

(1) In accordance with the provisions of the  
Act of 1961.  
(2) THE HIGH COURT OF THE WESTERN PACIFIC  
(CIVIL JURISDICTION)

BEFORE: The Honourable Mr Justice J. Bodilly  
exercising jurisdiction under the  
provisions of the Western Pacific  
(Courts) Order in Council, 1961.

HOLDEN: At Auki in the British Solomon  
Islands Protectorate on *Tuesday*  
the *12<sup>th</sup>* day of *November*  
1968 at *two* o'clock in  
the *after* noon.

BETWEEN: ROBERT HAROLD GORDON  
Plaintiff

AND: RUINARA  
Defendant

CORAM: J. Bodilly, Chief Justice

PRESENT: Plaintiff in person. Gordon

Defendant and Counterclaimant. Ruaniara  
In person.

INTERPRETER: Clement Videli  
(Koio language)  
Sworn on Bible.

Issues:

(1) Is the Def trespassing in Plf land and doing damage.

(2) If so, is Plf entitled to injunction and /or damages.

Plf to prove.

(3) If not above, is land that of Def.

Def to prove.

Issues agreed .

Plf in person:

Robert Harold Gordon  
of Baunani estate, Malaita.

Sworn on Bible.

This action concerns two of my estates Borasu and Kwa , Central Malaita.

Ex P1  
I have a leashold estate in Borasu. That is a 99 year Crown lease. I derived my title from the Fairymead Sugar Co. I put in ~~my~~ a certified copy of the lease from the Fairymead Sugar Co to me dated 10th September, 1958. This is a certified copy of the lease registered in the Land Registry Honiara and is by the Land Titles Ordinance admissable as prima facie evidence. The land was surveyed in 1958. The l<sup>and</sup> was surveyed by a surveyor named Beever of Sydney, a registered Australian surveyor. I pay my rent to Govt each year.

Ex P2  
Ex P3  
I put in also a certified copy of the previous <sup>Assignment</sup> by Malayta Co to the Fairymead Sugar Co. I also put in the certified copy of the original crown lease from Government to the Malayta Comapnay.

Three leases put in marked P1, P2, P3.

I say tha t the Def is trespassing. I put up a sign post. The post said " Private property sgd R.H.Gordon". I did that because people were planting gardens on the estate inside the place where I put the sign.  
( Plan marked red at approx position post)

I do not know what those people were. I cannot say if they had anything to do with Ruaniara. I did not enquire as to



whether they were of his line or not. I put up the sign towards the end of last year. I believe the signs were taken away. I do not know whether the people are still on the land or not. I know that those people have planted quite a number of coconuts on the land. There were coconuts on the land when I took the lease. They were self seeded nuts. I have been trying cocoa on that land but the plantation has not succeeded. I suspect that the Def was responsible for removing the signs but I never saw him myself.

In all I put up three signs and they cost \$13. It would cost me \$13 to replace them from where they were taken. Two on Borasu and one on Kwa I put up.

As regards Kwa estate.

Ex P4

I also acquired the Kwa estate from the Fairymead Sugar Co. I put in the deed. Deed dated 10th September, 1958 put in. Certified copy of conveyance from Fairymead Sugar Co to Plf put in. (Plan attached to conveyance explained to Def). The Kwa estate was also surveyed by the same surveyor and at the same time.

I say that the trespass took place by the Kwa cove. The trespass took place a little down the coast at a ~~point~~ ~~xxxxxx~~ place called Lawa. I have not planted nuts there but it is heavily timbered. Lawa is on the Kwa estate. The three sign posts which I have mentioned were all taken from their places and removed to Lawa. ~~The gardens~~ ~~xxx~~ I complain of the making of native gardens up near Kwa cove on the estate and also the planting of coconuts. I do not know who the people were who were planting the gardens on Kwa. I made a few enquiries. I gained the impression from those enquiries that they were people of the Defs line. I also suspect the Def of instigating the moving of the sign which I put up on Kwa. I had not myself planted trees near Lawa. When I took the conveyance there were coconuts growing at Lawa. Those trees belonged to the Fairymead Sugar Co. That was in the form of a plantation planted by the Co.

