

Civil hearing of 25<sup>th</sup> October, 1918.

Between

Marquis, native, represented by Mr. Trouin, his employer  
of the one part andKaloa, alias Rollin, native woman, represented by Mr. Freudenreich, acty, advocate  
for the natives

of the other part

Year 1918, 25<sup>th</sup> October at 9 am.

The Joint Court composed of Messrs Jb. Yb. J. f. Bergesius, President (acty.)  
J. Mahille, French Judge, Yb de Brough O'Reilly, British Judge (acty.)  
In the presence of Mr. J de Lener, Public Prosecutor (acty.)  
assisted by Mr. Emile Bourcade, Registrar (acty.)

In civil jurisdiction, first &amp; last resort.

After having deliberated according to law.

Delivered the following judgment:-

The Joint Court:-

Having heard read the documents in the case,

Heard Mr. Trouin, for the native "Marquis"

Heard Mr. Freudenreich, for the native woman Kaloa, alias Rollin -

After having deliberated according to law

Decreeing in a matter of arbitration after hearing all parties concerned and  
after express consent of the parties.

Considering that the woman Kaloa a Rollin, of Maero, and the native Marquis,  
of Santo, agreed to submit to the arbitration of the Joint Court, under Article 21  
of the Convention of 20<sup>th</sup> October, 1906, the following disagreement:-

The two natives above named being both engaged on Mr. Trouin's plantation  
have lived in concubinage from 1907 until the month of August, 1916, say for about  
9 years; from this union was born in 1911 the child Lilly, now 7 years of age; in  
August 1916, they left the Trouin plantation to go to Mr. Galibert, a neighbor,  
with whom they engaged for one year, taking the child Lilly with them; several  
months after, Kaloa separated from Marquis to join a boy from Pentecost, the native

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Potel, engaged at Falibert's; Marquis returned to Trouin's plantation on 8 October, 1917 & re-engaged for 3 years with the latter, but he returned alone, Kaloa not wishing to follow him or let him have the child; (Potel had paid Marquis £3 7s partly for the woman & partly for the child); the father of the illegitimate child, Marquis, now claims his child.

Whereas in cases brought before the Joint Court by agreement between the parties, by natives, this jurisdiction judges in equity, in observing, as much as possible the native customs and general principles of right law,

Whereas, according to a general rule, the English ~~right~~ law, in a similar case, maintains the principle "partus sequitur ventrem" (Halsbury) and rarely confides and in very special cases a bastard child to the father (Rey v Crowe); that, on the other hand, recent jurisprudence especially favors the interests of the child itself;

Whereas the French law follows almost identically the same principle

Whereas as concerns the native customs, it results from the depositions of the Rev. Father Loubriel and Rev Raff, heard as experts, also rare works on this matter, that, in most of the Islands the "matriarchy" or preponderance of the authority of the mother exists to such an extent that the children belong entirely to the mother's tribe; also on the death of the father, all ties with the family of the latter are broken which proves the uterine ascendancy;

Whereas, if, again, the recruiters are accustomed to pay a premium for each child recruited from the father, this custom, based on matrimonial rights, would not decide the status of a bastard child.

Whereas in this present case, the child Lily has lived up to now with her mother to whom she appears very attached to judge from her attitude and her statements and by whom she appears to be well cared for.

Whereas the Kaloa's engagement in the island of Kate will enable the father to see his child now and then, a faculty which is left him and of which he may take advantage if he so chooses;

Whereas it results from the foregoing that the child's interests must overcome all other considerations demands that she be left in the custody of her mother.

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For these reasons:

Decide that the ~~child~~ little native girl Lilly be confided to her mother, Kaloa, alias Rollig;

Orders that this sentence by arbitration be deposited in the archives of the Registry of the Joint Court and decides it will have executive force as would an ordinary judgment.

Costs to be charged to Condominium

Done, judged and pronounced, day, month & year as at head

The President (acting)

W. H. J. Perman

The British Judge (acting)

The French Judge

The Registrar (acting)

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