

'ISILELI MALUPŌ v. SAVELIO HAVILI.

(Land Court. Ragnar Hyne J. Ulukalala Assessor, Nuku'alofa, 18th June, 1936).

Subsequent grant of land by Noble — Land already "given" by Noble's predecessor — First grant prevails. Registered holder entitled.

This was a claim by the Plaintiff for the part of a town allotment in Ma'ufanga held by the Defendant. Originally the land was occupied by the plaintiff's mother and she was registered as the holder of an 'api on the 18th December, 1914. When she died the plaintiff held the land and was registered as the holder of an allotment, including the disputed area on 10th April, 1928. Prior to this the noble "gave" the land to the defendant but in evidence he said he had no records of the land having been already disposed of by his predecessor.

HELD: The plaintiff was entitled to the land.

M. Finau appeared for the Plaintiff.

S. Vaikona appeared for the defendant.

C.A.V.

RAGNAR HYNE J.: In this action, the Plaintiff claims a portion of Defendant's town api at Ma'ufanga.

Briefly the facts are as follows :—

The land in dispute was held by one Semisi, and with him lived his brother Pitoi, his wife, and the plaintiff. When Semisi and Pitoi were both dead, Plaintiff's mother occupied the whole land; and the then Fakafanua said the whole api, as shown on plan produced to Court, was the 'api of the plaintiff and the plaintiff's mother. When his mother died, the plaintiff got the 'api as his.

Later, the present Fakafanua, gave the land to another, but Fakafanua, in his evidence says, there were no records in his family of grants made by his predecessors. He says too, that if he had known that the land had already been granted, he would not have given it to anyone else.

Plaintiff's mother is Nenase Latu. She is registered as the owner of an 'api on 18/12/14. The Plaintiff is subsequently registered as the owner of an allotment, including the disputed area, on 10/4/28.

There is no record in the Lands Department of Savelio Havili as part owner of this allotment; and according to the Surveyor, in the Field Book of 1914, the plaintiff is shown as the owner of a piece of land identical in size and area with that shown in the plan on Exhibit "C".

Even the defendant admits in cross-examination that he told the Minister for Lands the whole area was plaintiff's and he assumes that, as a reason why the Minister refused to give him a title to the land in dispute.

The noble Fakafanua says he gave part of the land to Filo, Savelio's father, but he admits plaintiff was at the time living on the land. He admits further however as above intimated, that if he had known his predecessor had given the land to another, he could not have made a grant to Filo, as land once granted by a noble cannot be taken away by his successor.

'Isileli Malupō has also secured his title by registration, and the Court is satisfied that the land was properly acquired by him.

The Court is of the opinion, therefore, that the plaintiff must succeed, and I give judgment accordingly. The title of the registered proprietor is, in the absence of fraud, paramount.
