

TEVITA MOTU'APUAKA v. SEKONAIA VAHA'I.

(Land Court. Scott J. 'Ahome'e Assessor, Nuku'alofoa. 19th September, 1923, 10th October, 1923).

Grant by King Tupou II irregular — No publication in Gazette — Previous grant by Tupou I — Agreement of 1905 between Tupou II and Great Britain.

This was a claim of Tevita Motu'apuaka for Ha'avakatolo as part of his Tosi'a. It was occupied by the Defendant. The case turned on a question of fact but it is reported as showing that Tosi'as granted by Tupou I under the Constitution of 1875 can not be altered at the personal whim of a succeeding monarch. The judgment is obviously a translation from the Tongan but is the only copy available. The facts appear in the judgment.

Held: That the lands in question belonged to the Plaintiff.

M. Finau for the Plaintiff.

S. Mataele for the Defendant.

C.A.V.

SCOTT J. This case was heard before the Land Court on the 19th September, 1923, and it was postponed to this date for judgment. Motu'apuaka claims the land against Vaha'i the present possessor as inheritable land granted to him by the first King. Vaha'i disputed the claim. Ve'a Matahau and 'Otunuku for Plaintiff stated that they know the land claimed, and as far as they could remember the land in question belong to Motu'apuaka, at that time the Mayor of Te'ekiu instructed them to look after the land and also keep it's frontage cleaned, the reason they ceased to look after the 'api was because they heard that the King instructed Vaha'i and 'Ahome'e to plant on this 'api. Plaintiff also produces a deposition taken before Vaha'i and others that Motu'apuaka informed the King George Tupou I of this, and the King consented to have the land return to Motu'apuaka. Motu'apuaka on this occasion was assured that the land was his and it was stated the reason why Vaha'i and 'Ahome'e came into possession of this land, he was informed to go back and be contended as the land was his.

For Defendant, there was a statement that King George Tupou I granted the said land and the witness who give the clear definition of this was Lisi 'Ahome'e when the tosi'a were granted the tosi'a granted to 'Ahome'e and Vaha'i were not large enough and that is the reason of the land in question being granted to them as an additional to their tosi'as. Lisi also stated that the King used to plant on this land, but the witnesses for Plaintiff also stated the land was theirs. The defence also referred to the agreement made between the High Commissioner and the King George Tupou II, and it was produced before the Court on the September, 1923. It was stated that after the Constitution was granted, the King published in the Gazette the names of hereditary Chiefs, in which Vaha'i's name appeared to own Ha'avaka and 'Utui in Vava'u, and from 1875, after the list of grants was

was published in the Gazette and on other occasions, when King George Tupou I, and II, granted out a new tofi'a it was always published but I can not find Ha'akolo was included in the said grants made to Vaha'i. I have looked carefully into this case and arrived at this conclusion, if the King consented to have land granted out as additional to Vaha'i's tofi'a and 'Ahome'e, the grant would be published in the Gazette. What appears to me is that this is a portion of Motu'apuaka's land and from statements of those who looked after the land, they ceased to look after the same when the King permitted Vaha'i and 'Ahome'e to plant on this land. In my own mind if the King intended to have this land granted to 'Ahome'e and Vaha'i, he might first of all have granted them the leases, but I take it the land was only a permit to Vaha'i to plant on, but Motu'apuaka was the owner of the land as it was stated by witnesses. I was also convinced there were no such grants ever made on his behalf, in order to put things right what happened to the Nobles and Matapule ma'u Tofi'as, such as were wrongly taken from some body else, which the High Commissioner begged to the King George Tupou II, to see to it. The said granting of this land by the King can't be recognised, or to other Chiefs as I have already stated, this is the true meaning of the said agreement made between the High Commissioner and King George Tupou II, I am sorry there is no Minister of Lands appointed yet. But the decision of the Court is that King George I granted this land to Motu'apuaka and it's a part of his hereditary Tofi'a known as Te'ekiu, and this portion of Ha'akolo now in possession of Vaha'i is to be returned to Motu'apuaka "subject to any claim by the Minister of Lands".

EDITOR'S NOTE : The Defendant appealed to the Privy Council (Horne C. J.) on the 16th March, 1926, the Police Court dismissed the appeal but gave no reasons.
