

THE LAND AND TITLES COURT OF WESTERN SAMOA

by

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In presenting this article it was thought that it may be of interest to other Nations in the South Pacific to know something of the Land and Titles Court and the system of land tenure in this country. It should be stated at the outset that the Land and Titles is a most important Court, if not, the most important Court of the Independent State of Western Samoa. The Hon. Prime Minister, Tupua Tamasese Lealofi IV at the opening of the Additional Land and Titles Court at Savaii in 1970 in comparing the Criminal Courts and the Land and Titles Court said—

“the respective roles and functions of the two Courts are different. One is for the maintenance of law and order, the other is for the protection of rights to customary lands and titles—the two basic and fundamental things which form the very core of our Samoan society. The decisions of the Criminal Courts will affect only those accused whereas the decisions of the Land and Titles Court have far reaching effect, for they are binding even on the unborn generations”.

It is hoped that this article will arouse interest in the Land and Titles Court, if, for no reason other than its seeming complexity.

Jurisdiction of the Court

The Court has exclusive jurisdiction in

- (1) disputes between Samoans over Samoan Customary Land
- (2) disputes over matai titles—

It must be understood that the word “title” refers to the personal or honorific matai titles conferred upon individuals. About sixty percent of the decisions of the Court deal with Land matters, thirty-five percent with Matai titles and five percent miscellaneous. The Court hears in total approximately 170-200 cases a year.

Historical Introduction

Western Samoa lies between latitudes 13° and 15° south and longitudes 171° and 173° west. There are two large islands Savaii and Upolu (on which Apia the capital is located) and several smaller islands. Total land area is about 1,100 square miles and the population is estimated at 143,000 persons. Recent archaeological research suggests that the Samoan Islands were settled not later than 1,000 years B.C. and possibly much earlier. From about 1250 A.D. the genealogies of important matai titles and

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accompanying legends provide a reasonably clear outline of the main events of Samoa's social and political history. The first European to visit the Samoas was Jacob Roggeveen, a Dutch explorer in 1722. He was followed in 1768 by the Frenchman Bougainville who named the islands the Navigators' Islands. From this time onwards, visits by Europeans became more frequent and culminated in the arrival of the missionary John Williams in 1830 and the establishment of the London Missionary Society two years later. Between 1847 and 1861, Great Britain, Germany and the United States of America established consulates in Apia. A Samoan kingship was established under Western influence, but it failed to build up a workable administration. Germany, Great Britain, and the United States obtained privileges for themselves and for their nations; were granted the right to establish coaling stations and to bring Europeans under a form of extra-territorial jurisdiction.

Internal intrigue, jealousies and trade rivalries reached a climax in 1889 which led to the signing in that year of a treaty known as "The Final Act of the Berlin Conference on Samoan Affairs"—often referred to as the Treaty of Berlin—whereunder Samoa was declared neutral and independent, and Malietoa Laupepa was recognised as king; provision was made for a Supreme Court with extensive jurisdiction presided over by a European Chief Justice.

The treaty also provided for the setting up of a Land Claims Commission consisting of three impartial and competent persons one to be named by each of the Treaty Powers. It was the duty of the Commission to investigate all claims of foreigners to land in Samoa whether acquired from Samoans or aliens and to report thereon to the Supreme Court. There were 3,705 claims lodged and they covered an area more than twice the whole of Samoa.

The Commission recommended to the Supreme Court for confirmation about eight percent of the total claims; German claimants were the most successful—75,000 acres being confirmed, 36,000 acres to English and 21,000 to American claimants.

The assent of King Malietoa of Samoa to the Treaty of Berlin and the provisions thereof was given on the 19th April 1890. Until 1890 the rule of law in Samoa, except in so far as jurisdiction over their own subjects was exercised by outside powers, was regulated solely by the usages and customs of the Samoan people. It was not until the 10th February 1890 that the first laws were promulgated by Malietoa; known as the "Malietoa Laws".