In 1962 I sent some labour to Barasu and three men in Borasu stopped my men from working. That was the first indication that I had of trespass on my land. When I took the lease of Borasu I cannot say if the gardens were in existence or not. When I took the lease I had not been inland on the land but only along the coastal strip. I have ~~also~~ <sup>since</sup> walked from Borasu Harbour to Kwa cove midway through my estate. That was about 1962. Then I discovered gardens. Those are the same gardens to which I ~~am~~ ~~xxxxxx~~ am objecting now. I told the people ~~that~~ <sup>who</sup> were there that they were planting on my ground. They did not say anything. I did not order them off but stressed that they should not be there. I did the same when I saw the gardens on Kwa. I did not ask how long the people had been there. (Plf marks relevant plans with approximate areas of gardens.) I did not worry very much at that time because they were not doing much harm, but when they began to interrupt my labour then I put the signs up. I cannot say how long those people had been there against the Fairymead Co. In 1962 I took out an injunction against the ~~first~~ three men who had resisted my labour and I had also from time to time told the people not to trespass.



As far as I know the trespassers are people who live in the two native reserves. I know that the Def lives in one of the reserves.

XX by Def:

I have a witness who will tell you exactly where he put up the three signs. I do not <sup>know</sup> anything about the Fairmead Co having promised the people any of that land. I deny that the the Fairmead Sugar Co did not see <sup>are</sup> Borasu, Kwa down to Kweimela to me except for the two native reserves on which I have an option should they not be used for reserves. The people who sold me Kwa were the directors of the Co as named on the deed, namely Young and Bullpit. I am afraid that you cannot talk to those two men now, they are I believe in Queensland. I know that the Fairymead Co bought the land from the Malayta Co. When the Fairymead Co came I do not know if they started to work Borasu and Manafula. I do not know Manafula at all. I do not know if Organamai went to Mr Bellow the <sup>District</sup> ~~Commissioner~~ Governor and complained against the Fairymrad people and ~~the Governor~~ went and chased their people away. I cannot say if the Fairymead Co stole your land or not. I know nothing about the ~~Sugarmead~~ Sugar Co having promised this land to your people. I only know that I bought it from them as per the deeds. I don't know if the Co paid your people money or not. I paid the Co money.

*Louy Boring*

PWI: Beni Kai.  
of Baunani. Labourer for Plf.

Sworn on Bible.

I know the Borasu estate. I put sign posts there. Last year I put them there. I put two posts on Borasu. The Def himself did not see me put them up but members of his line did. I do not know what was written on the notices because I cannot read. I actually put one sign on Borasu and two on Kwa estate. Those sign posts were removed. I do not know who moved them. I have never seen them again. When I put up those posts the people of Kwa got angry. I do not know where these people lived. I do not know their names. I also do not know what village they came from. I know Mr Beever the surveyor. I was not working with him but I saw him surveying the land.

No XX by Def.

X by Ct.

I have been living at Baunani since 1928.



I knew the land Borasu and Kwa when the Fairymead Sugar Co had it. I did not go to the land when the Co was there. I cannot say if the people operated gardens there during that time. I cannot say when the people first started to make gardens on that land. When I put the sign posts up I told the people that Mr Gordon has sent me to do it. I say now that the people were not angry with me when I put the posts up. They did nothing and said nothing.

Faulk-Boring

Plf: That closes my evidence.

Def: Ruaniara.

Age 40 approx.

Lives at Furifafeta village. Close to Kwa estate.  
Sworn on Bible.

I claim that Borasu and Kwa is custom land held by me and my line. I am the head of the line. The line is called Bela. I say that Mr Gordon has no title to that land because the Fairymead Sugar Co did not pay for the land. They ought to have paid the people. I say that the people were living on the land then. I say that the people were not living only in the two reserves. They were scattered all about the land. I say that the Fairymead Co had promised to pay the people money for the land but they never did pay. I say that the Co promised to pay us for both places, Borasu and Kwa. I do not know when that promise was made. I only know of it because my ancestors have said so. It was my father. My father never told me that the Borasu was leased land was by crown lease in 1914. My father also never told me how the Fairymead Co got the freehold of the Kwa land. There are still old people who can say that the Co never paid the people anything. I still say that the people own the land land and either the Co or Mr Gordon must pay us. If I had known that the Fairymead Co had really paid for the land I would not have lived on it until today. If the Fairymead Co really had paid for the land I would have known it from my father. I say that the Fairymead Co must have stolen the land as they could never have owned it.

