

R. G. LYDEN v. FINEULA FOLAU.
 (Civil Appeal : Thomson C. J. Ha'apai, 11th December, 1946).

Contract — Immoral Consideration — Contract not enforceable.

The Plaintiff and the Defendant had been living together as man and wife and a child was born to them. While they were living together the Plaintiff promised the Defendant that he would marry her as soon as he secured a divorce from his wife. From time to time he brought various domestic articles of furniture to their joint home at Utulei. Subsequently the Defendant married another man and refused to return the articles to the Plaintiff. The Plaintiff sued for their recovery in the Magistrate's Court alleging that the agreement between them was that the articles were given on condition that the Defendant married the Plaintiff. The Defendant denied that there was any condition and alleged they were absolute gifts. In the course of his judgment the Magistrate said "The Court is convinced that these things were given as gifts when the Plaintiff was kind to the Defendant because she was faithful to him." In spite of this finding of fact the Magistrate found for the Plaintiff and ordered the Defendant to return the articles.

The Defendant appealed.

Havili for the Appellant.

TuiTui for the Respondent.

THOMSON C. J. In the course of his judgment said "if there was an agreement it was based on immoral consideration and can not be enforced. There was no valid promise to marry because the Plaintiff was not in a position to complete it."

The appeal was upheld.