With the death of King Malietoa in August 1898 and a dispute over the succession, the three Powers, Great Britain, U.S.A. and Germany sent a Commission to Samoa in 1899. It secured the acquiescence of some of the Samoan leaders and the abolition of the kingship. The three Powers agreed to divide the Samoan Islands in a series of conventions, culminating in the Convention of London signed on 17 February 1900 whereunder it was agreed that the United States of America should annex Eastern Samoa while Germany acquired control over Western Samoa by Imperial German decree on 17th October 1900. Great Britain withdrew in return for the recognition by the other Powers of certain of her claims in other parts of the Pacific.

In 1903 the Imperial German Governor Dr Solf constituted a Land and Titles Commission. The Commission was appointed to decide disputes over Samoan land and the holding of Matai titles. The members were European, in the main German nationals—but Samoans selected for their loyalty to

the German Regime were appointed as advisers. Afamasaga Maua who was a clerk employed by the German Administration was instrumental in establishing this Commission.

The records of the Commission are available to the Court today and are constantly referred to. In passing I would add that one cannot fail to be impressed by the thoroughness and the care of the Commission which is apparent from the files.

In 1914 New Zealand forces occupied Samoa and the British Military Occupation continued to administer the laws of the former German Protectorate until 1920 when the Samoa Native Land and Titles Commission Order came into force. The High Court, when specially constituted in accordance with the Order, functioned as the Native Land and Titles Commission; which comprised the Chief Judge as Chairman and at least two European Assessors. There were Samoan Assessors who acted in an advisory or consultative capacity; they had no vote, but were entitled to be heard by the Commission on all questions within the jurisdiction of the Commission.

There was a right of rehearing to the Commission within three months after delivery of its decision and it could vary or reverse its finding. There was no right of appeal to any other Court or tribunal.

The Samoan Native Land and Titles Commission Order 1924 revoked the 1920 Order and made certain inconsequential amendments.

On 1st April 1935, the *Native Land and Titles Protection Ordinance* 1934 (now known as the *Samoa Land and Titles Protection Ordinance*) came into force constituting and establishing in Western Samoa a Court of Record to be known as the Native Land and Titles Commission and setting out in detail its jurisdiction and powers. The Court is now known as the Land and Titles Court.

On 1st January 1962 Western Samoa emerged as the first fully independent Polynesian State with a parliamentary system of Government and a written Constitution which is declared to be the Supreme Law of the Country.

The law-making body as provided in the constitution is Parliament consisting of the Head of State and the Legislative Assembly.

The Legislative Assembly, consists of forty-five Samoan Members and two Members representing the individual voters. The Samoan Members are elected from territorial constituencies on a franchise confined to matais. Therefore only matais can vote in an election and only a matai may be elected to Parliament. The part-Samoan and European community—the individual voters—elect their two Members by universal adult suffrage.

Article 103 of the Constitution provides that there shall be a Land and Titles Court with such composition and with such jurisdiction in relation to matai titles and customary land as may be provided by Act. The Court has jurisdiction over customary land but cannot adjudicate over what is known as European or freehold land which is land held under a document of title and freely transferrable. Article 101(2) of the Constitution defines customary land as "land held in accordance with Samoan custom and usage and with the law relating to Samoan custom and usage."

Article 100 provides that a matai title shall be held in accordance with Samoan Custom and usage and with the law relating to Samoan Custom and usage.

There is no definition of "Samoan Custom and Usage" nor is there any Statute codifying the principles of Samoan Custom and Usage. It is the

Land and Titles Court which is the ultimate authority on the matter of Samoan Custom and Usage.

A custom is a particular rule which has existed either actually or presumptively from time immemorial, and has obtained the force of law in a particular locality. As regards the matter to which it relates, a custom takes the place of the general common law, and is in respect of that matter the local common law within the particular locality where it obtains.

