

## TONGAN LAW REPORTS

### JOSUA MOA v. SIONE TUIAKI.

(Rehearing after conviction by Magistrate. Skeen C. J., Nuku-  
'alofa, 11th November, 1908.)

Repair of roads ss. 620, 621, 626, 628. Premier, Ministers etc. liable.  
Clean hands.

A rehearing from a decision of the Magistrate ordered by Privy Council, after Cabinet had refused a rehearing (s. 256).

The defendant (Sione Tuiaki) was convicted by the Magistrate and fined \$10. for failing to attend roadmaking on the 20th August, 1908 when ordered by the Minister of Lands. The prosecution was by the Mayor under s. 629. The facts are sufficiently stated in the judgment. The sections referred to are the sections of the 1905 Statutes.

Held: Not sufficient evidence that the accused failed to attend and no evidence that the people were ordered to make the road on 20th August.

Case dismissed and judgment of the Magistrate reversed.  
Inspector M. Kapa for Prosecution.  
Defendant in person.

SKEEN C. J. : Tuiaki is charged that he did not attend road making on the 20th August as ordered by the Minister of Lands. He pleads "Not Guilty". There is not sufficient proof on this rehearing nor is there any actual proof in the evidence taken in the Police Court that he failed to attend nor does it appear from the evidence that any order was given to the people to make the road on the 20th August. There is only one witness and he cannot swear that Tuiaki did not attend. He thinks that Tuiaki was not present, but he cannot swear to the fact of non-attendance or to the date. There is no proof to the Court whether Tuiaki was at the road making or not and there is none that the people were called out to work for the 20th. For these reasons the case must be dismissed and the sentence of the Police Court reversed.

Further it is not clear to the Court that the Minister of Lands has power to call the people of Nukunuku out to make this part of the road in Hofoa. That part of the road does not appear to come under Section 620. There is no evidence that it was "bad and swampy and undermined by the sea". There is no evidence that it was in the condition as required by this Section to be repaired by the people. Two witnesses were called. One stated the road was bad the other stated that the Hofoa part of the road was in excellent condition at the time and it was only after heavy rain that it became muddy, and there was no danger of accident as required under Section 622. This Section 622 gives power to the Minister of Lands to repair any part of any road likely to cause an accident but unless the road is dangerous this section does not apply, nor has the Minister power under it. He only has power when the road is likely to cause an accident.

This case was brought before this Court to be decided according to the evidence and the law. If the people appeal, they appeal to the law. There is no evidence that the part of the road was bad and swampy and undermined by the sea, as under Section 620 or that it was dangerous and likely to cause an accident as per Section 622. According to the witnesses it was quite the reverse.

Those who come to Court should come with clean hands, in other words those who invoke the aid of the law should themselves follow the law. The prosecutor says he had the power to call out the people of Nukunuku in accordance with the instructions of the Minister. He forgets all about days and dates. If the people are called out according to the law they must obey the law.

If the taxpayers are called out by the Minister under Section 623, that Section requires them to carry out the work in a distinct and particular way, this course does not appear to have been followed. Section 626 requires that a fence be erected and the road closed to traffic and Section 628 requires that before repairing has commenced that a travelling way be made for the people to travel on. None of these requirements have been fulfilled under order of the Minister of Lands or the Pule Kolo. That the requirements of the law have not been carried out is clear to the Court.

This road Law does not seem clear and certain as to who may be called out, or how the people shall work in the various districts. The Law says, "Every taxpayer of the Government shall go". All shall be there to make the roads (Section 621) if this is strictly interpreted then the Premier, the Ministers, the Police and Government Servants should all be at the road making. They were not there nor should they be required to be so.

The case is dismissed for the reasons already stated and the Judgment of the Police Court is reversed.

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