No XX

X by Court.

I say that my grandfather complained against the Co. He chased the Co away from Kwa. He prevented the Co doing any work on the land till today. He did not take the Co to the Court. But Mr. Bell chased them away from Kwa. It was Mr. Bell who told the Fairymead Co that they must pay for the land before they start work.

My grandfather did not sue for the money because the Co told him that if they started work then they would pay them money. I admit that the Co planted up to Lawa and we did not object because they paid the people <sup>for land up to them</sup>. I do not know what was paid, but the spearline divides the part which was paid ~~from~~ the part which was not. That land was not owned by us but by someone else and I know he got paid but my line did not.

*Forlynt Botilly*

Def: states: ~~that~~ that is all I have to tell about.

I have witnesses;

I have eight witnesses.

Paul Misika

George Siamaori

Raymon Dick

Mailaga

Ariana

Salimara

Ahigua Laibae.

The eighth is not here. I will not call him.

*J.B.*

Time 5.p.m. Ct adj to 8.30 a.m. 13.II.68.

Time 8 a.m. 13th November, 1968.

Parties present as before. Hearing resumed.

DWI Paul Misika.  
Kwa village. Kwa estate.  
Farmer.

Age 50 approx

Sworn on Bible.

I have been living in Kwa village for a long time. I have lived there for a long time and I did not know that the land belonged to Mr Gordon. I saw the three sign posts but I did not know what they said. I was in that village before the Farymead Sugar Co arrived. I was there when the Malayta Co was there. I heard that the Malayta Co had sold the land to the Farymead Co. I heard from my father that the Kwa Land and Borasu land had not been bought by the Malayta Co. My <sup>ancestors</sup> generations have been on the land since before the Malayta Co came there. I do not know how the Malayta Co got Borasu. The Malayta Co did not have the Kwa land. Before the Farymead Co came to Kwa my father and grandfather had the land of Kwa. My father and grandfather chased away the Co's workers when they started to work on Kwa. They did not take the Co to court, they just chased them away. A man called Orgamai went and reported to Mr. Bell. Mr. Bell ordered the Co not to work there.



After that the work was not again started on the land of Kwa. My parents went on living there in peace. I do not know how old I am. I heard all this from my father. I do not know anything about it myself. I have always understood from my father and grandfather that no money was paid to the people for Kwa.

XX by Plf.

When Mr Bell ~~was~~ was murdered I was a small boy ( W indicates height 5 or 6) ( Plf stated Bell was murdered about 1927.

*John B. Siley*

DW2: George Siamoara  
of Naiwani village.  
Farmer.

Age 30 approx

Sworn on Bible.

My village is just inside Kwa estate. It is in the area which Mr Gordon claims. I have lived there for a long time. I am 29 years of age.

I was only small when the Farymead Sugar Co was on the land. I only know Mr. Gordon. I knew when the three sign posts were put up by Mr Gordon but I did not know what they meant. I only know of Mr Gordons claim now.

I do not know if the Farymead Co owned the land properly when they sold to Gordon or not.

No XX by Plf.

*John B. Siley*

DW3: Raymon Dick  
of Manatala village.  
Farmer.

Age 40 approx

Sworn on Bible.

My village is inside the Kwa estate. It has been there many years. I do not know how old I am. I do not remember when the Farymead Sugar Co <sup>came</sup> ~~was~~ there but I have heard the story from my grandfather that the Co did not pay the people. I only know when Mr. Gordon was on the land.

I know when the three signboards were posted but I did not know their meaning. I myself have planted coconuts on the land and also a garden.

( W: produces an injunction by the High Court dated 16th August 1962 ~~re~~ restraining W from interfering with Gordons labour. Parties Gordon v Salemauri of Moa, Sudafie of Kwa, Raymond Limodo of Kwa.) ( Civil Suit 5/62).

After I received that injunction I planted coconuts. I was the party Raymond Limodo. It is another name for me.

Since that injunction I have not quarrelled with Mr Gordons labourers but I have carried on Farming.

