

## MELE MUMUI KAHO v. MINISTER OF LANDS.

(Land Court. Stuart J. Nuku'alofa, 21st October, 1940).

Leases to foreigners — Lease lands separated from the 'api — English Law prevails — Rents can be bequeathed by will — No. 7 points accepted by Tupou II.

The Plaintiff's father was the holder of a town allotment in Nuku'alofa. He leased part of it to Mr. Whitcombe. On the death of the plaintiff's father his wife inherited and the rents from the lease were paid to her. The mother died and left all her property to the plaintiff. The plaintiff claimed the rents from the leased land. The Crown alleged that this land vested in the Crown on the death of the plaintiff's mother and therefore the rents belonged to the Government. Apparently there were no male heirs and the plaintiff was married.

HELD: The plaintiff was entitled to the rents as personal property bequeathed to her by her mother. Verdict for the plaintiff.

Hale Vete appeared for the plaintiff.

The Minister appeared in person.

STUART J. : It is not correct to contend that when part of an 'api has been leased to a European or Foreigner it remains part of the original 'api and subject to the Land Act of Tonga as to devolution.

2. In terms of section 7 of the points accepted by the King on 18th January, 1905 — Renewals becoming automatic these Foreign leases are really breaches of the Crown's exclusive sovereignty in land.

3. This condition of affairs could only be altered by contract between Great Britain and Tonga.

4. In consequence the Leases here disputed became Leaseholds of the Foreigner and his successor in title Morris Hedstrom and the land affected was completely separated from the 'api.

5. The right to receive rent for this detached leased area is not specifically governed by any Tongan Law. English Law must apply to fill the gap. The whole lease is Foreign in character.

6. An attempt was made by Cabinet resolutions of April 17th 1929 to bridge the gap : but it is hard to see how this is of any effect. Certainly it is of no effect on leases then existing because if it is law (which we doubt, as it is only a Cabinet resolution) it could not be retrospective, vide Section 20 of the Constitution.

7. We agree that the Plaintiff's mother could leave her rents (£36) in this matter by will. She did leave it by will. The will is general, and under a general will all property passes, even if the owner does not realize that it is property that can pass.

8. The only doubt felt by the Judge, is whether in a matter such as this, the Land Court has jurisdiction at all. If it has no

jurisdiction then the Privy Council has no jurisdiction to upset this.

If it has jurisdiction then the Privy Council can deal with the merits.

If this case should have been brought in the Supreme Court which we doubt, the Chief Justice states that the Judgment would have been exactly the same. The only difference would have been that the Court Fees would have been £5 more, i.e. £6/2/- -- £11/2/-.

Judgment is given for Plaintiff. No order as to costs in view of the Privy Council's ruling in the Peliatisi case.

EDITOR'S NOTE : From the records available it is difficult to state the facts of this case precisely and more difficult to understand the true meaning of the judgment which is taken from a record in the Judge's handwriting. However the Defendant appealed and on the 20th August, 1942, the Privy Council (Stuart C.J.) allowed the appeal and reversed the decision of the Land Court. See page 148.

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