

SIONE FONI v. TATOFI, S. MALUNGAHU AND T.
LOSELI.

(Civil Appeal : Higginson J. Nuku'alofa, 25th June, 1950)

Sale of Impounded animal — Irregularities in proceedings before sale — Right of owner to return of animal — Refund of amount paid by purchaser at auction — The pounds in Animals Act 1918 Section 10.

This was an appeal from the decision of the Magistrate.

The Plaintiff was the owner of a brown mare which had been placed in the Pound and sold by order of the Pound Keeper. He sued the Pound keeper (Malungahu) the person who bought the horse (Tatofi) and the person who bid at the auction on behalf of Tatofi (Loseli) claiming from them the return of his horse.

The Magistrate gave judgment for the Defendants. The Plaintiff appealed. The facts are sufficiently set forth in the judgment.

HELD. The irregularities in the proceedings vitiated the sale and the horse must be returned to the owner (The Appellant). Appeal upheld.

Finau appeared for the Appellant.

Tu'akoi appeared for the Respondents.

HIGGINSON J. : The question is whether there has been such an irregularity in the impounding and sale of this horse as would affect the owner's opportunity to recover his horse before it was sold. If there is then the sale is illegal.

The Pound keeper now says he gave written notice to the Town Officer of impoundment of the horse. In the lower Court the Poundkeeper said he informed the Town Officer and the Town Officer says there was no written notice but that he was told verbally to tell the village that the horse would be sold.

The Act (S. 10 (1) of Cap. 31) requires not only a notice but this notice must state the date of the auction and be given to the District Officer. No Written notice has been produced and I am of the opinion that only a verbal notice was given and that was to the Town Officer and the date of the auction was not stated. Whether a further notice was given is not clear. But the most essential is the first notice in order to give time to the owner to hear of it before the sale.

The proceedings were irregular and did not comply with the requirements of S. 10 (1) Cap. 31 (His Honour then referred to do English and Empire Digest Vol. 18 P. 446 Note K).

The appeal is allowed. The horse is to be returned to the Appellant and the Appellant is to pay to Tatofi the full amount Tatofi paid for the horse.

Defendant Malungahu to pay £2/6/0 costs.