As I understood that case the judge only told me not to interfere with Mr Gordons labour and he told Mr Gordon not to interfere with my coconuts. My contention in that case was that the Farymead Co had not paid enough money for the land. They had paid some but too little. Sudafi said the same. I have not sued Mr Gordon to recover the land since the injunction. That is all I have to say.

No XX by Plf.

Xby Ct: My grandfather always said that nothing was paid for Kwa and Borasu but money was paid for other land.

*Fairy-Borasi*

DW4: Mailaga

Age 35 approx

of Fo'au village. Close to Kakara.

Farmer

Sworn on Bible.

My village is very close to Kwa. It is just outside Kwa.

I say that ~~that~~ both Boran~~asu~~ and Kwa belong to the Def. and also to me as I am of his line. I say it is ours because Farymead Sugar Co did not pay my grandfather for the land. I say they did not pay anything atall. My father said that nothing atall was paid. I was about seven uyears old when my grandfather died. My father is also now dead. I did not know that in the case ofn Borasu the Co got the land by assignment of crown lease from Malayta Co. Al I know is what my father said that the Farymead Co paid nothing for either place. My father told me that Mr. Bell chased the Fairymead Co away. As far as I know there was no court case.

XX by Plf

I was born very near to Kakara.

DW5: Joe Ariana.

Very old man

Bushlias village.

Farmer.

Sworn on Bible.

My village is on the Kwa estate.

I say that Ruaniara owns the land. I speak of both Borasu and Kwa. I say that Mr Gordon did not buy the land from Farymead Co. I agree that Mr Gordon claims the



land because he says that he bought it from the Farymead Sugar Co.

I was living on the land when the Farymead Sugar Co was on the land. I was there when the Fairymead Sugar Co first came to the land. They came to the land because they wanted to put up a spearline. I was a grown man when that happened. The Co put up the spearline because they said to the people that if they <sup>Co</sup> worked on the land after that they would pay money. The spearline runs from Borasu to Kweimella~~er~~. The old people allowed the spearline because the company said that they would pay if they made use of the land. The Co did not plant or cultivate either inside or outside the spearline. I do not know anything else. I was at a meeting of the old people of the area who met together and there I heard that the Co had promised to ~~pay~~ if the land was used. No representatives of the Co were present at that meeting. It was stated at the meeting that no money was given yet but that the Co had promised.

I remember when the Co sent men to that land to work. They men had been sent to plant coconuts but the people chased them away. They were chased away because the Co had not paid anything for the land. Noone took the compnay to court for the payment. The old people went to Mr Bell and reported and Mr. Bell chased the Co's men away. I was present and I saw Mr. Bell. The Co. Staff were still on the land when Mr. Bell came. Mr. Bell did not hold a court but he ordered the staff away and they <sup>went and</sup> lived at Sui. There was a European member of the Co's staff at that time. I heard Mr Bell say that as the Co had not paid for the land they must not work the land but go where they had paid the owners. Mr Bell chased the staff away from Borasu as well as Kwa. I did not know that Borasu is held on Crown lease, granted in 1914. I know that nothing was paid because I did not see the payment. I also say that because I did not see the owner. I agree that I did not see the judge pay for the typewriter he is using but I do not say he stoel it, but I still say that nothing was paid because I did not see it.

XX by Plf.

I admit that we did not plant coconuts on that land during the Farymead Sugar Co's time. We only planted a few. The Farymead people did not object. I did not know that Gordon had bought the land from Farymead till Gordon put up the sign posts. I admit this is the first court which has been brought against Mr Gordon since he came to the land. The reason for not taking Gordon to court was that Mr Gordon had left the people alone.

No ReX.

Xby Ct.

When I say I know that money was not paid because I did not see it, I mean that if it had been paid I would have known of it and seen it.



Michael

DW6:/Selimara

Very old man

Kwa village.

Farmer.

Sworn on Bible.

The Farymead Co put spear lines in Borasu but they did not pay anything to the people. I say that Borasu was my land. In 1914 I was small. I did not know that Borasu was leased by Crown lease. My father did not make any case against the Malayta Co or complain. My father waited for the Malayta Co to start work and as they did not we did nothing. I never saw or heard whether the Government ever paid anything for Borasu before leasing it to the Malayta Co. I was then about 11 years old. In fact I never knew that the Government had held the land at all until now. I don't know anything about negotiations between Govt and the people before the crown lease.