"Law" is defined in the Constitution as including "any custom or usage" which has acquired the force of law in Western "Samoa or any part thereof under the provisions of any Act or under a judgment of a Court of competent jurisdiction."

There is more than one reason for attributing to custom the force of law. In the first place, custom is frequently the embodiment of those principles which have commended themselves to the national conscience as principles of justice and public utility. The fact that any rule has already the sanction of custom, raises a presumption that it deserves to obtain the sanction of law also. Speaking generally, it is well that Courts of justice, in seeking for those rules of right which it is their duty to administer, should be content to accept those which have already in their favour the prestige and authority of long acceptance, rather than attempt the more dangerous task of fashioning a set of rules for themselves by the light of nature. The national conscience may well be accepted by the courts as an authoritative guide; and of this conscience national custom is the external and visible sign. Custom is to society what law is to the state. Each is the expression and realisation to the measure of men's insight and ability, of the principles of right and justice. The law embodies those principles as they commend themselves to the incorporate community in the exercise of its sovereign power. Custom embodies them as acknowledged and approved, not by the power of the state, but by the public opinion of the society at large. Nothing, therefore, is more natural than that, when the state begins to evolve out of the society, the law of the state should in respect of its material contents be in great part modelled upon, and coincident with, the customs of the society. When the state takes up its function of administering justice, it accepts as valid the rules of right already accepted by the society of which it is itself a product, and it finds those principles already realised in the customs of the realm.

A second ground of the law-creative efficacy of custom is to be found in the fact that the existence of an established usage is the basis of a rational expectation of its continuance in the future. Justice demands that, unless there is good reason to the contrary, men's rational expectations shall, so far as possible, be fulfilled rather than frustrated. Even if customs are not ideally just and reasonable, even if it can be shown that the national conscience has gone astray in establishing them, even if better rules might be formulated and enforced by the wisdom of the judicature, it may yet be wise to accept them as they are, rather than to disappoint the expectations which are based upon established practice.

Considerations such as these are sufficient, even in modern times and in fully developed legal systems, to induce the legislature on due occasion to give express statutory authority to bodies of national or local custom.

Similarly in New Zealand, when English Government and English law were introduced on the founding of the Colony, the legislature thought fit that the Maoris should to a large extent continue to live by their own tribal

customs, and to this extent those customs were given by statute. By the *Native Rights Act*, 1865, it was enacted that "every title to or interest in land over which the native title has not been extinguished, shall be determined according to the ancient custom and usage of the Maori people, so far as the same can be ascertained."

In the preamble to the Constitution it is stated--

"Whereas the Leaders of Western Samoa have declared that Western Samoa should be an Independent State based on Christian principles and Samoan Custom and Tradition."

No where in the Constitution is Samoan custom and tradition defined; the Constitution has been so drawn to permit of a flexible approach to Samoan Custom.

The decisions of the Court are based largely on the customs and traditions of the Samoan people. The task of interpretation, definition and implementation of these respected and time honoured customs is becoming more difficult as external influences are being introduced; there is a great risk that some of the revered customs of the Samoans recognised for centuries may be lost. The Court is aware of this risk; in all its deliberations the Court endeavours to ensure that the most respected and recognised customs and traditions of the Samoan people are protected and preserved for their welfare and prosperity.

In some respects law and custom may conflict.

In Article 8 2(d) of the Constitution there is an acknowledgment that custom shall not be in conflict with the Statute Law--when it provides:

"For the purposes of this Article, the term 'forced or compulsory labour' shall not include--

(d) any work or service which is required by Samoan custom or which forms part of normal civic obligations."

The Samoans would, I believe, resist any move whereby the Constitution would interfere with their Customs.

Roberts Wray in "Commonwealth and Colonial Law" says "while there is room for both customary and statutory law in different fields there must eventually be a reconciliation of inconsistent systems and that the first element of customary law to be brought under Statute is usually that relating to offences."

