

IN RE "TONGA MA'A TONGA KAUTAHA".

Civil application. Skeen C. J. Nuku'alofa 19th September, 1910. Licensed Syndicate taken over by Government — The Treaties of Friendship — Advice of British Agent and Consul — Supreme Court will not hear claims against the Government — Tongans' right of Appeal To British Government — C. J. part of the Government and can not act.

This was an application on behalf of the Tonga Ma'a Tonga Kautaha for relief on account of alleged illegal acts against the Government in taking possession of the property and possessions of the "Tonga Ma'a Tonga Kautaha" and asking for an order that the property and possessions be restored.

The facts sufficiently appears in the judgment.

The Minister of Police for the Government. Finau 'Ulukalala, Josaia Vaea, L. S. Mafie'o representing the "Tonga Ma'a Tonga Kautaha".
C. A. V.

SKEEN C. J. This is an application by the Tonga Ma'a Tonga Kautaha a licenced Syndicate of Tongans carrying on business at Nuku'alofa and elsewhere in the group for redress and relief through the Court on account of alleged illegal acts by the Government in taking possession of the Kautaha's property and premises and asking to have such restored. The Tonga Ma'a Tonga Kautaha in August 10, presented through its President its 1st annual Report and Balance Sheet dated 6th August this was presented to the Trustees of the Tonga Ma'a Tonga Kautaha at a general meeting and was certified to by the Kautaha's Auditor H. M. Jerris a member of the New Zealand Society of Accountants "as a true and correct statement of the affairs of the Company as on 30th April, 1910". (Ex. C). The Court from its knowledge of Tongans is quite convinced that the great majority understood nothing from this Report and Balance Sheet and that such was passed by them relying absolutely upon their President and Treasurer (Cameron and Jerris). Previous to this in June Olein and other members of the Kautaha had petitioned the British Consul "that an audit be made by someone who is not connected with the Tonga Ma'a Tonga Kautaha". (Ex. B.) This trouble therefore started within the Kautaha itself and not from outsiders. The British Consul communicated with the Tonga Government and the Government ordered an audit as prayed by Olein to be made by two outsiders (Roberts and Humphreys) Roberts being the Auditor General and well versed in Tongan language and Mr. Humphreys being a certified accountant in whom the Government had confidence and a non-resident of Tonga. No doubt this action of the Consul and Government was owing to the fact that the matter was one of almost national importance, there being nearly 4,000 members of the Kautaha and in addition the Chief Justice was absent in New Zealand at the time. Roberts and Humphreys made an investigation and report thereon to the Government and this Report is published in English and Tongan for all to read in the Government Gazette No. 25 August 26 1910 (Ex. D). Upon such Report the Government took possession of the Kautaha's premises and

property and suspended the President and the Treasurer, and appointed Mr. Humphreys attorney to manage and further investigate Kautaha affairs. This investigation is not yet finished and will not be for some time. For this reason I ask you not to talk and discuss matters you do not understand but wait patiently. Government is taking care of you and your property and are acting in place of your President and Treasurer. Everything is being cared for by Government and it is quite certain Government will not steal any of your property or money. Your property will be taken care of. Later on the Premier called a general meeting of the Kautaha and informed them of these main facts — Now the Kautaha through its appointed representatives (Finau Vaea and Mafle'o) come to the Court and practically ask that the whole of these proceedings be upset on the ground that the Government has acted illegally and are trespassers. The Court has taken time to consider the applications in its various phases and will review them seriatim :

If any proceedings are taken in this Court, they involve according to the law and Constitution a sum of over \$250⁰⁰ and all such matters must be tried by Judge and Jury; and with the Kautaha membership of nearly 4,000, and their many relatives all of whom would be barred from acting as jurors it would be indeed a hard matter to obtain an impartial jury as the jury would have to be chosen from amongst the few who are not in the Kautaha, and many of whom it may be presumed are antagonists to Kautaha. It would be practically a case the Bulk of the Tax payers against the Government and a fair Jury would be manifestly impossible to procure.

The Court and the Law state the Supreme Court has jurisdiction in all cases arising under the Law and the Constitution : (92C. 163 Law), but under an agreement between the King and His Excellency the High Commissioner in January, 1905 we are ruled by the Treaty and that agreement which over rides the Law and Constitution, and in 1907 His Excellency referring to the agreement spoke as follows :— "Two and a half years since I settled certain matters with the King. We settled certain lines on which the Government has to go on. I must remind you that the plan chosen was the one alternative to the annexation of Tonga, and it is only by strictly keeping to this plan that the Tongan flag can continue to fly. It is intended as far as possible, that the Executive work be carried only by you Tongans, but by the advice and assistance of the British Government. I need only remind you that the only mouth piece is that of the present British Agent.

