

## M. TUPOU &amp; ANOR v. FOTU.

(Probate. Brownlees C. J. Neiafu, 16th January, 1946).

Lost will — Letters of Administration granted — Will found — Letters of Administration Revoked — Probate of will granted — Validity of unfiled will.

On the 16th March, 1944 letters of administration were granted to the Defendant Fotu of the estate of her deceased husband who died on the 13th August, 1943. Search had first been made in the Registry at Nuku'alofa and Neiafu but no record of any will could be found. Subsequently a will was found. At the hearing a witness (who had witnessed the will) gave evidence that the will was made in duplicate and that he had deposited one copy with the Court. This was an application to revoke the Letters of Administration and to admit the will to Probate.

Havili appeared for the Plaintiffs.

V. Latu appeared for the Defendant.

BROWNLEES C. J.: With regard to matters concerning a deceased estate the Court will, wherever possible and provided certain rules are observed, seek to enforce the intention of the deceased person with regard to the disposal of his estate. One of the rules is that any Tongan may dispose of his estate after his death by a document in writing, signed by himself or someone else in his presence and under his direction in the presence of at least two signatory witnesses (Cap. 7 S. 17 of the Laws of Tonga 1925).

It is not disputed in this case that the late Fotu did make such a will on the 13th August, 1937. Unfortunately, due to a series of accidents, the will was misplaced and Letters of Administrations granted to the Defendant in February, 1944.

Now the will has become available and the question for the Court to decide is whether the Letters of Administration must now be revoked and Probate granted to the plaintiffs. The Defence submits that only wills which have been filed in the Court are valid but there is nothing in the Law of Tonga to support this contention.

The Court must accordingly regard the grant of Letters of Administration as conditional. These are now revoked and Probate will be granted to the Plaintiffs.

Judgment for the Plaintiffs with costs.

---