In the Magistrates' Court and the Supreme Court, Samoan custom is to some degree taken into account in certain cases. If for example proper ceremonial apologies have been made to an aggrieved person in a case of theft or assault and amends made in accordance with Samoan custom cognisance thereof can be taken in assessing the penalty to be imposed by the Court. However let me hasten to add that the Court never loses the opportunity to dilate upon the need to uphold the rule of law even to the extent of overruling custom.

It may well be that in the future there will be some reconciliation of custom and Statute law but in my view change will come slowly.

It is to be remembered that Samoan society has been in contact with the Western World for more than a century, yet it has largely retained its traditional organisation, absorbing by a process of selection, adaptation, and modification the various external influences to which it has been exposed.

The fact that the society is still very largely intact—after a long period of contact with first, German and later, New Zealand administration—is a measure of its quality and its strength.

The Samoan people, with very few exceptions, live within an “aiga” system.

One great advantage of the Samoan social system is the security that it provides. The young, the aged, and the weak are taken care of with the family (or aiga potopoto).

Tribal organisations as such do not exist in Samoa. Society is based on traditional family ties and loyalties. The stable centre of the pre-European political power—or pule—was the village community. Samoan custom finds political expression through the “matai” system, which still provides the main link between the people and the modern political, judicial, and administrative organisation which has been super-imposed on the old order. Thus the matai system remains the focus of Samoan political and economic life, and there is a tendency to resist any innovation which might modify the established basis of society.

The Lands and Titles Court is therefore the guardian and protection of Samoan Customs; it ensures that the customary lands of Samoa—which represent eighty percent of the total land mass—are used in accordance with custom.

The Constitution of the Court

The Chief Justice of the Supreme Court is the President of the Court, but the Chief Justice has power to authorise any puisne Judge of the Supreme Court or any Samoan Judge to act as president of the Court. The other members of the Court are Samoan Judges of the Land and Titles Court and Assessors. The Court when sitting is normally composed of the President or Deputy President, one Assessor and four Samoan Judges.

The normal procedure is for a petition to be filed with the Registrar which is duly published once in the “Savali” at least 21 days before the sitting and inviting any Samoan who may be interested to attend the hearing and claim to be made a party to the proceedings.

In the Land and Titles Court, evidence is given in the official language of the Court, which is Samoan, and interpreted into English for the benefit of the European members thereof.

Each party appoints a leader usually a chief or an orator and after a written statement of evidence is read and duly sworn to, the witnesses are examined by the members of the Court. All parties have the right to reply at the conclusion. The Court then deliberates in private and each member of the Court expresses his own opinion and each has an equal voice. The Ordinance provides that if at least four of the Samoan Judges and Assessors are in agreement then that shall be the decision of the Court; if this is not possible then the decision of the President shall be the decision of the Court.

The President prepares the final decision of the Court; it is duly sealed and signed by the Court; the decision is published in the “Savali” and thereupon it is deemed to be complete. Any party to the proceedings or any Samoan affected by the decision may apply within two months after the publication in the “Savali” for a rehearing of the petition. The application for rehearing is heard by the President alone. If the application is granted

then the matter is referred back to the Land and Titles Court for a hearing de novo, preferably before an entirely new bench.

There is a Register of Matais kept by the Registrar of the Land and Titles Court in which is entered the names of all persons who are the rightful holders of matai titles. If a case involves a matai title then the Registrar will upon the decision of the Court being given enter the name of the matai appointed by the Court in the Register. Where appointments are made by the Aiga Potopoto (or family) or, by other means in accordance with custom, the Registrar is notified of the appointment by the Pulenuu (or Head matai of the village) and thereupon the Registrar will make the appropriate entries; the Register of Matais occupies an important place in the social structure of this Country.

It is provided in the *Land and Titles Ordinance*—Section 76—

“Any party may be represented by a Solicitor for the purpose of preparing and filing a petition under this Ordinance; but no Solicitor shall have or be entitled to audience before the Court.”

