

# NUKU AND V. LATU v. TAIAMONI 'ANITEMA.

(Land Court. Gavin A.J. Nuku'alofa, 28th and 29th April, 1952).

Forfeiture of allotment by widow on adultery or fornication — Difference between fornication and adultery — object of Section 69 of Cap. 27 (1928 Laws).

This was a case brought by the Tofi'a holder for a declaration by the Court that a widow had forfeited her tax and town allotments on the ground of her adultery. The Court was not satisfied that adultery, which must be strictly proved, had been committed and dismissed the application. The case is reported for the observations of the learned judge on the difference between adultery and fornication and the Legislature's intention in wording Section 69 in the way it did.

Finau appeared for the plaintiff.

Tu'akoi appeared for the defendant.

GARVIN A.J. : There are three matters which require consideration in this action.

1. The Plaintiff charges the Defendant with adultery. Now the legislature in its wisdom separated fornication from adultery. Fornication includes adultery but the reverse does not apply. At the material time it is shown by the evidence the Defendant was a widow and the man a bachelor. It would appear therefore that Defendant could not have committed adultery.

2. Section 69 of the Land Act makes provision for the reversion of an allotment on fornication or adultery by a widow. It is necessary to consider the intention of the legislature in formulating this section. It was so drawn this Court is sure for the purpose of preserving morals and not for the purpose of enabling tofi'a holders to recover their lands when they so feel inclined. If this were not so the legislature would be placing in the hands of tofi'a holders an almost unlimited means of extortion and nepotism.

Both the first plaintiff and his son the town officer admitted that the fact of the alleged adultery was of no interest to them and that their sole object was to recover the allotment to give it to someone else. The Court is satisfied that Viliami Latu had a concerted plan to give the property to the latter. This reflects little credit on either of them the more especially as it was some years after the alleged adultery that the Town Officer took any interest in the matter although he himself stated in evidence that he had suspicious in 1947.

3. The third question is whether or not Defendant did commit adultery. We have the evidence of the man. This must be looked on with the utmost suspicion and requires strong corroboration. He is very exact as to occasions and where they took place but as to dates he is extremely hazy.

The corroboration is that of the Town Officer who says he saw them living together in the same house. That house however was a clergyman's and he or his wife were related to Defendant. Living together turned out to mean that they were living in the same house. Further corroboration is that of a man who saw them sitting together on a country road. He can't remember when.

The Court is satisfied that there is no evidence which would justify it in arriving at the conclusion that adultery had been committed.