

raard Municipality on Babelthaup Island in the Palau District, and designated in the Japanese land records as No. 885, is owned by the defendant Ngirturong, or the Tublai clan or the Akii family of that clan, of which clan and family the defendant is one of the leading members.

2. This judgment shall not affect any rights of way which may exist over or across the land in question.

3. No costs are assessed against either party.

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JESSE and TULPE, Plaintiffs

v.

DAVID EBREAM and Others, Defendants

Civil Action No. 42

Trial Division of the High Court

Ponape District

December 11, 1953

Action to determine ownership of land on Kusaie Island, in which person in whose name land was registered in Japanese survey of Kusaie in 1932 brought suit to recover land. The Trial Division of the High Court, Chief Justice E. P. Furber, held that any presumption of ownership in person whose name appeared on survey could be overcome by other evidence, including fact that he did not have possession of land ten to fifteen years before survey and has not had possession since then.

**1. Ponape Land Law—Kusaie—Japanese Survey**

As Japanese survey of Kusaie in 1932 placed primary emphasis on determination of boundaries, there is no assurance that all claims to ownership were considered or that there was any detailed investigation of extent of or basis for any alleged owner's interest in land shown under his name.

**2. Ponape Land Law—Kusaie—Japanese Survey**

Listing of party's name in Japanese survey of Kusaie in 1932 is at best only some evidence as to ownership or control.

**3. Ponape Land Law—Kusaie—Japanese Survey**

Where neither the person in whose name land is shown on Japanese survey of land on Kusaie nor person through whom he claims has been in physical control of property for ten to fifteen years before survey, and neither has been in control since, any presumption that owner shown on survey is true owner has been overcome.

FURBER, *Chief Justice*

## FINDINGS OF FACT

1. Kenye Niatkin gave the land in question to Ebream, who was the father of the defendants.

2. Ebream gave part of the land on his death to the defendant Kilion and the rest to the four defendants in equal shares.

3. In the records compiled by the official Japanese Government surveyors in 1932, most of the land in question was shown under the name of the plaintiff Jesse.

## CONCLUSIONS OF LAW

[1-3] 1. The plaintiffs appear to base their claim largely on the fact that in the official Japanese survey of Kusaie ending in 1932, most of the land in question was shown under the name of the plaintiff Jesse. The court takes judicial notice that in this survey emphasis was placed primarily on determination of boundaries, that the determinations as to who should be shown as owners were made largely in the field at the time the boundary lines were checked, and that there is no assurance either that all claims to ownership were considered or that there was any detailed investigation of the exact extent of or basis for any alleged owner's interest in the land shown under his name. It appears that, in a number of instances, the person in whose name a piece of land was shown in the survey records did not know that that piece of land had been shown in his name until the records of the Japanese survey were made generally available to the people on Kusaie during the American administration. The showing of a given piece of land under a particular person's name in this survey is, therefore, at best only some evidence as to ownership or control. When such a person's rights are disputed, the court will consider other evidence as well,

and determine the ownership on the basis of all the evidence. In this case, where it is clear that neither the person in whose name most of the land was shown nor the person through whom he claims, had been in physical control of the property for ten or fifteen years before the survey and that neither has been since, and other evidence tends to support the claims of another person, any presumption that the owner shown by the survey records is the true owner, has been overcome.

JUDGMENT

It is ordered, adjudged and decreed as follows:—

1. As between the parties and all persons claiming under them, the land known as Fwinnem, located in Lele Island, Kusaie, and consisting of a little over an acre, is owned completely by one or more of the defendants David Ebream, Boas Ebream, Josuah Ebream and Kilion Ebream, all of whom live on Lele Island, Kusaie. No determination has been requested in this action as to the rights of the defendants among themselves, and no such determination is made.
2. This judgment shall not affect any rights of way there may be over the land in question.
3. No costs are assessed against any party.