

## TUITA v. THE PREMIER AND THE MINISTER OF LANDS.

(Civil Action. Hunter J. Nuku'alofa, 23rd April, 1956).

Action against the Government — Premier as defendant representing the Government — Interference by Government with proprietary rights — Acquisition of land by the Crown — Compensation — Government's liability to pay compensation — Damages — The Constitution. Clauses 18, 44, 68 — The Interpretation Act 1926 (Cap. 1) Section 3 — The Evacuation Act, 1947.

The Plaintiff is a Noble and the holder of an estate at Niuafu'ou on which he grows copra. In 1946 or 1947 the inhabitants of Niuafu'ou were compulsorily evacuated from the island by the Government under powers conferred by an Ordinance (No. 4 of 1946) and the Evacuation Act, 1947. From this time onwards no one was allowed on the island except certain workmen who were cutting copra for the Evacuation Committee. It was impossible for the plaintiff to work his estate. In 1951 the Evacuation Committee, without the consent of the plaintiff took a certain portion of his land and erected buildings thereon. The Government neither paid nor offered any compensation to the plaintiff for having prevented him from working his plantation. After pressure by the plaintiff the Government offered him £6 per year as rent for the portion of his land they occupied with their buildings. The plaintiff refused this offer. The plaintiff issued a writ claiming compensation for having been prevented from using his land for the purpose of producing copra and rent for the portion of his land occupied by the Evacuation Committee.

HELD. (1) An action lay against the Premier as representing the Government of Tonga and that the Minister of Lands was rightly joined as Chairman of the Evacuation Committee.

(2) That in order to interfere with a citizen's rights of property without being liable to compensate him for any injury he may suffer as a result of such interference the Government must be able to point to some statutory authority conferring such right.

(3) That the Evacuation Act, 1947, empowered the Government to compulsorily evacuate the inhabitants of Niuafu'ou but as the Act was silent on the question of compensation, the Government was liable in damages for injury caused to proprietary rights.

(4) That the action of the Government in preventing the plaintiff from working his plantation at Niuafu'ou was unlawful and that the plaintiff was entitled to damages therefor and that the occupation of his land by the Evacuation Committee for purposes other than those connected with the evacuation of the inhabitants of the island was also unlawful, for which he was entitled to damages.

Verdict for the plaintiff for the amount claimed (£880).

The facts are set out in the judgment.

Tu'akoi (with him Pousima) appeared for the Plaintiff.

Hamlyn Harris (Crown Solicitor) appeared for the defendants.

C. A. V.

HUNTER J. : The Plaintiff, Tuita, has brought this action against the Premier and the Minister of Lands claiming damages for (a) loss he has suffered from being prevented from working his copra plantation at Niuafu'ou and (b) for use and occupation of certain lands of his at Niuafu'ou.

The Premier is sued not in his personal capacity but as representing the Government of Tonga and the Minister as Chairman of the Competent Authority for Evacuation, or as it has been referred to throughout the case — the Evacuation Committee.

In order that the matter may be properly understood it is necessary that I briefly outline the history of the events which give rise to the present case. There had been several volcanic eruptions at the island of Niuafu'ou in 1946. The Government resolved that it was in the best interests of the inhabitants that they all be evacuated and settled in a different and safer part of the Kingdom. Accordingly in 1946 an Ordinance was passed being No. 4 of 1946 which is entitled "An Ordinance to confer upon Her Majesty in Council certain powers to evacuate persons from one part of the Kingdom to any other part." Under this Ordinance Her Majesty in Council could by Order in Council order the complete or partial evacuation of a body of persons from one part of the Kingdom to another part and if such an order were made Her Majesty in Council "shall appoint one or more persons to be the competent Authority for Evacuation." The Ordinance contains further provisions which will be referred to later when dealing with the Evacuation Act (No. 11 of 1947) which superceded the Ordinance.

In pursuance of the Ordinance an Order in Council was issued on 23rd October, 1946. This ordered that the inhabitants of Niuafu'ou should be compulsorily evacuated "in such manner and time as the Competent Authority appointed shall order."

The Competent Authority was appointed under this Ordinance.

On the 17th September, 1947 an Act (No. 11 of 1947) entitled the Evacuation Act 1947 was passed. This Act contains no reference whatever to the previous Ordinance but it is in identical terms. On the same day, 17th September, 1947, an Order in Council was issued by which a Chairman and members were appointed the Competent Authority for the evacuation of Niuafu'ou "under Section 3 of the Evacuation Act 1947." It will be noted that neither the complete nor partial evacuation of residents was ordered by this Order in Council but apparently the evacuation had been completed before the Order came into force.

