

**CHARLY GIBBONS, Plaintiff**

**v.**

**KISAOL, Defendant**

**Civil Action No. 14**

**Trial Division of the High Court**

**Palau District**

**January 31, 1955**

Action to determine ownership of land on Koror Island, in which chief's title land was transferred to clan member without consent of other clan members. The Trial Division of the High Court, Chief Justice E. P. Furber, held that chief's title land in Palau Islands cannot be voluntarily transferred without consent of at least every adult clan member in maternal line living in Palau Islands.

**1. Palau Land Law—Chief's Title Land**

Chief's title land is of very special importance under Palau customary law.

**2. Palau Land Law—Chief's Title Land**

Under Palau custom, clan is normally expected to hold chief's title land as important indication of existence of clan and feature on which its recognition as clan is based.

**3. Palau Land Law Chief's Title Land Transfer**

Voluntary transfer by clan of chief's title land is not contemplated under Palau custom, and can only be effected as extraordinary matter with consent of entire clan.

**4. Palau Custom Clans**

Under Palau custom, clans commonly conduct routine business without notice to members living in villages other than that to which clan belongs.

**5. Palau Land Law—Chief's Title Land—Transfer**

Chief's title land in Palau Islands cannot be voluntarily transferred by clan without consent of at least every adult clan member in maternal line living in Palau Islands, given either personally or through someone entitled under Palau custom to represent him.

FURBER, *Chief Justice*

## FINDINGS OF FACT

1. The maternal line of the Techekii Clan has not died out.

2. The plaintiff, Charly Gibbons, is the *Rechucher* of the Techekii Clan. (Note:—*Rechucher* is the title of the head or chief of that particular clan.)

3. In 1942 the Techekii Clan, through its then *Rechucher*, Ngoriyakl, and in accordance with a decision made at a clan meeting in Koror, purported to transfer the land in question, known as Techekii, to the defendant, Kisaol. This purported transfer was made without the consent of at least three members of the clan, in the maternal line, including the plaintiff, all three of whom were adults living in the Palau Islands.

4. At the time he prepared, or assisted in preparing, the paper stamped by him and eight other members directing the transfer in question, Ngoriyakl had just been chosen *Rechucher* that day at the meeting at which the transfer was decided on. He had not attended the meeting and did not know that the land referred to in the paper was chief's title land; nor was it described as chief's title land in the paper.

## CONCLUSIONS OF LAW

[1, 2] 1. The land in question in this action is located on the Island of Koror in the Palau District and was admittedly chief's title land of the Techekii Clan, or, as it is sometimes described, "property of the clan reserved for the exclusive use of the chief", at the time the clan purported to transfer it. This type of land is of very special importance under Palau customary law. A clan is normally expected to hold such land as one of the important indications of the existence of the clan and as one of the

features on which its recognition as a clan is based. Although in the case of a few large clans in recent years the holding of chief's title land by a major lineage within the clan has been accepted as a substitute for chief's title land of the clan, this is not a regular or usual situation.

[3-5] 2. Chief's title land is of such a special nature that its voluntary transfer by a clan is not contemplated under Palau customary law and can only be effected as an extraordinary matter with the consent of the entire clan on the general theory that there is then no one to object to it. The defendant claims that the three adult members in the maternal line, mentioned in the findings of fact, who did not consent to the transfer, were not consulted about the matter or notified of the meeting at which it was considered because they lived in Ngaraard, a village in the Palaus distant from Koror which was the village to which the clan belonged and where its chief's title land was located. It is recognized that it is common for Palauan clans to conduct routine business without notice to members living in villages other than that to which the clan belongs. The Court holds, however, that chief's title land in the Palau Islands cannot be voluntarily transferred by a clan without the consent of at least every adult clan member in the maternal line living in the Palau Islands, given either personally or through someone entitled under Palau custom to represent him. No opinion is expressed as to just who may represent a member for this purpose since in this action there is no claim made that anyone representing any of the three members referred to above gave consent on their behalf; nor is any opinion expressed as to the rights, if any, in such a matter of a clan member who is a child or has been long absent from the Palaus, or the rights, if any, of a person connected with the clan through the paternal line or by adoption.

3. The purported transfer of the land in question by the clan to the defendant, Kisaol, was therefore of no legal effect.

#### JUDGMENT

It is ordered, adjudged and decreed as follows:—

1. The land known as Techekii, located on the Island of Koror in the Palau Islands, designated on an official Japanese map of Koror (a tracing of a part of which has been filed in this action) as No. 891 and containing about 635.8 tsubo, is chief's title land of the Techekii Clan, and the plaintiff, Charly Gibbons, as Chief or *Rechucher* of that clan, is entitled to its exclusive use, if he wants it, and to the exclusive control of its use if he does not want to use it himself.

2. The defendant, Kisaol, has no right, title or interest in the land described above except such interest as she, as a member of the Techekii Clan, shares with all other members of that clan, but the plaintiff, Charly Gibbons, is to allow her a reasonable time to remove anything on it which she owns.

3. No costs are assessed against either party.