holding that paragraph 14 of the published letter could not be understood to mean that the plaintiff was personally responsible for planting hecklers at coalition meetings.

15. THE Learned Trial Judge erred in holding that he was not satisfied that the words used in the published letter were capable of supporting the imputations in paragraph 5.

16. THE Learned Trial Judge erred in holding that it is not defamatory to say of anyone that he is undemocratic.

17. THE Learned Trial Judge erred in holding that the reference in paragraph 15 to the 'rules of the game' was not applicable in the context to the Prime Minister personally.

18. THAT the Trial Judge erred in law in holding that the defence of fair comment was made out after finding that the author had 'misinterpreted the plaintiff's reference to 'atta baba'.

19. THAT the Trial Judge should have found that a comment, based on facts which the writer has misrepresented in the article, is not fair.

20. THAT the Learned Trial Judge erred in finding that the defence of fair comment was made out, when in truth :

(a) the words 'character assassin' were a statement of fact and not a comment;

(b) no facts were proved in evidence which could support a fair comment to the effect 'Is that not character assassination';

(c) the fact that the plaintiff had used the term 'atta baba' in reference to Mr Sharda Nand was not of itself a sufficient basis for the comment 'Is that not character assassination';

(d) no evidence was proved that the comment represented the opinion of the author;

(e) the defendant in its pleadings, submissions and evidence made no attempt to support the statement as a fair comment;

(f) there was no evidence to prove the meaning of the term 'atta baba' or any other facts to support the fairness of a comment 'Is that not character assassination'.

21. THE Learned Trial Judge erred in that, even if objectively the term 'atta baba' would support the words 'Is that not character assassination' as a fair comment, the defence failed in this case by reason of the finding that the author misrepresented the plaintiff's reference to 'atta baba'. "

Mr. McHugh argued Grounds 1 and 7 to 17 inclusive together and for the purposes of the argument reduced the 17 imputations pleaded into 6 categories, namely that :

1. the appellant was a racist - an amalgamation of paragraphs (a), (b), (d), (e), (f), (g), (i), (j) and (l).

2. he was guilty of improper and unfair electioneering behaviour and tactics - paragraphs (h), (m) and (o)

3. he was dishonest - paragraph (c)

4. he was a character assassin - paragraph (n)

5. he was a hypocrite - paragraph (a)

6. he was undemocratic - (k) and (p)

Before passing to consider Mr. McHugh's submissions in support of these various heads of appeal we pause to remind ourselves and to remark that a Judge sitting without jury in a defamation action - as did the learned Judge in the Court below - has to eschew construing the words complained of in the legal sense; rather for this part of his duty, he has to put aside the judicial robe and assume the mantle of the reasonable man of ordinary intelligence with the ordinary man's general knowledge and experience of men and affairs. And he must put aside the reserve by which the lawyer restricts implication to the necessary and the reasonable and assume the liberality wherewith the ordinary man is prone to perceive an implication. As Lord Devlin put it in Lewis v. Daily Telegraph (1964) A.C. 234 at p. 277 :

> " The layman reads in an implication much more freely; (than the lawyer) and unfortunately, as the law of defamation has to take into account, is especially prone to do when it is derogatory. "

And on the same topic, in the same case at p. 258 Lord Reid had this to say :

> " What the ordinary man would infer without special knowledge has been called the natural and ordinary meaning of the words, but the expression is rather misleading in that it conceals the fact that there are two elements in it. Sometimes it is not necessary to go beyond the words themselves as where the plaintiff has been called a thief or a murderer. But more often the sting is not so much in the words themselves as in what the ordinary man will infer from them and that is regarded as part of their natural and ordinary meaning. "

We remind ourselves also that "where a Judge is sitting alone to try a libel action without a jury the only questions he has to ask himself are 'Is the natural and ordinary meaning of the words that which is alleged in the statement of claim?' and: (If not) what, if any, less injurious defamatory meaning do they bear?" - see Slim v. Daily Telegraph Ltd. (1968) 2 Q.B. 157 per Diplock L.J. at p. 176D.

The learned Judge in dealing with the imputations as to racism, first considered paragraph 2 of the letter and said :

> " The Senate is a deliberate assembly with legislative functions. I cannot imagine that any member of the public believes that the Senate consists of persons whose sole function is to echo the views of the persons or institutions who nominated them for appointment. It follows, therefore, that even if Senator Tabua had been nominated to the Senate by the Prime Minister, the statements in the published letter could not be understood to mean that what the Senator said in the Senate or any occasion was said by him under the direction of the plaintiff. On the contrary, the complaint contained in paragraph 2 of the published letter is an indication that the writer believed that Senator Tabua was a free agent able to express his own views. A reader would have understood this also. The words used mean that the Senator was speaking his own mind, that his ideas as expressed were repugnant and that the Prime Minister ought to have rebuked him on that account.
>
> This disposes of the allegation that the natural and ordinary meaning of the words used in the published letter contained the imputations set out in paragraph 5 (a), (b), (c), (d), (e), (f), (g), (i), (j) of the Statement of Claim, some of which appear to me to be fanciful in the extreme. "

