

Land Case No. 35/69

HON. FIELAKEPA -v- HON. MINISTER OF LANDS

(Land Court: Roberts J., Hon. Luani, Assessor, Nuku'alofa, 24th April, 1971).

Limitation of Action—Section 148—When time begins to run—When right of action first accrues—Dispossession and right of ejectment the true test.

Held: That the period of limitation in Section 148 of the Land Act cannot commence to run unless and until the true owner ceases to be in possession of his land and that the true test as to whether a rightful owner has been dispossessed or not is whether ejectment will lie at his suit against another person.

Tu'akoi for the Plaintiff.

The Minister of Lands in person.

ROBERTS, J: The Plaintiff claims that the allotment "Melepoani" stated to be of $8\frac{1}{4}$ acres and situate in Tofoa was formerly "Vaotaki" of 8a, 1r 2p and situate in Haveluloto, the plaintiff's hereditary estate, and that "Vaotaki" was arbitrarily excluded from plaintiff's hereditary estate. It is alleged that this occurred on 14.3.35 when the allotment was registered as "Melepoani" as of $8\frac{1}{4}$ acres in the name of Felemi Lomu.

On 24.4.51 (Felemi Lomu having elected to take his father's estate) "Melepoani" was surrendered and granted to Samiuela Lomu.

On 26.2.62 Cabinet approved another surrender namely by Samiuela Lomu of the said allotment and the allotment reverted to the Crown which has leased the said allotments to the Copra Board.

On 22.11.61 the estate holder, father of the plaintiff complained to the Minister of Lands and asked that the allotment be returned to him. He also came in person to the Minister of Lands. On 6.4.65 the father of plaintiff died and the plaintiff as heir to the title inherited the estate.

It is admitted by the Minister of Lands that the names "Vaitaki" and "Melepoani" refer to the same allotment. Witness for the defendant, the Minister, stated that on 10.6.32 a survey was made to determine the boundaries of the estate of plaintiff and witness indicated a dotted line on the Land's Department map of the area which shows the bounds of plaintiff's hereditary estate and which excludes the allotment in question. It is submitted by plaintiff that the Lands Department in the Survey of 1932 was wrong in including the allotment in the estate of Tofoa and that it has always belonged to the estate at present held by the plaintiff and that as plaintiff has not lost the land in question Section 148 of the Land Act does not apply.

With regard to the application of Section 148 the Minister of Lands has shown that in the Rent Book for the Crown it is recorded on page 172 that Tevita Lomu held Vaotaki from the Crown and paid a rent to the Crown of 8/- per annum from 1930 to 1934. Also it is shown that Felemi Lomu paid rent to the Crown for the same allotment which became known as Melepoani from 1934 to 1951 when the allotment was surrendered by him to the Crown on election. It was transferred to Samiuela Lomu on 24.4.51 and he continued to pay rent to the Crown up to and including 1961.

The defendant, Minister of Lands submits that as no claim was made or action taken by the estate holder for over thirty years, during which the allotment was included in Crown Land, Section 148 of the Land Act applies and that this action is thereby statute-barred. Section 148 provides that "No person shall bring in the Court any action but within ten years after the time at which the right to bring such action shall have first accrued to some person through whom he claims, or if such right shall not have accrued to any person through whom he claims then within ten years next after the time at which the right to bring such action shall have first accrued to the person bringing the same".

If the right to bring an action in this matter first accrued to the estate-holder more than ten years prior to the issue of the writ in this action then the action on the writ is statute-barred.

The question to be considered is (1) when does the right of action in a matter concerning land normally first accrue, and (2) when did the right first accrue in this present case.

Halsbury 3rd Edition Vol. 24 Page 251 to 252 describes the law as follows:—

"Where a right of action to recover land is deemed to accrue on a certain date and no person is in adverse possession on that date, the right of action is not deemed to accrue unless and until adverse possession of the land is taken. "Thus", continues Halsbury, "the statute cannot commence to run unless and until the true owner ceases to be in possession of his land. The true test whether a rightful owner has been dispossessed or not is whether ejectment will lie at his suit against some other person."

In the case now before this Court the Crown collected rent for the land and not the estate holder pursuant to Section 57 and 58 of the Land Act. The rent books for Crown Land held by the Ministry of Lands show that from 1930 to 1961 the Crown collected rent for the allotment in question. That is to say for thirty-one years the estate holder made no claim for rent and took no action to recover rent pursuant to Section 60. All control of the allotment was vested in the Crown and consequently any right of ejectment. Thus there was adverse possession by the Crown which first occurred in 1930 and continued for thirty-nine years before the writ was issued in the present case.

Thus the right, if any, of the estate holder to institute legal action first accrued in 1930 and time, under the limitation of Action provision, section 148, expired in 1940, twenty-one years before the previous estate holder made his complaint to the Minister of Lands and twenty-nine years before the issue of writ by plaintiff.

This Court, therefore, has no alternative but to hold that this action is prescribed by Section 148 of the Land Act and accordingly finds for the defendant.

No order as to costs.