

**KANOTEN, Plaintiff**  
**v.**  
**MANUEL, Defendant**  
**Civil Action No. 94**  
**Trial Division of the High Court**  
**Truk District**  
**January 5, 1959**

Action to determine title and use rights in land located on Udot Island. The Trial Division of the High Court, Associate Justice Philip R. Toomin, held that plaintiff failed to establish by clear and convincing evidence that title was transferred to him by inter vivos gift or that he had any interest in the land.

**1. Real Property—Gifts**

In order to sustain gift of land, evidence must be clear and convincing.

**2. Real Property—Gifts**

To sustain gift of land, there must be evidence free from personal interest and not equivocal in character that property was delivered to donee during donor's lifetime.

**3. Truk Land Law—Use Rights**

Fact that close relative of land owner has lived on land for period of years, worked it and received some of its production does not indicate interest in title under Truk custom although it may indicate use rights.

**4. Truk Land Law—Use Rights**

Fact that dwellings have been demolished and family has moved off land indicates that their interest in land on Truk was temporary one.

**5. Truk Land Law—Evidence of Ownership**

Where defendant at trial has no interest in land in Truk except as possible heir as son of owner, court will presume that he is acting as representative of his father's interest, particularly where plaintiff has no rights in land.

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**TOOMIN, Associate Justice**

**I. FINDINGS OF FACT**

1. Involved in this case is the determination of title and use-rights to the land Fukun, located in Wolip Village, Udot Island, Truk District.

2. Said land was acquired by purchase for cash by one Samuel Hartmann in Japanese times, approximately 1922-1923. Both parties claim title through him.

3. Upon the death of his natural father, Salle, in 1935, Carl Hartmann, the father of defendant, and nephew of Samuel Hartmann, was adopted as a son by Samuel. In the same year Samuel gave him title and use-rights to Fukun. There is no evidence that Carl ever gave them to defendant.

4. The evidence is not clear and convincing that Samuel Hartmann and his three brothers acquired Fukun with money contributed by them jointly, and that they gave it thereafter to Haimiris Hartmann so that he could give it to plaintiff, as contended by plaintiff.

5. During the period 1922-1935 the land was worked by Carl Hartmann with his laborers; however, during the period 1930-1934 the work was supervised by Haimiris Hartmann for Carl at Carl's express request.

6. During the lifetime of Haimiris, plaintiff was given permission either by Samuel Hartmann or Carl Hartmann, to work the land and build dwellings on Fukun for his family. Plaintiff built four houses on the land, one for his wife and children, his father and mother; a second for his sister, her husband and children; a third for his mother's brother, his wife and children; and the fourth for use as a cookhouse.

7. In 1926 plaintiff left Udot and went to Ponape, where he stayed until 1932. During his absence the dwellings erected by him were occupied by some of the members of this family referred to in the prior paragraph. All of these houses were demolished before World War II.

8. From the time of Haimiris' death, Carl Hartmann took over control of production. He appointed one Justo to work the land, at a rental of 50 Yen per year. This arrangement continued up to the start of World War II.

9. During the war years, neither of the parties worked the land Fukun, as it was controlled by the Japanese military. After the war, Carl Hartmann turned over management to Justo again, and later to his son Manuel. In 1951–1952 the land was worked for Carl by one Sapa, and since then by defendant.

10. By the start of American times, neither plaintiff nor any of his family members were living on the land, nor defendant or any members of his family. Each party produced copra on the land from time to time, but plaintiff's production was protested by defendant, to the point where defendant had plaintiff charged with criminal trespass and petit larceny.

## II. CONCLUSIONS OF LAW

1. It is plaintiff's theory that the land in question was bought for him by his father and uncles, though he concedes the major investment was that of the uncles. The only evidence of the gift is plaintiff's story of his father's statement to him that he should take care of the land, and if he did, after the father's death he and his children would have it as their own. This statement is at odds with plaintiff's theory, as it tends to indicate a gift to take effect in the future rather than, as plaintiff contends, a gift to him immediately after the property was acquired.

[1] In any event plaintiff's uncorroborated evidence fails to make out the kind of case necessary to establish a gift of land. In order to sustain such a gift, the evidence must be clear and convincing. 24 Am. Jur. 797, Gifts, § 129.

[2] In such case, there must be evidence free from personal interest, and not equivocal in character, that the property was delivered to the donee during the donor's lifetime. *Atchley v. Rimmer*, 148 Tenn. 303, 255 S.W. 366.

The story of plaintiff is inherently weak and unconvincing. Why a gift should be made to him during his father's lifetime, by the brothers of his father, of land which they have to buy for the purpose, is not explained. As against plaintiff's story, there is that of Albert Hoffmann, his cousin and the son of Samuel, that Samuel bought the land with his own funds, and ultimately (twelve years later) gave it to his adopted son Carl, when that person's natural father died. Since Albert himself might well have been the donee of this land, his testimony that neither he nor plaintiff were the recipients of the gift, is entitled to great weight. And on no other theory can be explained the control and supervision of the land by Carl for many years during the Japanese and American administrations, established by independent witnesses.

This court is therefore constrained to hold that the evidence of a gift to plaintiff has not been established by clear and convincing evidence on the record in this case.

[3, 4] 2. Nor is the position of Carl weakened, or that of the plaintiff strengthened, by a showing that plaintiff and his immediate family lived on the land for a period of years, and worked it and received some of its production. It is common in Truk District for the owner of land to permit close relatives to build their houses on the owner's land, and to work it and participate in the production. This does not indicate any interest in title, though it may help to establish use-rights, providing such was the intent of the donor at or after the time possession was taken. The fact that all the dwellings erected by plaintiff (or his father) have long since been demolished, and that plaintiff's family have since settled on Ptarik, from where they must come in order to work this land, indicates that plaintiff's interest was a temporary one.

[5] 3. The record fails to establish any interest of defendant in the subject property, save as the possible

heir of his father Carl Hartmann. For aught appearing in the record, Carl is still living and has not conveyed his title to anyone. It is not necessary to decision in this case to carry Carl's interest in this title any further than to himself, since plaintiff's claim in this case is that he is the owner, and that defendant has interfered with his possession by taking the production without permission. It will therefore be presumed that in defending title in this case, defendant is acting as representative of his father's interest.

III. JUDGMENT

It is ordered, adjudged, and decreed as follows:—

1. As between the parties hereto and all persons claiming through or under them,

(a) Plaintiff has no right, title or interest in the land Fukun, located in Wolip Village, Udot Island, Truk District, and is not entitled to any relief against defendant in connection with defendant's taking of production from said land.

(b) Title to said land is in one Carl Hartmann, or if he is no longer living, then in such person or persons to whom he may have conveyed his interest in said property, or in default thereof, to his heirs-at-law as determined by recognized native custom.

2. This judgment shall not affect any rights of way over, across, or upon the said parcel of land.

3. No costs are assessed in favor of or against any party.