

rights of the plaintiff. The action might well have been dismissed at the close of the plaintiff's evidence. Since the trial judge's efforts to bring about a settlement were unsuccessful, it may be unfortunate that he did not dismiss the case at that point, but the plaintiff cannot justly complain about this delay in dismissing the action.

JUDGMENT

The judgment of the District Court for the Yap District in its Civil Action No. 25 is affirmed without costs.

YANGRUW and GILTAMAN, Plaintiffs

v.

MANGGUR and FENAM, Defendants

Civil Action No. 23

Trial Division of the High Court

Yap District

April 21, 1961

Action to determine fishing rights under Yapese customary law in waters over reefs. Plaintiffs claimed rights of control of all "big fishing" in Palau Village, Maap Municipality. The Trial Division of the High Court, Chief Justice E. P. Furber, held that waters in dispute suitable for *zum ey* fishing are "owned" by family group of which defendants are members, subject to obligation to permit others to cooperate with them in fishing and obligation to contribute *walbuu* to senior male member of group owning certain land in Palau Village.

1. Yap Custom—Fishing

Under Yap custom, *yaraw* type fishing and "small" (individual) fishing are essentially different matters from, and covered by different controls, than *zum ey* fishing.

2. Yap Custom—Fishing

No inference should be drawn from opinion relating to *zum ey* fishing rights as to fishing in any other waters or rights in any other kind of fishing.

3. Yap Custom—Fishing

Under Yap custom, waters of Palau Village suitable for *zum ey* fishing are divided into plots, each owned by various family groups and usually

under immediate control of senior competent male member of group, subject to obligation to permit other members of village to cooperate in this type of fishing.

4. Yap Custom—Fishing

Under Yap custom, there is obligation in some instances to give part of catch from *zum ey* fishing as *walbuu* to senior male member of group owning particular piece of land, such group being different from one “owning” area of shallow water involved.

5. Yap Custom—Fishing

Under Yap custom, *walbuu* rights vary from special nature of their origin and may not apply at all in certain instances.

6. Yap Custom—Fishing

Under Yap custom, division of *walbuu* rights may vary from village to village because of special agreements.

7. Yap Custom—Fishing

In Palau Village, unless chief of Village is member of group owning *zum ey* rights or entitled to *walbuu* from that area, he has no control or rights in such fishing in any part of Village waters under Yap custom, nor does any high chief in Yap have such rights merely by virtue of being high chief.

FURBER, *Chief Justice*

OPINION

[1, 2] This action brings out the extremely complicated nature of the fishing rights under Yapese customary law which have been re-established by Section 32(b) of the Trust Territory Code on or in waters over reefs where the general depth of the water does not exceed four feet at mean low water, and the sharp distinction between the rights applying to different types of fishing in the same area. It was agreed during the trial that all of the fishing complained about in this action was of the “*zum ey*” type—that is, fishing with a relatively large net or nets erected in a given location as one tide begins to fall and maintained there until approximately the following high tide. In this action the plaintiffs claimed the right to control all “big fishing” with nets (that is, such fishing involving the cooperation of six or more people) in Palau

Village waters in Maap Municipality, Yap District. They have attempted to prove this control, however, primarily by showing of instances of control over “*yaraw*” type fishing—that is, fishing engaged in by a considerable number of people each using two hand nets and operating in cooperation over large areas of shallow water, sometimes including all the shallow waters of a village. The court is satisfied that, under Yapese custom, *yaraw* type fishing is an essentially different matter from and is covered by different controls from *zum ey* fishing. So is so-called “small” or individual fishing. This opinion and the decision deal solely with *zum ey* fishing rights in Palau Village waters and no inference should be drawn from it as to rights to any other kind of fishing or in any other waters.

[3-6] So far as *zum ey* fishing is concerned, the court holds that the waters, at least of Palau Village in Maap Municipality, which are suitable for this type of fishing—all of which come within the terms of Section 32(b) of the Trust Territory Code—are divided into plots or areas which are, from the Yapese point of view, “owned” by various family groups, each such area being under the immediate control of the head or acting head—usually the senior competent male member—of the group, subject to certain general obligations to permit other members of at least the village to cooperate in the customary manner in this type of fishing. In some instances there is an obligation, arising out of the settlement, or settlements, made at the end of civil wars of long ago, to give a part of the catch from time to time as “*wolbuu*”, or tribute, to the senior male member of the group owning a particular piece of land. The group whose senior male member is entitled to receive the *wolbuu* in such case will be different from the group said to “own” the area of shallow water involved. While the general custom with regard to fishing rights in the Yap Islands proper is sometimes said to be

uniform, it is obvious from the special nature of their origin that these *wolbuu* rights are bound to vary and may not apply at all in certain instances. It also seems possible that the division of these rights may vary somewhat from village to village because of such special agreements.

[7] At least in Palau Village, unless a chief of the village happens to be a member of a group owning *zum ey* fishing rights in the particular area of shallow water involved or owning land entitled to *wolbuu* from that area, a village chief has no control or rights in this type of fishing in any part of his village waters nor does any high chief in Yap have such rights merely by virtue of being a high chief.

This opinion and decision relate purely to the rights in connection with the waters concerned and no inference is to be drawn therefrom as to control or lack of control of any party over any dry land not owned by the family group of which he is a member.

JUDGMENT

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

1. As between the parties and all persons claiming under them, the right to conduct and control *zum ey* fishing in the Baan Mochongod section of Palau Village waters in Maap Municipality, Yap District, is owned by the group of which the defendants Manggur and Fenam are members, subject to the obligation to permit others to cooperate with them in such fishing in the customary manner and subject to the obligation of contributing *wolbuu* to the senior male member of the group owning the land or home known as Wowol in Waloy Village, Maap Municipality.

2. The plaintiff Yangruw has no rights in connection with *zum ey* fishing in Palau Village waters except in a particular area to the east of the village, in which area none of the fishing complained about in this action took place.

UTO v. TRUST TERRITORY

3. All the above rights are subject to the inherent rights of the Trust Territory Government under Section 32 of the Trust Territory Code.

4. The plaintiff Giltaman has no rights in connection with *zum ey* fishing in any part of Palau Village waters.

5. Neither of the defendants Manggur and Fenam owes either of the plaintiffs Yangruw and Giltaman anything because of the fishing complained about in this action.

6. No costs are assessed against any party.

ALFANSO UTO (otherwise known as ALFANSO MARA),
Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Case No. 120

Trial Division of the High Court

Truk District

May 1, 1961

Appeal from conviction in Truk District Court of criminal libel in violation of T.T.C., Sec. 425. Appellant claims that prosecution failed to show specific intent to inflict injury or actual damage to reputation and that his comments stating complainant, a magistrate, stole money from municipality, were privileged as fair comment concerning public official. The Trial Division of the High Court, Chief Justice E. P. Furber, held that it is not necessary to show either specific intent or actual damage to prove charge of criminal libel, and that privilege of fair comment does not extend to unfounded charges of crime.

Affirmed.

1. Criminal Libel—Generally

Offense of criminal libel under Trust Territory Code is based on common law principles, except that it has been extended to include oral statements. (T.T.C., Sec. 425)

2. Criminal Libel—Actual Damage

In complaint for criminal libel, it is not necessary to allege actual damage to complainant. (T.T.C., Sec. 425)

3. Criminal Libel—Generally

Criminal libel is crime which affects public peace by publication of defamatory matter concerning another, not because of injury to repu-