In reaching those conclusions we think that it is manifest that the learned Judge has applied the approach and the tests of the lawyer and not those of reasonable men of ordinary intelligence and knowledge. We think it

clear from his language that he has made no allowance and paid no heed to the layman's capacity for implication and his propensity to do so when the matter is derogatory. In holding, as he did, that the words in paragraph 2 of the letter meant that the Senator's ideas as expressed were repugnant and that the appellant ought to have rebuked him on that account, we think the learned Judge has overlooked that our reasonable man would have readily inferred that the words carried the imputation that in failing to rebuke the Senator or disassociate himself from the remarks, the appellant was tacitly approving them. We allow that such inferences do not attain the degree of calumny expressed in paragraph (b) of the appellant's alleged defamatory imputations but, in our view, they do come broadly within the meaning he has pleaded and bear a defamatory meaning, less injurious to the appellant but nonetheless defamatory - see Slim v. Daily Telegraph Ltd. (supra) per Lord Diplock at 176D and Lord Salmon at 185B.

The respondents pleaded that the words, if found to be defamatory, (as we have now found them), constituted fair comment on a matter of public interest.

It was common ground that the letter had to do with a matter of public interest; common ground, also, that the respondents were entitled to adopt and advance what was in reality, the protection afforded to the author and not the publisher of the words complained of.

Mr. Sweetman before launching into his submissions as to this defence referred us to the provisions of sections 3 and 12 of the Constitution of Fiji (Cap. 1) which insofar as they are relevant read :

> "3. Whereas every person in Fiji is entitled to fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others in the public interest to each and all of the following, namely -

(a) .....

(b) freedom of ....., expression.

(c) .....

the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations designed to ensure that the enjoyment of the said rights and freedoms by any person does not prejudice the rights and freedoms of others or the public interest. "

"12(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions and to ..... impart ideas ..... without interference.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision -

(a) .....

(b) for the purpose of protecting the reputations ..... of other persons. "

The underlining is ours.

And he submitted that these provisions extended the freedom of expression in this country.

In our view, the provisions of these sections insofar as they impinge upon the law as to defamation, did not affect any alteration to the law of this country prior to Fiji acquiring fully responsible status on the enactment of the Fiji Independence Act, 1970. Without so deciding, we are disposed to think that their provisions insofar as they relate to freedom of speech is concerned, are declaratory of the law prior to independence and we hold that subsection (2) of section 12 excludes from the effect of those provisions the laws of this country as to defamation.

The main thrust of the appellant's case in relation to the defence of fair comment is contained in Ground No. 5 :

> "5. The Learned Trial Judge erred in holding that the defence of fair comment had been made out on the basis that the matter upon which the defence was pleaded was not comment and was factually incorrect. "

The respondents acknowledge - and indeed acknowledged on the day following publication of the letter that the statement contained in paragraph 1 of the letter that Senator Tabua was the nominee of the appellant in the Senate, was untrue. And that statement is the sub-stratum for several matters of comment in the letter. Paragraph 2 gives rise to an implication that the appellant was in a position to rebuke Senator Tabua; that such a situation arose because of his patronage of the gentleman and the comment is that being so placed, he did not do so. And the rhetorical question in paragraph 3, "Will Senator Tabua face a similar situation?" in its ordinary meaning would convey to this reasonable man that it was the author's opinion that he would not.

The reference in paragraph 16 is that -

> "it is sad that people of Senator Inoke Tabua's wisdom use the highest forum of debate in the country to make racial statements ..... to get a renewal of a senate seat. "

These words are linked with and bear nexus to the mis-statement in the paragraph. The clear inference is that one of the reasons why the Senator chose to make the alleged racialist statement was to curry favour with the appellant who would be pleased by such statements and would be more likely to nominate Senator Tabua again as a Senator.

This, in our view, is also clearly defamatory.

In our view none of these several libels can be excused as fair comment. The comments have as their sub-stratum the untrue statement that Senator Tabua was the appellant's nominee in the Senate. As long ago as 1886 their Lordships of the Privy Council held that if the facts upon which a comment is based are not true, the defence of fair comment must fail - Davis v. Shepstone (1886) 11 App. Cas. 180 at 190-1. And, in Sutherland v. Stopes (1925) A.C. 47 at pp. 99-100 Lord Carson said :

> " Comment, in order to be fair, must be based on facts and if the defendant cannot show that his comments contain no mis-statements of fact, he cannot prove a defence of fair comment. "

All in all, therefore, we think that the appellant must succeed on this ground of appeal.

We find it convenient next to consider Category 4 of Mr. McHugh's subdivision of the grounds of appeal (paragraph (n)) of the alleged defamatory imputations.

Paragraph (n) reads :

> " That the Prime Minister is unfit for the office and to be a Member of Parliament because he was a party to character assassination by making false allegations against a political candidate. "

This alleged imputation arises from paragraphs 12 and 13 of the letter.

The learned Judge held that the imputing of character assassination to the appellant was defamatory of him but went on to uphold the defence of fair comment in respect of it.

