

on foot and handcarts, with such burdens as are normally and commonly carried by foot travelers or on handcarts on Ponape, across said section "A" to and from said Mission's land and tide-water;

ii. the Protestant Mission's right to continue to use said section "B" as tenant at will unless and until this right is terminated on reasonable notice;"

b. Striking out in the granting clause the words "in its entirety and without reservation" and substituting therefor the words "subject to the above mentioned right of way and tenancy at will".

2. As so modified, said Determination of Ownership and Release No. 21 is affirmed.

3. If the parties are unable to agree upon the exact location and width of the above mentioned right of way, any one of them may apply to the court, by motion filed in this action, for further determination as to the right of way.

4. No costs are assessed against any party.

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LUSPER, Plaintiff

v.

FATIOL, Defendant

Civil Action No. 296

Trial Division of the High Court

Truk District

May 4, 1965

Action to determine ownership of island in Oneop Municipality, Mortlock Islands. One-half of island was given to defendant by his father with consent of father's lineage; later defendant gave lineage other land so that lineage would allow second half of island to be given to plaintiff. The Trial Division of the High Court, Chief Justice E. P. Furber, held that defendant owns outright half of island originally given to him and that he also owns second half subject to life interest in plaintiff.

1. Truk Land Law-Mortlock Islands

Under Mortlock custom, where land is given to child by his father's lineage, child's lineage is expected to give land in exchange.

## 2. Truk Land Law-Mortlock Islands

Under Mortlocks custom, where land is given to child by his father's lineage and child's lineage gives land in return, child has right to use land given to him as long as he lives, but his matrilineal lineage is considered to own land.

## 3. Truk Land Law-Mortlock Islands

Under Mortlocks custom, where land is given to child by his father's lineage and child's lineage gives land in return, child has no right to give land received by him to his own children without consent of his matrilineal lineage.

## 4. Truk Land Law-Mortlock Islands

Under Mortlocks custom, where land is given to child by his father's lineage, and individual related to child in male line gives land to that lineage in exchange, that individual is considered to own land received by child, and latter cannot dispose of it without individual's consent.

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FURBER, *Chief Justice*

## REPORT OF HEARING

This matter came on for hearing upon the Master's Report and was argued by Wanis Simina for the plaintiff and by N. S. Filorian for the defendant. F. Soukichi was interpreter. No evidence was presented by either party beyond the Report and the transcript of testimony attached to it.

Both parties objected to the final paragraph of the Master's findings of fact, the plaintiff claiming that he should have outright ownership of three-quarters of the island in question, while the defendant claimed he should have control over the whole of it.

It appears very clearly that half of Pianimon Island was given to the defendant Fatiol by his father Airinios, with the consent of Airinios' lineage, and that at the request of Airinios' brother Emina, Fatiol gave to Airinios' and Emina's lineage a part of the land Maserou in order to obtain the lineage consent to Emina's giving of the other half of Pianimon to his children, Lusper and Sangiko, the lineage having refused to approve this gift unless a satisfactory piece of land was given in exchange for it.

## OPINION

[1] This action involves the ownership of an island in Oneop Municipality, Mortlock (otherwise known as Nomoi) Island, Truk District, and turns upon the legal effect of a transfer of land given by an individual in a way similar to which a child's lineage is ordinarily expected there to give land in exchange for that given to the child by his father's lineage.

For a general description of this Mortlock practice of exchanging land when a father's lineage gives some land to his child or children, see "Social Organization, Land Tenure and Subsistence Economy of Lukunor, Nomoi Islands", by Tolerton and Rauch, p. 71-73-A, and Land Tenure Patterns, Trust Territory of the Pacific Islands, Vol. 1, p. 170, 171.

[2-4] It is quite clear that under the Mortlock custom where there is an exchange between lineages, it is considered that the child's land has been in effect bought by the child's matrilineal family and while the child has the right to use the land as long as he lives, it is considered to belong to his matrilineal family which "put up" the land given in exchange for it, and that therefore a male child has no right to give this land away to his own children without the consent of his matrilineal lineage. This custom between lineages certainly accords with the claim of the defendant that those who "put up" the land for the exchange are the ones who are entitled to have the greatest voice in its disposition. In this instance, the land instead of being put up by the child's lineage was put up by an individual related to him in the male line, but it is believed that the same principles should apply and that no disposition of the half of the island in question given to Lusper and Sangiko (Sangiko having now died) can be made by Lusper without the consent of Fatiol.

## JUDGMENT

Upon consideration of the Master's Report, the transcript of evidence attached to it, and the arguments of counsel, the Master's Report is approved, and it is

Ordered, adjudged, and decreed as follows : -

1. As between the parties, both of whom live on Oneop Island, Truk District, and all persons claiming under them, Pianimon Island, located in the Oneop Municipality, Truk District, is owned as follows : -

a. The half of it given to him by Airinios with the consent of his lineage is owned by the defendant Fatiol.

b. The other half, which Emina purported to give to Sangiko and Lusper in exchange for other land given to Emina's lineage, is owned by the defendant Fatiol, subject to a life interest in the plaintiff Lusper, but Lusper has no right to transfer this half without Fatiol's consent.

2. This judgment shall not affect any rights of way there may be over the land in question.

3. No costs are assessed against either party.

4. Time for appeal from this judgment is extended to and including July 30, 1965.