As regards Kwa. The Farymead Sugar Co came to the land of Kwa about 54 years ago. I cannot say if at that time the Malayta Co was on Borasu land. It was then that a European man came to Kwa. I was then more than 11 years old. I saw the man. He talked with the people. He talked about the land. I understood that the Co promised to pay for the land, but only if they started work on the land. Later on they sent men to plant the land. That was three years later. A man called Orgamai asked the Co to pay the promised money. I say the Co never did pay. Orgamai demanded the money at the same time as he chased away the men. There was a European present. Orgamai then went to fetch Mr Bell the District Commissioner and he came and he ordered the Co off the land. Since then the Co did not start work on the land. I was present. I saw Mr Bell. Mr Bell told the Co Staff that they must not work on the land because the land had not yet been bought. I was present in the crowd and I heard that said.

XX by Plf.

I admit that five years ago I was in court for taking away logs from the land. I admit I was placed on bond to be of good behaviour.

Mo Re X

X by Ct:

I thought that I was entitled to take those logs. I did not take out a civil suit against Gordon because I was too much worried. I did not appeal either against the order. Immediately after that case I and some others put up some money to pay the fees for a court case against Mr Gordon but Sudafie eat up that money for himself and we had not any more. That is why we have not sued Gordon till now. What Sudafie said in the case about the injunction was ~~in~~ with reference to the whole of the estates from Baunani right down. He said the Co had not paid enough. I say that the Co paid up as far as Kweimella but not beyond that. As far up as Kweimella coconuts were planted by the Company. They did not plant anything beyond Kweimella towards Kwa. That is what I say.

Borasu

*Pauly Boley*



DW7: Arsiulaibae

Age 40 approx

Kwa village

Farmer.

Sworn on Bible.

I say that Ruaniara is the owner of Kwa land . He is the head of my line. I say that Gordon has no title because the Farymead Co never paid our fathers for the land. I do not know when the Farymead Co first came to the land. I can only say what my father has told me.

No XX

X by Ct.

I was only a small boy when Mr Bell came to the land.  
I am about 40 now.

*Joseph Botilly*

Addresses:

Def:

I say that Gordon can have no title to the Kwa and Borasu lands because the Fairymead Co had no title to sell <sup>to</sup> him because they never paid the price. They stole the land.

I admit that in 1962 I took away the sign posts which Mr Gordon had put up. I say that the \$13 cost of the posts as claimed by Mr Gordon is too much. I would say they were worth about \$6. I admit that I was wrong to take away the posts without a court order in any event.

That is my case.

Mr Gordon:

I submit that the evidence produced of nonpayment for Kwa is not sufficient. I say that there is no evidence to show that the Farymead obtained the land by Fraud and therefore passed me a bad title. I bought bone fide for value from the Co and knew nothing about this question of non payment to the native owners.

Court adjourns sine die for judgment <sup>reserved</sup>.

*Joseph Botilly*

Chief Justice.  
13th November, 1968.

3rd December, 1968. Time 9.00 a.m.

Parties present as before.

Judgement delivered as attached.

(page 14 etc.)

413



IN THE HIGH COURT  
OF THE WESTERN PACIFIC

Actions Nos. 9 and 10 of 1968.

(CIVIL JURISDICTION)

BETWEEN: ROBERT HAROLD GORDON Plaintiff  
AND: RUANIARA Defendant  
and  
Cross claimant

JUDGMENT

This is an interesting case, and both parties appeared in person without legal assistance.

2. On the 14th September 1968 the Plaintiff filed an application for an injunction to restrain the Defendant from planting coconuts, planting gardens, removing timber and living on the Plaintiff's land situate at Kwa'a (or Kwa) and Borasu on the Malaita island. The Defendant entered an appearance on the 8th October, 1968 and on the 19th October, 1968 issued a writ against the Plaintiff (Action No. 10 of 1968) claiming on behalf of himself and his line to be the owner of the lands in question. In otherwords the Defendant (who maintains that he is the head of his line in custom) is cross claiming that the land is native customary land and not freehold belonging to the Plaintiff. For convenience of trial I have joined the actions and will in this judgment refer to Ruaniara simply as the Defendant.

