

SIONE TEU v. VILI TEU, TEVITA FUSIMALOHI,
TAITUSI FUNAKI AND SAMISONI MANU.

(Civil case : Horne C. J. without jury. Nuku'alofa 9th November, 1927).

House given as security for debt — distress — Sale of house — estoppel.

The Plaintiff alleged that a certain house was his property and that his brother, the defendant Vili Teu, had pledged the house with Burns Philp (South Sea) Co. Ltd. as security for an advance to Vili Teu of £50. The Company recovered judgment against Vili Teu for £50 and sold the house under a distress warrant. The Plaintiff then brought this action against his brother, the purchaser of the house, the officer who carried out the sale and the Magistrate who signed the distress warrant, asking the court for a declaration that the house in question was his and that the sale be set aside, and damages.

HELD. That the Plaintiff by his conduct was estopped from setting up that the house was his property.

M. Finau for the Plaintiff.

Defendant in person.

HORNE C. J. I find as facts that :—

- (1) The Plaintiff had consented to the house being purchased from Burns Philp Ltd. in the name of the defendant Vili Teu and had agreed with him not to say anything about it.
- (2) The Plaintiff had declared to W. Cocker his employer that Vili Teu was the owner of the house.
- (3) The Plaintiff was aware at least two months prior to July, 1927 that Vili Teu had pledged the house with Burns Philp Ltd.
- (4) The Plaintiff was aware that Burns Philp Ltd. sued Vili Teu in the Magistrate's Court and that Vili Teu had appealed to the Supreme Court in September and judgment had been given against him.
- (5) The Plaintiff was aware that execution was issued within a few days after judgment.
- (6) The Plaintiff made no claim against Vili Teu or Burns Philp but made a claim to me on the day of the sale under the execution.

I hold that the Plaintiff had culpably stood by and allowed Vili Teu to hold himself out as the owner and had knowingly allowed Burns Philp to advance money on the house and had continued to stand by and allow process to issue and that accordingly he was estopped from setting up a title against the officer executing distress, and against the purchaser at the auction under the warrant, further that there is no case against the Magistrate as he was not exercising any jurisdiction being *functus officio* after the issuing of the warrant and no summons had been applied for by the Plaintiff.

Vili Teu having admitted the Plaintiff's claim, judgment given against him for £100. Judgment for the other three defendants against plaintiff.

No order as to costs.