The respondents in their cross-appeal sought that the judgment of the learned Judge be affirmed on

several grounds additional to those relied upon in the judgment out of which was -

> "the said defamatory words were not defamatory of the appellant as alleged in the statement of claim. "

That ground encompasses an appeal against the Judge's finding that the allegation that the appellant was guilty of character assassination, was defamatory. However, no specific submissions were advanced in support of such ground. We affirm the Judge's finding.

Paragraphs 12 and 13 contain several statements of fact upon which comment was founded. First, there is the reference to the appellant speaking at a political meeting, of Mr. Sharda Nand as "atta baba". And it is followed by the comment that such was "a contemptuous reference to Mr. Nand's involvement in the Flour Mills of Fiji Case". That comment itself has within it statements of fact to the effect that Nand was indeed involved in such case and that the reference the appellant made to him at Koroqaqa referred to such involvement.

The only evidence as to these matters was that of the appellant, he said :

> " I was at Koroqaqa promoting the cause of Singh. I made reference to Mr. Nand as 'atta baba' a flour distributor. I understood that was being done in the constituency. Mr. Nand was involved in a court case when he was manager of Flour Mills. I was not referring to court case but to the distribution of flour. "

The only evidence on the topic, therefore, was that the reference to Nand as "atta baba" was not to his involvement in the "Flour Mills of Fiji Case". So, again the comment that such was contemptuous has not the requisite foundation of fact. And, there was no evidence that Nand was involved in the case.

And later, in paragraph 13, there is the assertion of fact that Nand "had been proven not guilty by the due process of law". The only evidence as to that is also that of the appellant. We interpolate that the learned Judge who had the tedious task of himself recording the evidence expressed some misgivings as to the accuracy of his note as to the relevant passage. It reads :

> " Mr. Nand was not proved innocent. He was found not guilty. "

Mr. Sweetman, with the candour and fairness that so becomes the barrister, read us his note of what the appellant said. It was :

> " My understanding was not held innocent. The appeal court did not declare him not guilty. "

Neither version provides proof of the fact stated, namely, that Nand was proved not guilty by the due process of law.

Accordingly, for the reasons we gave in dealing with this selfsame topic in respect of the imputations of racism, we hold that the learned Judge erred in holding that the defence of fair comment availed the respondents.

Mr. McHugh, as a subsidiary ground, submitted that the rhetorical question - "Is that not character assassination ....." was not, as the learned Judge held, an expression of opinion but rather an assertion of fact. From the structure of the sentence itself we are inclined to think that Mr. McHugh's submission is correct and indeed that view finds support from the observations of Evatt J. in Smith's Newspapers Limited v. Becker (1932) 47 C.L.R. 279 at p. 302 but having disposed of this ground of appeal on the first limb of the argument, we take no concluded view on the matter.

Mr. McHugh did not offer any submission as to

the alleged imputation of dishonesty (Category C) and we say no more of it.

As to the imputations of improper and unfair electioneering behaviour on the appellant's part, we are disposed to agree with the learned Judge that the allegations contained in paragraphs 5 (h) and 5 (m) have not been made out. The imputations founded upon them seem to us to go beyond the meaning the ordinary man would ascribe to them. However, we think otherwise of the imputations alleged in paragraph 5 (o) - in particular as they refer to and arise from that part of paragraph 14 of the letter - "Who slipped in filthy notes beneath doors in Lautoka?" The only person to whom these words could possibly refer are Senator Tabua and the appellant. We think, in the context of the letter as a whole, they would be taken to allude to the appellant. The ordinary man would not, in our view, take the words to mean that he personally went about Lautoka on such a mission; rather, he would, we think, take it that it was being alleged that he caused such to be done.

We uphold the appellant's submission that the words are defamatory and again, as there is no evidence as to the fact of filthy notes being so planted, the defence of fair comment does not avail the respondents.

With regard to the imputation of hypocrisy, Mr. McHugh allowed that he could not support such on the basis of the ordinary and natural meaning of the first paragraph. Instead, he advanced it on the footing of a true innuendo. That innuendo was not pleaded. In any event, we find ourselves unable to hold that our reasonable man would on reading paragraph 1 above conclude that they meant or carried the implication that the appellant was a hypocrite. They could be taken no more than a base or a premise for what allusions to the appellant were to follow.

We reject the submission.

The final category (No.6) refers to the alleged imputation that the appellant was undemocratic - (paragraphs (k) and (p)). The allegation is founded upon the words of paragraph 15 and the first sentence of paragraph 16. The second sentence of paragraph 16 clearly have no affinity with the imputation under consideration.

In our view, reasonable men of ordinary intelligence with the ordinary man's general knowledge would not ascribe the suggested meaning; rather, we think, the reference to "the Alliance" at the outset and the generality of the words which follow would lead him to take the passage as akin to a peroration to a political speech denouncing the Alliance Party. Despite the earlier references to the appellant in the letter, we do not think that our reasonable man would associate the appellant personally with the passage.

We reject the submission.

In the result the appeal must be and is allowed. Counsel agreed that, in that eventuality, we should pronounce a verdict for the appellant and order a new trial limited to the assessment of damages and that we now do.

The respondents are ordered to pay the appellant's costs here and below.

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Vice President

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Judge of Appeal

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Judge of Appeal