

HIGH COURT. Apia. 1952. 17, 21, July; 7, August. MARSACK C.J.

Theft - defendant responsible for cutting a removing trees from land - ownership of land in dispute - removal of trees wrongful but taking not fraudulent or dishonest - no theft.

The defendant was charged with theft of trees from the land of another. The cutting and removal of trees was admitted, but it was shown that there was a long-standing dispute as to ownership of the land from which the trees were taken.

Held: That though the removal of the trees was wrongful, it was not proved that it amounted to a fraudulent or dishonest taking there being an honest belief or assertion on the part of the defendant of a lawful claim to the land; and accordingly he cannot be said to have committed theft.

Information dismissed.

Defendant, in person.

Cur. adv. vult.

MARSACK C.J.: The defendant is charged with the theft of thirty trees valued at £30, the property of the S.D.A. Mission at Saluafata. The cutting and removal of the trees is admitted, and it is also admitted that the defendant gave instructions to the taulcle'a who actually did the work. The defendant, who is the pulenu'u of Saluafata, was acting with the authority of the Ali'i and Faipule of the village.

The defence raised is to the effect that the land in question, from which the trees were removed, is not in fact the property of the S.D.A. Mission but belongs to the inhabitants of Saluafata. At the request of the defendant and of Tagaloa who spoke for the Ali'i and Faipule, I made a visit to the village in company with the Fa'amasino Samoa Maulolo, a Surveyor and the prosecutor, inspected lands in the locality of Fusi and Saluafata, and heard submissions from the parties on the spot.

I find as a fact that there has been a long-standing dispute between the Ali'i and Faipule of Saluafata and the Mission as to the ownership of the land from which the trees were removed. The conveyancing documents filed in the Land Registry Office disclose various purchases by the German D.H. and P.G. Company of pieces of land in the vicinity of Fusi and Saluafata, purchases which were confirmed by the Land Commission. As a result of the occupation of Western Samoa by New Zealand Forces during the war of 1914-1918 these lands were taken over by New Zealand Reparation Estates. In 1934 an area of a little over 30 acres was sold by New Zealand Reparation Estates to the S.D.A. Mission, and Court Grant No. 102 in favour of the Mission gave that institution a title which the Court must uphold. Inspection of the land shows that the trees which are in dispute are from the land included in the Court Grant.

The evidence as to the history of the land in dispute before the issue of the Court Grant is confusing. The Ali'i and Faipule state that several pieces of land named in the conveyancing documents as forming the basis of the lands comprised in the Court Grant, as for example Lelama, Matautu and Vaitai, are situated elsewhere than in the thirty acres transferred to the Mission, and they were pointed out to the Court in localities some distance from the land described in the Grant. Moreover, evidence was given that the original vendors of the lands to the D.H. and P.G. were not in fact chiefs of Saluafata, but of Fusi. From the situation of the land now held by the Mission it appears clear that it was land of Saluafata in the first place, and not of Fusi.

The people of Saluafata have for many years asserted a claim to the land in question, and have made use of portion of it.

Whatever may have been done prior to 1934 - and the evidence as to the early history is, as I have said, very confusing - the Court is bound by Court Grant No. 102 issued in that year. The Court has no power in these proceedings to go behind that grant. Consequently I am compelled to find that the S.D.A. Mission has a good title to the land from a portion of which thirty trees were cut and removed at the instigation of the defendant, and that such removal was wrongful.

Before a charge of theft can be sustained, however, it is necessary to prove more than that. Under the definition of theft contained in section 156 of the Samoa Act 1921, the taking must be shown to be fraudulent or dishonest. It is a well-established principle of law that if the taking was the result of the honest assertion of a lawful claim, the taker is not guilty of the crime of theft. Here I find that the trees were taken bona fide under a claim of right, and that therefore the removal was neither fraudulent nor dishonest. The prosecution for theft accordingly fails.

It is perhaps proper for me to point out that now the Court has held Court Grant 102 to confer a good title to the lands described in the Grant, the defence of the honest assertion of a claim of right will no longer be available to the people of Saluafata, and any further removal of trees from the land will render the persons responsible liable to conviction for theft.

Information dismissed.