I am not aware of the reason for this provision but the Court is concerned mainly with the Customs and Usages of the Samoan people, and the persons who have the best knowledge of the customs of a particular village are obviously those residing there; perhaps it was thought that matters may be more expeditiously dealt with by the Court if members of the legal fraternity did not appear.

The decisions of the Court are final and not subject to appeal or to control by any other Court whether in respect of want of jurisdiction or otherwise by way of certiorari, mandamus or in any other manner whatever.

Samoan Judges of the Land and Titles Court are appointed by the Head of State acting on the advice of the Judicial Service Commission. They are not permitted under the Ordinance to be appointed for more than three years but they may be reappointed from time to time for not more than three years in respect of each reappointment. Their salaries are fixed by order of the Head of State pursuant to the *Samoan Land and Titles Protection Ordinance* 1934. There are 10 Samoan Judges of the Court.

A Samoan Judicial Officer can very often be the subject of aiga (or family) pressure. I have had the experience of Samoan Judges of the Land and Titles Court asking to be excused from sitting on a particular case on the grounds that pressure has been exerted against them. In all cases I readily acquiesce in the request and another judge is asked to sit.

The Judges are conscious of their judicial independence and integrity and I know they impress upon their respective families that the latter can expect no favours from them in the administration of Justice.

Assessors of the Land and Titles Court

The Head of State nominates such a person as he thinks qualified (by reason of their character, ability and reputation) to hold office as Assessors of the Land and Titles Court and in like manner may revoke such nomination. At present there are approximately 120 Assessors all of whom are high ranking matais and the Registrar of the Court will summon one Assessor to sit as a member of the Court each sitting day. The allowance is \$5 per diem.

The Work of the Court

The Court sits each day—Monday to Friday at Mulinuu in Upolu—and also at Fogapoa one week in every three on Savaii.

Each morning before the work of the Court commences a Kava Ceremony is held. Each member of the Court is addressed by his Kava title and handed a bowl (made from coconut shell) of kava. This is a highly dignified and respected ceremony; while it may seem strange for it to be held in a Court of Justice one must remember that this is a Samoan Court steeped in tradition and usage and the serving of kava has a high and honoured place in Samoan custom.

The matters coming before the Court are varied and consist of disputes over matai titles, disputes over land; petitions for banishment from Samoan land; the height of the foundation of a house in a Samoan village; boundary disputes between villages; removal of matai titles; the right to confer the highly respected lady titles on a taupou; confirmation of private ventures on Samoan customary land; objections to a licence proposed over Samoan land for commercial purposes; petitions brought by persons whose matai titles have not been recognised by the Registrar or whose names have been removed from the Register of Matais.

It is quite impossible to deal with all these matters in detail but I shall endeavour to deal briefly with some of them.

(a) Matai Titles—

The power to confer a matai title is normally vested in the Aiga Potopoto (or family). Although in some cases the pule (or power to confer a matai title) is vested in a superior or higher matai title. Practically every matai title has appurtenant to it customary lands which belong to that particular title. It is the duty of the matai to deal with these lands for the benefit of the family of which he is the head; he is in the position of a trustee. The Aiga Potopoto comprises the filifiliga—heirs more closely connected with the title, and the taupulega—comprising the more remote members of the family. Normally the filifiliga will deliberate on the successor to a matai title and usually the taupulega will agree, but cases have come before the Court where a dispute between them cannot be resolved and the Court makes an appointment. In so doing it examines the candidates and considers numerous matters including service to the former matai, the village and the fitness of the person to be a matai.

It is a fundamental principle of Samoan life that the taule'ale'a (or untitled man) must render due and proper service (tautua) to his matai. He must render daily service such as the provision of foodstuffs, cultivating family lands and other duties; in return the matai will allocate lands to the taule'ale'a and his family. The Court places considerable store on the rendition of services in considering the fitness or otherwise of a person to succeed to a matai title.

