

## LEONE 'ETU v. NUKU (Noble).

(Land Court. Hunter J. 'Etoni Tonga, Assessor. Nuku'alofa, 20th December, 1957, 20th January, 1958).

Jurisdiction of Court — Limitation of action — Application of Section 147 of Land Act to nobles — Inheritance by adopted child — Constitution Clauses 67 and 107 — Land Act (Cap. 45) Ss. 126 and 147.

This was a claim to the estates of Nuku. Two preliminary submissions were made by the defendant; (1) that the claim was barred by S. 147 of the Land Act, and (2) that the Court had no jurisdiction as a noble's title was involved.

HELD: That the Court had jurisdiction, but that the claim was barred by S. 147.

Verdict for the defendant.

Pousima and Tu'akoi appeared for the plaintiff.

Finau and Kioa appeared for the defendant.

C.A.V.

HUNTER J.: This is a claim by Leone 'Etu to the title and estates of Nuku. Counsel for the defendant took two preliminary objections: (i) that claim was barred by Section 147 of the Land Act in as much as more than ten years had elapsed from the time at which the right to bring this action arose; and (ii) that the Court had no jurisdiction, as the disposal of titles is a matter solely for Her Majesty.

It was agreed between the parties that these preliminary objections should be disposed of before calling evidence and this course was adopted.

Although submission (1) was raised it was not seriously pressed and in my view there is no substance in it. The Land Court has dealt with many cases involving the titles of nobles and its jurisdiction has never been questioned. Under Section 126 of Chapter 45 the Court has jurisdiction ".....(ii) to hear and determine all disputes ... affecting any land.....and in particular all disputes claims and questions of title affecting any tofi'a tax or town allotment or any interest therein." The very title under dispute in this case was the subject of the decision of this Court in 1949, and the Court's decision was confirmed by the Privy Council (*Sunia 'Akaveka v. Nuku*, No. 108/47).

With regard to the first objection, Counsel for the Plaintiff submitted that Section 147 of Chapter 45 could not apply as if it purported to affect the titles of nobles it was ultra vires and void not having been passed in conformity with Clause 67 of the Constitution. In my view Section 147 of Chapter 45 is not a law (or part of a law) "relating to the Queen, or the Royal family or the titles or inheritances of the nobles" within the meaning of Clause 67 of the Constitution and that the provisions of that

Clause do not apply. Claims against nobles's estates are just as much subject to the ten years' limitation as claims against the holders of tax allotments.

Counsel for the Plaintiff further submitted that even if Section 147 does apply to claims affecting the inheritances of nobles it is not a bar to the Plaintiff in this case as the defendant's title is traced from an adopted son and it was only after the Constitution was amended by Act No. 15 of 1953 that the Plaintiff could assert his claim and that in his case time did not begin to run under Section 147 until the death of Sunia in 1956.

It was admitted by the Plaintiff that if Section 147 does apply to nobles and if the amendment to the constitution in 1953 cannot be regarded as a starting point for the calculation of time in cases where the estate is traced through an adopted heir then his claim is barred by Section 147; in other words the right of action in this case did accrue more than ten years prior to the issue of the writ.

The 1953 Amendment adds the following words to Clause 107 of the Constitution : "Whereas by Tongan custom provision has always been made that an adopted child might succeed to the estates and titles of his adoptive father now therefore it is decreed that upon the death of the holder of an estate or title who has inherited such estate or title by virtue of his blood descent from such adopted child the estate and title shall revert to the descendant by blood of the original holder of the estate and title in accordance with the provisions of this clause and should there be alive no such descendant by blood the provisions of the next succeeding clause shall apply."

At first sight the submission of the Plaintiff that the result of this amendment is that time only begins to run against him on the death of the holder of the title which happened next after the passing of the amendment, is an attractive one, but on careful consideration I do not think it is sound.

Clause 20 of the Constitution provides "It shall not be lawful to enact any retrospective laws in so far as they may curtail or take away or affect rights or privileges existing at the time of the passing of such laws." If the 1953 amendment is to be given the construction suggested by the Plaintiff it is clear that it might affect many existing rights or privileges. The Legislature could never have intended to throw open to attack titles and tofi'a's which have been held in the same possession for many years.

In my view the effect of this amendment is this : If after the 27th January, 1954 (the date on which the amendment came into force) an estate passes to an adopted child then on the death of a person who has inherited through such adopted child the estate will revert to the descendant by blood of the original holder. In other words the right of the "adoptive line" (if I may use such an expression) to hold the estate is limited to two generations. If

*this is not so then an estate which had been in a family for very many years could be attacked if say a hundred years ago an adopted son had inherited. This is in direct conflict with Clause 20 of the Constitution, which makes any law invalid if it takes away any right existing at the time the law is passed.*

It follows from this that Section 147 of Chapter 45 is a bar to the Plaintiff's action in this case and therefore I must dismiss the claim. Verdict for the Defendant.

EDITOR'S NOTE: The plaintiff appealed. The Privy Council (Hammett C.J.) dismissed the appeal on 12 December, 1958. See Page 161.