

REGINA v. VETEKINA SISI.

(Criminal Court : Carew C. J. Nuku'alofa, 25th November, 1949).

Incest — First Cousins — Father's brother's daughter — Mother's brother's daughter — Sentence.

The accused was charged with incest with his first cousin his father's brother's daughter. He admitted the intercourse but pleaded not guilty under the belief that intercourse between cousins was not an offence. The court pointed out that under Tongan law intercourse by a man with a first cousin who is his mother's brother's daughter is legal while intercourse with a first cousin who is accused's father's brother's daughter is an offence. The accused then withdrew his plea of "not guilty" and entered a plea of "guilty".

CAREW C. J. There seems to be an unexplained inconsistency in the law on this subject; that is to say incest between cousins.

Before 1935 the law of incest was the same as in England; but in 1935 the law of Tonga on the subject was amended to make sexual intercourse between certain first cousins an offence classified as incest.

The relationship included is that between a man and his mother's brother's daughter, and between a woman and her father's sister's son.

Sexual intercourse between persons so related is not an offence, but between other first cousins it is now illegal and prohibited and punished as incest.

In view of this inconsistency I find it difficult to estimate the gravity of the offence to which the accused has pleaded guilty.

If instead of choosing his father's brother's daughter he had selected his mother's brother's daughter he would have been guiltless.

I do not feel justified in imposing a heavy Sentence.

The accused is fined £10 in default one months imprisonment.