It will also examine, often in great detail, the gafas or genealogy tables of the contesting parties. These tables, similar to a family tree, are prepared from old records handed down from generation to generation. These Gafas are jealously guarded and only the writer is permitted to take notes of another party's genealogy. It is an offence under the *Police Offences Ordinance* to publish or speak any derogatory remarks concerning the genealogy of any person.

Matais are divided into two classes—chiefs and orators—although there are some matai titles which have the right to exercise both functions, but there are rare.

The orator's duty is to have a thorough understanding of the history of the family; know the ceremonial addresses of the village and other villages and to speak on all ceremonial occasions. The orator's residential site in the village to which his title belongs is called a Laoa. The chief on the other hand controls the family lands and attends to the social set-up of the family and its well-being—a chief's residential site is called a Maota.

Discussions in a family over an appointment to a matai title may last for weeks, months or even years and when the final decision is announced the kava is ceremoniously served to the new holder of the title; the village and Registrar of the Court notified. The saofa'i feast which is the traditional feast marking the celebration will then be held. Very often new titles are created, and the Court has no right to intervene unless objection is raised and a petition brought before the Court. Shortly stated if the Court is satisfied that a particular title is recognised in the village and that all the requirements of custom observed, the Court will confirm such a title. Regard is often had to the Tusi Faalupega which means the Book containing "the words of the villages". In this book all the villages and sub-villages in Western Samoa are named—giving the names of the high ranking matai titles of the village, the ceremonial addresses or words of welcome pertaining to each, the kava cup titles, the Sa'otama'ita'i title, the Maota sites (the residential site) and other important information. This book was compiled by Pastor Griffin, who became Secretary of Native Affairs, and while it is not infallible it is helpful in considering disputes over matai titles and customary land.

The Court also deals with petitions seeking the removal of a title from a holder on the grounds that he has abused his position as head of the family; failed to observe the obligations cast upon him as trustee of the lands of the family; that he has acted harshly towards the family members; that he has left the village and resided elsewhere; that he is taking part in the affairs of another village.

There is an increasing desire on the part of Samoans to hold matai titles—especially the younger generations. The importance of Parliamentary representation is largely a contributing factor. In 1969 an Amendment was made to the 1934 Ordinance (*Supra*) giving the Registrar power if he is of the opinion that an appointment to a matai title has not been made in accordance with the customs and usages of the Samoan people to remove the name from the Register. If any such action is taken a petition is presented to the Court to have the Registrar's action confirmed or otherwise.

Pursuant to the 1969 Amendment there are further duties cast upon the Registrar relating to the appointment to a matai title. The Registrar must be satisfied that the traditional ceremony of appointment has been held in the village to which the title belongs, and that the appointment complies with the customs and usages. If the Registrar is so satisfied he will make the appropriate entries in the Register of Matais; if he is not so satisfied he notifies the new appointee accordingly who may within one month after receiving the notice petition the Court to have his name entered in the Register. These new provisions while they have created additional work for the Court were designed to circumvent the practice of creating matais for

political reasons, which if allowed to go unchecked could seriously imperil the matai system and the whole of the social structure of this country.

Under the *Samoa Status Act* of 1963 no person can hold a matai title or exercise the pule over any customary land unless he is a Samoan, i.e. a citizen of Western Samoa and has any Samoan blood.

Women can hold a matai title. There is nothing in Samoan tradition or the laws of the country which prevents this. Salamasina in Samoan history is recognised as a Queen of Samoa. She held the four titles—Tuiaana, Tuiatua, Tamasoalii and Gatoaitete—which were considered to confer royal rank. It is many, many years since appointments have been made to these titles, particularly the latter two.

