

SMITH AND VOLLMER v. SIONE FONUA AND THE TRUSTEES OF THE FREE CHURCH OF TONGA.

(Civil Action : Higginson J. Nuku'alofa, 29th May, 1950).

Contract — Delivering ship from New Zealand — Repairs to ship — No written agreement — Contract unenforceable — Cap. 66 Section 5 15 — British Merchantile law not applicable.

The defendants, the Free Church of Tonga, engaged the plaintiffs to go to New Zealand and bring the church's ship to Tonga and then to take her to Fiji and there have certain repairs carried out. The defendants did this and while in Fiji paid all expenses — repairs, wages of crew, provisions for ship etc. out of their own pockets; the agreement being that they were to be recouped by the church. The agreement between the parties was not reduced to writing. When the Plaintiff presented their bill the Church refused to pay. The Plaintiffs then issued a writ for £1,439/18/1d. The Defendants pleaded no written contract in accordance with the provisions of Cap. 66.

HELD. The action was not maintainable as the contract had not been reduced to writing, and registered.

Verdict for the Defendants.

Vea appeared for the Plaintiff.

Finau (with him Kaho) appeared for the Defendant.

HIGGINSON J. : It is admitted that there are no written contracts. The plaintiffs submit generally that these agreements come under British Merchantile Law and therefore they are exempted from the provisions of Section 5 of the Contract Act 1921 (Cap. 66). No exemption has been obtained in accordance with the provisions of Section 3 of Act No. 20 of 1930 and the agreements do not come within the provision of Section 4 of the Act, and Section 15 of the Contract Act does not apply.

The Defendants say that as there is no proper registered contract under Section 5 of Cap. 66 that therefore no action can be maintained.

I agree with the Defendants on the following grounds :—

1. Contract not registered under Cap. 66.
2. No written contract.
3. No exemption from Section 5 of Chapter 66.

Therefore no action can be maintained and the claim is dismissed.

Costs to the defendants.

EDITOR'S NOTE. It is probable that the Plaintiffs would have been entitled to recover the moneys they had expended for repairs, spare parts, provisions etc. (which formed a large part of the claim) had they sued for money paid at the request of and on behalf of the Defendants. The result of such an action would depend on the terms of the oral agreement between the parties which are not shown in the record as no evidence was called the case being argued and decided on the point that there was no registered contract in accordance with Chapter 66.