

*Remarks of the Judicial Committee in
Appeal and Cross Appeal of McArthur &
v. Cornwall and another, from the Supreme
Court of Fiji.*

Present :

LORD HOBHOUSE.

LORD MACNAGHTEN.

SIR RICHARD COUCH.

(In the course of Mr. Napier's reply the following took place.)

Lord Hobhouse.—Mr. Napier, their Lordships consider that the matter stands thus. At the close of your opening their Lordships made up their minds that they must decide:—that there was jurisdiction; that there was wrongful possession on your part, trespass, which is the same thing; and that was inconsistent with your plea of *res judicata* to contend that Mr. Cornwall was not in possession by his agent Manaema; therefore that Mr. Cornwall was entitled to some damages. All those points Mr. Fullarton was relieved from arguing, and in point of fact he has not argued any of them. Therefore there should be no reply upon those points. The only remaining question is as to the *quantum* of damages. Even if their Lordships had authority to decide *quantum* here, which is very doubtful, they would not, in a case like this, take upon themselves the responsibility of doing so. Therefore there must be, as the Chief Justice has decided, a new trial. But their Lordships would be desirous, if they can do it usefully, to indicate

any principle which, in a case between British subjects, the newly created tribunal might find it expedient to use for its own guidance. Of course we cannot tell in the least on what principles it will go, but it is not improbable that in a case between British subjects it might find our observations useful. One principle has been already fully argued, namely that of vindictive damages. On that point, their Lordships are prepared to rule against Mr. Fullarton, and to lay down that, looking at English law, there should not be vindictive damages. Therefore you need not reply upon that; but their Lordships would be glad to hear from you what other principles you say they ought to lay down for this case.

(Mr. Napier proceeded with his reply, at the termination of which their Lordships reserved judgment.)