It has been said that the Samoan matai system is closely allied to the feudal system; while there is some similarity there is a one very important difference and that is that the taule'ale'a (untitled man) has a say in the appointment of the matai of the family. Each person titled or untitled, man or woman, is permitted to express his views firmly before the meeting convened for the purpose of considering the appointment of a matai to replace a former holder. To this extent there is democracy in the sense that everyone participates in the discussion; finally agreement is reached on an appointment. If there is disagreement the matter is referred to the Court for decision. Although matais alone can vote at a Parliamentary Election those matais are the representatives of the Samoan constituencies and they have been selected and appointed in a democratic way.

The Sa'otama'ita'i is an honorific title given to the Taupou of a village. Usually the title is conferred on the daughter of a leading matai of the village. Cases come before the Court to determine the right to confer the title and who shall be the recipient.

The Tuiga is the formal head dress worn on important occasions by the Taupou—or the Manaia the son of the head matai. A petition is not infrequently presented to the Court for its ruling as to who is entitled to wear the Tuiga.

Height of Foundation of a House:

Petitions are presented to the Court, if a matai inferior in standing to a higher matai, has built or is building a house in the village area which equals or exceeds in height the house of a superior matai. Custom demands that the paramount matai shall have the highest house and this accords with dignity and tradition. The Court has made orders ensuring that the foundation of the house of the lesser matai is lowered.

Land—about eighty percent of the land in Samoa is customary land. A large proportion of which is appurtenant to matai titles. The matai deals with the land appurtenant to his title for the benefit of his family. When the matai dies the land does not belong to his heirs. The land is still appurtenant to that particular title and the successor to that title will assume control over the lands appurtenant thereto.

The matai is not permitted to sell the land or exchange it. The Constitution provides that it shall not be lawful or competent for anyone to alienate or dispose of customary land in any way. There is a procedure whereby a matai who claims the pule of land may publish a pulefaamau in the "Savali" and if no objections are lodged the Court will confirm the pulefaamau. This procedure is used if a matai wishes to establish a store or a private venture of some kind on the land.

If there is an objection then a petition is presented to the Court for the confirmation or otherwise of the pulefaamau.

In order to promote the timber milling industry in Samoa by a large American Company, recent legislation has enacted that licences and leases of customary land may be granted. If there are objections thereto then these are heard and considered by the Land and Titles Court.

This is not derogating from the Constitution as Section 102 of the Constitution expressly permits that an Act of Parliament may authorise the granting of a lease or licence over customary land.

In the wake of this industrial development comes disputes between villages as to their common boundaries; the Court is required to adjudicate thereon. The matters are often complicated by areas of freehold land having been unwittingly cultivated as part of village lands.

In the latter event the Court applies the principles of the Common Law and while ordering the occupants to leave the land over which they have no pule usually postpones for some time the operation of the order so that they can collect the fruits of their labour.

The Court is now insisting wherever possible that surveys be made of the land in dispute—particularly where boundaries are fixed. The surveying of large areas of customary land will, I believe, assist Government in compiling valuable survey data and at the same time give certainty and clarity to its decision.

The principles of natural justice are also frequently applied by the Court in its deliberations. A case which comes readily to mind is where the original planter of lands dies and leaves a widow and children living on the land; the Court will usually see that she and her family are not disturbed providing service (tatua) is rendered to the newly appointed matai.

There are customary lands held according to the customs and usages of Samoa which are not subject to the pule of an individual matai.

These are—

- (a) Virgin bush lands which have not been allocated to any particular matai title—and
- (b) Land purchased or acquired from Government or Europeans and held by the Alii and Faipule of a district or village in accordance with the usages and customs of the Samoan people.

Virgin bush lands lying behind a village and extending as far as the mountain range which runs along the centre of both the Main islands of Samoa are in the main held by the Alii and Faipule of the village; there are however some high matai titles which have exclusive and sole pule over the virgin bush lands.

If a matai clears an area of bush land behind his village then the land so cleared will be allocated by the Alii and Faipule to that matai and it will become appurtenant to his particular title; if a taule'ale'a clears the bush land behind his village then the land will be allocated to the title of the matai to whom the taule'ale'a renders service but the taule'ale'a will be permitted to cultivate on the land.

