

## SOLOMONE LATIUME v. SIONE MANU.

(Civil Action. Hunter J. Nuku'alofa, 27th January, 4th February, 1959).

Damage to growing crops — Permissive Occupancy — Rights of occupier — Nature of tenure.

The Plaintiff claimed damages from the defendant for the loss of his crops planted with the defendant's permission in land under the defendant's control.

The facts sufficiently appear in the judgment.

HELD. In the circumstances the Plaintiff had no right of action.

Verdict for the Defendant.

Mafua & Pousima for the Plaintiff.

Tu'akoi for the Defendant.

C.A.V.

HUNTER J. : The Plaintiff is claiming £269. 10. 0 from the Defendant for damage to his growing crops. I am satisfied of the following facts : indeed the facts are hardly in dispute.

In about 1955 at the request of Her Majesty the Plaintiff and his wife went to Kauvai to supervise the feeding of workmen engaged in building operations.

The Defendant was, prior to this time, and still is, foreman in charge of the labourers on the Queen's estate there. He was not in charge of the Plaintiff and his wife.

In 1957 the Plaintiff asked the Defendant for a piece of land on the estate on which to establish a garden for himself. The defendant pointed out an area of land to the Plaintiff which he said could be used by the Plaintiff to establish a garden. Nothing was said at the time by either party as to how long the Plaintiff could have possession of this land, or what was to be the nature of his possession. The Plaintiff cultivated and planted the piece of land which was fairly extensive — about 2 — 3 acres — and I am satisfied that at the time of the damage there was a large number of crops such as taro, kape, bananas, yams etc. growing and producing, or just about to produce, fruits.

In October, 1957 the Defendant saw the Plaintiff's wife, acting on instructions from his employer, and told her to tell her husband that they could make some copra for themselves but must leave Kauvai by the end of November. The Plaintiff saw Defendant about this and said, "What about my yam patch." The Defendant said, "Oh, you can come out and weed it so that it will be some use to you."

The Plaintiff and his wife left Kauvai as requested, but Plaintiff periodically returned to attend to his garden.

In April or May, 1958 the Defendant saw the Plaintiff at work in the garden and told him he had better move his crops as he (the Defendant) was going to establish a pig sty there on instructions from the Queen. About two weeks later the fence for the sty was erected and it enclosed the Plaintiff's garden. The Plaintiff did not remove his crops and approximately two months after the fence had been erected the pigs were put in the sty. It is not surprising that the whole of the crops growing there were ruined.

The Plaintiff's case is that he was occupying this garden lawfully and that the Defendant is liable for the damage caused by his action in putting the pigs on to the garden. I cannot agree. At the best the Plaintiff had only a permissive occupancy of this land and was liable to be moved by the owner at any time. If he chose to take the risk of expending money and labour in cultivating the land when he had no security of tenure, that is his affair and he could not complain if the land was taken away from him at any time without any notice.

As a matter of fact the Defendant gave him about two months in which to remove his crops. Whether it was practicable to remove them I do not know, but whether it was or not cannot affect the legal position.

Once the Defendant told him to go he was bound to do so. Any damage to crops he left behind cannot be laid at the Defendant's door.

Verdict for the Defendant

---