

FINAU VE'ETUTU v. SOSAIA VAIHOLA TALO.

(Civil Appeal : Thomson C. J. Ha'apai, 5th December, 1946).
 Sale of horse — Exchange of horses — Cap. 31 5. 25.

The Plaintiff sued the Defendant in the Magistrate's Court for £10 damages for detaining his horse. The facts were as follows: On 7/7/46 the Plaintiff and the Defendant exchanged horses. The Defendant promised the Plaintiff that his (the Defendant's) horse was suitable for a cart. The Plaintiff afterwards discovered that the horse was not suitable for a cart and returned the horse to the Defendant and asked for his own horse back. The Defendant refused. The Magistrate gave judgment for the Plaintiff. The Defendant appealed.

Havili for the Appellant (Defendant).

Pousima for the Respondent (Plaintiff).

THOMPSON C. J. Section 25 of Cap. 31 applies so the agreement was unlawful.

It was unlawful on the grounds of public policy since there is a penal section attached to it. So no property passed in either horse and the Appellant is therefore entitled to judgment for his own horse on return by him of the Respondent's horse.

Appeal dismissed. Each side to pay its own costs.

EDITOR'S NOTE: The above is a full report of the entry in the Chief Justice's note book.

Section 25 of Cap. 31 provides that it is unlawful to sell a horse except on the town common between certain hours, and subject to certain conditions which are set out in the section. A penalty of a fine of £3 (in default imprisonment) is provided for breach of the section. With respect to the Chief Justice it is difficult to understand his judgment as it is written. The appellant's counsel argued that Section 52 of Cap. 31 does not apply to an exchange, but only to a sale, and this would appear to be the case.