Several later Orders in Council were issued but they deal only with the personnel of the Competent Authority.

The Plaintiff is a noble and the holder of an estate known as Futu situated in Niuafu'ou. He complains that owing to the action of the Government and the Evacuation Committee he has been prevented from working the copra on his estate from the time of the evacuation until 1955 and that he has suffered considerable loss thereby and that the Committee have erected certain buildings on his land without his consent and against his will and have refused to pay him any compensation.

There was some question at the hearing as to whether the Premier was rightly made a party. I am satisfied that it was proper to join the Premier as representing the Government. At the present there are no provisions in Tonga as to the proper procedure to be adopted by a litigant who wishes to sue the Government. This is a matter which I understand the Government intends to clarify but at present it seems to me that if a citizen has a claim against the State then the proper person to join is the Premier as the head of the Government, or the Minister in charge of the Department, directly concerned, or both.

The following facts were admitted by the Crown Solicitor who appeared for the defendants :

- (1) That the Plaintiff is a noble and the holder of an estate in Niufo'ou, known as Futu.
- (2) That the Competent Authority for the Evacuation of Niufo'ou known as the Niufo'ou Evacuation Committee or persons employed by and acting for the Committee have been occupying approximately  $\frac{1}{2}$  acre of Futu since 1951.
- (3) That three huts have been built on such portion of such land for the use of the Committee.
- (4) That no agreement verbal or written has been entered into between the Plaintiff and the Defendant.
- (5) That the said land has not been resumed.

It was submitted by the Crown Solicitor on behalf of the Defendant : (a) that what was done was done under the Authority of the Evacuation Act 1947 and that as that act makes no provision for compensation none is payable (b) that the Plaintiff was not prevented by the Defendants from returning to Niufo'ou and working his plantation and (c) that once the evacuation had been completed the Plaintiff is not entitled to any payment for the use and occupation of his land as the very act of evacuation has rendered his land valueless.

Plaintiff's counsel submitted :

(a) That as far as the Plaintiff is concerned the Evacuation Act is invalid as it conflicts with Clauses 44 and 67 of the Constitution. (b) That even if the act is valid it must be read subject to Clause 18 of the Constitution which provides for the payment of compensation on acquisition of land by the Government and (c) That at the relevant times the Evacuation Act was not law as it had not been proclaimed in accordance with Section 3 of Cap. 1.

I am satisfied that the Plaintiff was prevented by the Government and by the Evacuation Committee on behalf of the Government from 1949 (or probably 1948) until 1955 from cutting copra on his estate and exporting it and that he has suffered considerable loss thereby. I am also satisfied that he did everything he reason-

ably could have been expected to do to obtain permission and that the Defendant knew or should have known that he was pressing for permission during the whole period until finally he was told in 1955 by an official from the Premier's Department that the ban, as far as he was concerned, had been lifted.

In order to be entitled legally to interfere with a citizen's rights of property, without being liable to compensate him for any injury he may have suffered as a result, Government must be able to point to some statutory authority justifying their action.

It is a well settled principle of law that proprietary rights should not be taken away by Parliament without compensation unless the legislature has so provided in clear terms (See *Conssett Iron Co. v. Clavering Trustees* 1935 2.K.B.42). It is presumed when the objects of an act do not obviously imply such an intention, that the legislature does not desire to confiscate the property or to encroach on the rights of persons, and it is therefore expected, that if such be its intension, it will manifest it plainly, if not in express words, at least by clear implication and beyond reasonable doubt (See *Minister of Health v. Stafford* 1952 Ch. 730). It is not proper to construe an act of Parliament as interfering with a person's rights without compensation, unless one is obliged so to construe it. (See *Colonial Sugar Refining Co. v. Melbourne Harbour Trust Commissions* 1927 A.C. 343).

Section 2 of the Evacuation Act 1947 is in these terms :  
 "On any occasion Her Majesty in Council may, in the interest and for the welfare of any particular body of persons residing within the Kingdom, by Order in Council order the complete or partial evacuation of that body of persons from its normal place of residence to any other part of the Kingdom."

It will be seen that the object of the act, and the sole object, is to "evacuate a body of persons from its normal place of residence" to another part of the Kingdom. "Evacuate" is not a term of art. It means here I should say "to remove." The important words are "from its normal place of residence." There is no intention and indeed no power, to interfere with industry, except perhaps, in so far as the existence of a particular industry may depend on residence, e.g. shops.

