

TUPUIVA MAULETAUA v FALESIVA, FOTU AND PAPUA

High Court Apia
 20 January; 17 February 1948
 Marsack CJ

SAMOAN CUSTOM (Powers of village councils) - Rules for protection of property must be consistent with the law of the land - "Combined rule" agreed to by adjoining villages that straying or trespassing pigs could be killed and eaten inconsistent with both the law and Samoan custom.

Plaintiff owner sued defendants for the value of his pigs killed and eaten by them by their own admission, but which they claimed they had the right to do by virtue of the "combined rule" of their respective villages.

Held: The "combined rule" was not only inconsistent with the law but also with Samoan custom which required that the carcass of any pig killed be brought to the Pulenu'u so that the owner may be found, and that implied recognition of such custom was to be found in s 22.(2) of the Samoan Native Regulations 1938. Accordingly, plaintiff was entitled to compensation.

Plaintiff in person.
 Jackson for defendants.

Cur adv vult

MARSACK CJ. Plaintiff claims £21, the value of five pigs the property of plaintiff, alleged to have been killed and eaten by defendants. I find as a fact that two sows belonging to plaintiff were killed and consumed by defendants. Plaintiff belongs to the village of Letogo, defendants to Lau'i. The sows had escaped from the Letogo pig fence, and had strayed on to a taro plantation about three miles from the village. This taro patch is the property of the people of Letogo. The animals were killed on or near the plantation.

Defendants admit killing the pigs, but claim a right to do so under an arrangement entered into by the respective chiefs and orators of the three villages of Letogo, Lau'i and Vailele. Simaika, the principal title holder of Letogo, and Leniu, the leading chief of Lau'i, both gave evidence that, in order to prevent the depredations of straying pigs, the three villages concerned passed what they called a "combined rule" that any straying or trespassing pigs found out of the pig fences in the whole area containing these villages could be killed and immediately consumed by any persons of the three villages. For example, Letogo men could kill and consume straying Lau'i pigs, even if not on Letogo land. Although plaintiff denies that such a rule exists, I am satisfied on the evidence that it does, and that plaintiff knew of it.

The case raises the important question of the powers of village councils to pass such local rules, and before giving my decision I have had the benefit of a long conference with all three Samoan Judges.

It seems to me that there is no objection to three villages meeting together and deciding on a joint arrangement for the protection of their property. But that arrangement must be consistent with the laws of the land. It has long been the law that trespassing animals may be destroyed in certain circumstances; but the carcass is still the property of the owner. I am informed by the Samoan Judges that there is a definite and well established custom in this Territory that trespassing pigs may be killed, but the carcass must be brought to the

Pulenu'u so that the owner may be found. This custom is impliedly recognised by the Samoan Native Regulations 1938, paragraph 22 where it is provided that in certain cases a pig found at large may be destroyed, but subsection (2) states:-

The Pulenu'u shall cause the carcass of any pig so destroyed to be returned to the owner, but if after reasonable inquiry he is unable to ascertain the owner he may dispose of it as he thinks fit.

The Samoan Judges agree that it is quite proper, according to custom, for the chiefs and orators of two or more villages to meet together and pass a "combined rule" that trespassing pigs may be killed by persons of any of the villages, though they are doubtful as to whether this rule can properly provide for the killing of, for example, Letogo pigs trespassing on a Letogo plantation, by men of Lau'i'i. But they inform me that by custom the Pulenu'u should in every case be informed, so that the owner of the carcass may be found. The owner may have to pay for the damage caused, and this payment may take the form of the whole or part of the pig, as the Pulenu'u decides; but subject to this the owner is entitled to the carcass.

Consequently, I find that the "rule" in question, in providing that the carcass is not to be returned to the owner is consistent neither with the law nor with Samoan custom, and the Court cannot uphold it. This means that plaintiff is entitled to compensation for the loss of his property, that is to say, the carcasses of the pigs killed.