Cases frequently came before the Court for a definition of village boundaries. Difficulties often arise in determining the area of virgin bush lands appurtenant to villages because of the topography of the islands, particularly at the eastern and western ends of the Islands.

The Title to Land purchased or acquired from Government or Europeans and registered in the name of the Alii and Faipule of a district or village will contain a declaration that it is held in accordance with the usages and customs of the Samoan people; any disputes thereover will be heard in the Land and Titles Court. The Alii and Faipule will allocate the land among the matais of their district or village who will exercise their own pule over the respective portions so allocated subject to the over-riding pulefaamamalu of the Alii and Faipule. This means that providing the matais exercise their pule in accordance with custom and tradition the Alii and Faipule will not interfere; should there be any deviation from established custom or any outside intrusion into the lands then the pulefaamamalu will be exercised by the Chiefs and Orators.

Banishment

The Court is often confronted with the petitions for banishment from Samoan customary lands. When fines and other penalties have failed, and a rift in village life threatens "Public order", the ultimate sanction is for the offender and his family to be banished from the village—for a limited period or forever. Banishment does not mean as much physical hardship as might be expected as the family will live with relatives elsewhere, but it involves disruption and social disgrace. It sometimes means the loss of property in house, crops and livestock. If asked by the person banished or by the village to do so, the Land and Titles Court will decide whether the banishment order should stand, or be quashed or varied, and in some cases the village will petition the Court for an order before taking any action. The Court examines all the circumstances and acts in accordance with Samoan custom in making and upholding banishment orders but is today more inclined to require that prior warnings and ostracism be fully exhausted.

Religion

A difficulty is sometimes encountered where certain religious beliefs are diametrically opposed to Samoan Custom.

The Court does not in any way interfere with the freedom of worship, but if a matai objects to lands over which he has the pule being used for the purpose of a religion which defies the customs then the Court, if the circumstances should warrant, will support the matai and refuse to allow the land to be so used. One of the principles which guides the Court in all its deliberations is the maintenance of peace and harmony in the village.

Difficulties arise sometimes in determining whether a certain piece of land is freehold or Samoan customary land. The Court has on several occasions declined jurisdiction on the grounds that the Land was not Samoan Customary Land. In 1966 the Land Titles Investigation Act was passed whereby a Commission was established to investigate and determine the status of land and to adjudicate on claims. Should the Commission determine that the land is Customary land it has no power to adjudicate on any claim thereover and the matter would be referred to the Land and Titles Court for determination.

From time to time proposals for the development of Customary land have been advanced.

In 1960 it was suggested by the Working Committee on Independence that there be a system of leases or occupational licences over customary land

for the purpose of promoting agricultural development. The main purpose of the scheme was to give adequate security of tenure and incentive to a matai or a Taule'ale'a. It was submitted that planters would extend, improve and develop their plantations thereby promoting the economic well-being of the country. It was also argued that if leases were granted then planters would have some security to offer on the borrowing of money.

The scheme was not favoured by the Legislative Assembly as it ran contrary to the authority of the matai and customs of Samoa.

As the population increases and there are more demands for greater production it is possible that the Land and Titles Court may provide an answer to this vexed question as to how to develop customary land and raise the standard of living of the people without detracting from the pule of the matai.

However, I say no more about this as this must of necessity be a matter for the Legislature.

In conclusion I trust it will be apparent that the Land and Titles Court occupies a very important place in the social structure of Western Samoa maintaining and preserving the time honoured customs and traditions of its people. It has been my great privilege and honour for the past five years to have presided over this most dignified and honourable Court as President. I have at all times received the fullest co-operation and goodwill of my Samoan Colleagues; it has been a pleasing experience to have shared their secrets and participated in the deliberations relating to Matai Titles and Customary Land.

Soifual