Section 3 of the Act provides that when Her Majesty in Council has ordered the evacuation of a body of persons as provided by S. 2 (i.e. from its normal place of residence) a Competent Authority for Evacuation shall be appointed.

Section 4 delimits the powers of the Competent Authority and it is this section which the Defendants submit gives the authority for their actions.

On an examination of the powers conferred by this section it will be seen that they fall far short of those claimed by the Defendant. The Competent Authority shall have the general management

and control of the moving of the body of residents and for that purpose (and for that purpose only if we are to construe the section strictly) it may (a) make rules (Incidentally no rules were made) (b) Requisition property for the purposes of the evacuation (c) apply money received from the treasurer and (d) do such other things as appear necessary or expedient for furthering the interests of the evacuated persons during the course of the evacuation and re settlement. The Crown Solicitor submitted that this sub-section authorises the occupation of the Plaintiff's land. It might just be possible that it authorised it (leaving the question of compensation out of consideration) during the course of the evacuation but surely not ten years after the evacuation has been completed.

Property may be requisitioned only for the purposes of the evacuation (S. 4 (b) ). That is for purposes which may be reasonably necessary in order to move the inhabitants. In my view it does not confer powers to retain property for a purpose not connected with the movement, such as the storing of copra cut by the Authority, or to prevent the holder of an estate from working his estate long after the evacuation has been completed; and it is Section 4, and only Section 4, by which the Defendants can hope to justify their actions. In my opinion Section 4 provides no such justification and it follows that any interference with the proprietary rights of the Plaintiff after the evacuation is a trespass for which the Plaintiff is entitled to damages.

This being so it becomes unnecessary for me to decide the other points raised by Plaintiff's counsel but as they were argued before me I feel I should mention them. In my opinion the Evacuation Act 1947 is not in conflict with Clause 67 of the Constitution as it is not an act "relating to the titles and inheritances of nobles," nor does Clause 44 of the Constitution render the act invalid. The wording of Clause 44 is rather obscure but I am very doubtful whether it can be said that the Evacuation Act has the effect of depriving a noble of his hereditary lands.

The position with regard to Clause 18 of the Constitution is more difficult and I am inclined to the view that it does confer upon the Plaintiff a constitutional right to compensation in the circumstances which have arisen.

However, as I have said above the view I have taken renders a decision on these questions unnecessary.

The submission of the Plaintiff's counsel that the Act of 1947 was not law at the relevant period as it had not been proclaimed in accordance with Section 3 of Cap. 1 was not raised until his closing address. No evidence was submitted to substantiate this and I express no opinion on it.

There remains the question of the quantum of damages and I must say that the evidence on this point is very scanty and far from satisfactory.

The defendants admit that they have been occupying approximately  $\frac{1}{4}$  acre of the Plaintiff's land with buildings since 1951, and as I understand the Plaintiff's case it is from 1951 onwards that he complains of having been prevented from working his plantation, although according to the evidence the prohibition was in force earlier. However, I take this year as the starting point.

The only evidence on what would be a fair amount to pay for the use and occupation of the  $\frac{1}{4}$  acre is (a) that of the Hon. Tu'ihateiho, who was called by the defendants, and who said that in 1948 £25 per annum would have been a fair rent but that it would have increased from 1951 onwards (b) that there had been a previous lease of an unspecified area of land to Morris Hedstrom Ltd. at £8 p.a. and (c) the Defendant's offer of £6 p.a. There is also evidence that the site is on the best and now the only anchorage at Niuafou'ou. Taking all these matters into consideration I fix as a fair rent for the land occupied by the defendants the sum of £19/10/0 per annum and assess the amount due to the Plaintiff under this count from 1951 until the issue of the writ at £87/15/-. Of course this rent continues to run while the Defendants are occupying the land and today a further amount is due but this may possibly be able to be adjusted between the parties without the necessity for further litigation.

The Plaintiff's second claim rests on the damage he has suffered from being prevented from working his plantation from 1951 until 1955. Various figures have been given as to what this amount should be and on the evidence I am satisfied that the least the plaintiff could have earned from his plantation during the relevant period, taking into consideration the price of copra for these years was £440 p.a. Under this claim then the loss was £1760.

However, the Plaintiff has only claimed £880 and I give a verdict for the full amount of the claim.

EDITOR'S NOTE: Both parties appealed to the Privy Council. On 28. 1. 57 the Privy Council varied the judgment by setting aside the damages awarded to the Plaintiff for having been prevented from producing copra but affirming the judgment for £87. 15. 0 for use and occupation.