

## TUNGI (Noble) v. MINISTER FOR LANDS.

(Land Court. Ragnar Hyne J. Assessor Ulukalala, Nuku'alofa, 8th June, 1937).

*Res judicata* — ten years limitation of action — action heard again by leave of Privy Council — Land Act Cap. 27 S. 145 — Act 19 of 1934 S. 10.

This was a claim of the Noble Tungi for part of his *tofi'a* at Navutoka, which he alleged the Minister was wrongfully withholding. The facts are sufficiently set out in the judgment.

RAGNAR HYNE J. : This is an action in which the Noble Tungi, claims from the Minister for Lands a part of his *tofi'a* at Navutoka, which, he alleges, the Minister is holding unlawfully as Government Land. The part in question is known as "Lolotelia."

This matter has been in issue between the same parties in the Land Court on a previous occasion when the Minister claimed the land from the Noble Tungi. It was an action brought to establish title. The then learned Land Court Judge decided in favour of the then defendant, the Noble Tungi. The Minister appealed to the Court of Appeal, the Privy Council, and Privy Council upheld the appeal, stating "Tungi is unable to claim the land by right, but it seems to be a case where some redress should be given by the Government."

It was explained, in the course of the hearing of the present case, that the reason for Privy Council's decision on the 2nd November, 1932, was that the Noble Tungi's claims could not be entertained because the right to bring the action was barred by the ten years limitation imposed by Section 145 of the Land Act 1927.

Since Privy Council's decision of the 2nd November, 1932, however, the Section of the Land Act above referred to has been amended by Section 10 of the Land Act Amendment Act 1934 (Act No. 19 of 1934). By this Section, Privy Council can, in cases where it deems fit, grant permission to bring an action, notwithstanding the limitation of ten years imposed by the Principal Act.

By virtue of the Act of 1934, the noble Tungi sought to bring an action, and, on the 7th April, 1936, a communication was received by him to the effect that Privy Council had given him permission to bring an action in the Land Court relative to certain lands at Navutoka, which he claimed.

I am of opinion, therefore, that the defence of *res judicate* raised, cannot be properly pleaded, and I am of the opinion that the noble Tungi can properly bring this action, the legislature having removed the limitation disability, by reason of which Privy Council could not determine the previous action on its merits.

The Court, for reasons given at the hearing of the present action, admitted the evidence of Tofale and Oleni, since deceased, who gave evidence in the earlier action.

The witness Tofale, said that Malupo, the Minister for Lands, called Lolotelie a part of Navutoka. He was given his 'api in Lolotelie and it was given him by the late Tungi as a noble, and not as Minister for Lands. He had his 'api for fifty years. He said that the people always paid rent to Tungi, until there was a dispute between him (Tofale) and Mailau the mayor of Navutoka. After which rent was paid to Government. Oleni said Lolotelie was in Tungi's tofi'a and the people paid rent to Tungi or the equivalent of rent. Sione Momotu says Lolotelie was part of Navutoka, which is Tungi's tofi'a. Tungi ruled them.

All these witnesses were old men at the time of giving evidence.

Manumu'a says whole place, "Lolotelie" and "Navutoka" were one.

Fine Feuiaki says Tungi's fonos were always attended at Navutoka by Lolotelie people and that the boundary of Tungi's tofi'a was that of Lauaki's tofi'a.

Pauliasi Vuna, sixty odd years old, confirms the previous witness's evidence. He says the boundary of Tungi's tofi'a and of Lauaki's adjoined. He says he has seen Navutoka and Lolotelie together at Tungi's meetings.

The plaintiff says that Vaea defining boundaries, agreed that Lolotelie was part of Tungi's tofi'a. He remembers Lolotelie and Navutoka people coming to the late Tungi's meetings on his tofi'a.

Mr. Heenan, Surveyor, says he remembers a dispute in 1918. Vaea and Tungi were present. No boundary was decided upon Vaea claimed that boundary was a certain line, Tungi claimed a different boundary. Two lines appeared on the plan.

The plaintiff, recalled, claimed that his boundary and Lauaki's are contiguous.

No evidence was tendered by the defence, other than the copy of the decision of the Privy Council in the previous action, to which I have already made reference.

Reviewing all the evidence, I am of the opinion that the plaintiff must succeed in this action.

There appears no doubt, particularly from the evidence of the older witnesses that the people of Lolotelie were people belonging to Tungi's tofi'a. They attended Tungi's fonos paid rents and homage to him. There is no evidence before the Court that Tungi was lawfully deprived of any part of his tofi'a, and the evidence of two old witnesses, Finefeuiaki and Vuna speaking from personal knowledge was to the effect that Tungi's and Lauaki's boundaries adjoined.

For these reasons, I am of the opinion that plaintiff has established his claim, and I give judgment for the plaintiff accordingly.