Mr. Hunter tells you what the High Commissioner advises and the advice the High Commissioner sends you is the advice of the British Government." This speech was published in Tongan Gazette No. 7/1907 in both Tongan and English so that you can all read it. It is plain and clear. Now in this case the Tongan Government have acted on the initiative of the British Consul,

and presumably with his advice all through as he has been present in Nuku'alofa and has not disapproved of the Government's actions and he has had the matter brought more or less directly under his notice in the proceedings *Cameron v. Jerris* in the British Court. The Court considers this a matter in which Government are acting under advice of the British Agent in accordance with terms of the Governor's speech.

All the time these things were happening the Chief Justice was absent in New Zealand; so that therefore there was no Court to apply to, but if the Chief Justice had been here he would have ordered the same course of procedure as followed by the Government. Upon the request of Olein to me the Court would have ordered an audit by outsiders and upon the auditor's report as presented the Court would have had no option but to have appointed a Receiver and suspended the President and Treasurer. The Government have done what the Court would have done. Now consider the position of the Government. It is a Government representing the people of Tonga and is mainly composed of Tongan chiefs and nobles. The Kautaha is almost of national importance, the great bulk of taxpayers being members. The Government are not interested in the Kautaha or in trading and are acting in the interests of the members of the Kautaha, none of whom seem to properly understand what has been done in the past, or what is really now being done, and none of whom are able to properly understand or explain the Balance Sheet and auditor's report. It is quite evident that many things in the Kautaha have not been done aright. The Government at present are really managing Kautaha for the benefit of the Kautaha and act in place of your President and Treasurer.

This is the first time any proceedings have been asked for or taken in Supreme Court against Government. All other claims have in the past been settled by arrangement with His Excellency the High Commissioner through the British Consul. When the present administration came into power in January, 1905 there were many claims against Government and all were settled through the Consul, none came to the Court. Later on the claim of the unfortunate Rahn was disposed of by His Excellency and the Government, no case came to Court. It is quite evident from this fact that no claims against Government such as this Kautaha matter, were intended to be tried by the Court, and it is against all precedent to do so. The Chief Justice is a member of the Government Executive and Privy Council and is also the Legal adviser to the Government. The Government if they wish can call on him for advice and assistance if they are in trouble, and it is manifest that it was never intended that a member of the Tongan Government and legal adviser to it should as Chief Justice sit and try cases of magnitude against Government. It was a wise and advisable arrangement to keep them out of Court and have them settled by the British Agent who is not interested or a party to the Government.

Therefore for the reasons above given and on the grounds :—

1. That the Government is acting under the advice of the British Agent in accordance with the agreement between the King of Tonga and His Excellency the High Commissioner, in a matter of almost national importance affecting as it does the great bulk of taxpayers.
2. That the course pursued by the Government is virtually the course the Court would have had been compelled to follow if the matter had been properly before the Court.
3. That Precedent is against such a claim being settled by the Supreme Court.
4. That the Chief Justice is a part and parcel of the Government and the legal adviser to the Government and as such is bound to advise and help the Government, and therefore might have to adjudicate upon matters as a Chief Justice in which he took part as one of Executive, which would not be right or just.
5. And lastly that it is impossible to have a proper trial in Court for the reason that it is not possible to obtain an unbiassed Jury. The Court therefore declines to take Jurisdiction and refuses the application of the representatives of the Kautaha Tonga Ma'a Tonga as made in their letter (Exhibit A).

The application of Vaea and others is dismissed.

The Court : Having disposed of the application before the Court, let me say a few words of advice to the applicant and members of the Kautaha present. Do not talk about things you do not understand properly. You do not understand properly these proceedings of the Government. The Government are acting for you as your friend and without any fee or recompence, they do not expect any pay, they act in your interest and are really your managers, your President and Treasurer. Go to your homes and wait quietly and patiently until the Government has finished its investigations — Your property is safe with the Government, they have not robbed you of your property or your freedom as the application states. They are your chiefs and the Government is looking after you and yours. Trust the Government, you need have no fear. Even if the Tongan Government does wrong which it has not done yet, you can always appeal to the British Government through the Consul and things will be put right — go home, keep quiet, wait, and trust the Government.

No fee charged as no cases for summons issued.