3. The case falls to be considered in two parts, namely Kwa'a and Borasu, for the titles set up by the Plaintiff respectively depend as regards Kwa'a upon a root conveyance and as regards Borasu upon an assignment of a crown lease. The Plaintiff claims that in both areas the Defendant and his line have been trespassing in that they have been planting coconuts, making native food gardens, taking timber and generally occupying the land contrary to his title and without his consent. In the course of the trial it came to light that this was not the first application for an injunction to restrain by the Plaintiff against members of the Defendant's line. In 1962 in Gordon v Salemauri of Maca, Sudafi of Kwa and Limodo of Kwa (Civil case No. 5 of 1962), the Plaintiff sought an injunction to restrain the three defendants from resisting labourers sent by him to work on Kwa'a and Borasu respectively. An injunction was issued restraining the Defendants from interfering with the Plaintiff's labourers until further order. I have read the judgment in that case and the learned trial judge, Briggs C.J., was at pains in his judgment to make it quite clear that, though he granted the injunction applied for, the question of title was not before him and he made no decision upon it. It is to be noted that two of the witnesses called by the defendant in this dispute were defendants in the action in 1962, namely Salemauri and Limodo.



4. I shall first of all examine the title upon which the Plaintiff stands seized of the Borasu land. Borasu consists of a narrow strip of land between the sea and the Southern shore of Borasu harbour bounded to the north by a line joining a point on the western shore of Borasu harbour where a native track joins the harbour foreshore and running approximately west to the point where the Namoni River flows into Kwa cove. The land was surveyed in 1958 and consists of an area of approximately 167 acres. That piece of land was originally leased on the 1st December, 1914 by the Government for a period of 99 years to a company called the Malayta Company Ltd. The lease (Exhibit P3) purports to be made under the Solomons Land Regulations 1914 (Kings Regulation No. 3 of 1914) which came into operation on the 20th of March of that year, and is headed "Lease of Public Land". By virtue of Regulation 2 of those Regulations, "public land" is defined as being land which is neither native land nor private land. "Private land" is defined as being land owned by non-natives in freehold; and "native land" is defined as follows -

"land owned by natives or subject to the exercise by natives of customary rights of occupation, cultivation or other user".

It follows therefore that either the Borasu land had already in 1914 been acquired as public land by the Government by purchase from the natives or it was at that time land which was not owned by natives or subject to the exercise by natives of customary rights of occupation, cultivation or other user, and the Government exercised its powers pursuant to the provisions of the 1914 Regulations to lease the land to the Malayta Company Ltd, at annual rentals payable to the Government as specified in the lease. On the 27th October, 1936, the Malayta Company Ltd., assigned (Exhibit P2) that lease to the Fairymead Sugar Company Ltd and finally on the 10th September, 1958, the Fairymead Sugar Company Ltd., further assigned (Exhibit P4) the lease to the Plaintiff in this action.

5. Now, the Defendant's contention is that by tradition, which he has endeavoured to establish by evidence, the land of Borasu is native customary land because no one has paid any money to the ancestral members of his line. It is certainly clear that as from 1914 rent has been paid to the Government, and still is, under the public lease. It was not paid to the people. The Government having acted under statutory powers when the land was leased it must be presumed that the provisions of the law under which the Government acted were complied with unless the contrary can be positively established. It must therefore be presumed that the provisions of Regulation 12 of the Solomons Land Regulations 1914 which require that certain enquiries and notifications to be made, were complied with at the time. There is certainly no evidence to establish the contrary. All that the Defendant has shown is that there is a general belief among the people of his line that no money was paid by the Plaintiff or his



predecessors to the Defendant's ancestors. None of his witnesses was aware that the Borasu land was in fact leased by the Government as being as long ago as 1914 at any rate, public land and not native customary land at all. So much for the Borasu land, the Defendant's claim to be customary owner fails, and his cross claim relating to Borasu is dismissed accordingly.

6. The lands of Kwa'a fall under a different category. That land was not public land. It consists of an area of approximately 2205 acres lying between the Namoni river and Kwa Cove to the north east and the Araoro river to the south west. The Plaintiff claims that he is seised of that land in freehold by conveyance from the Fairymead Sugar Company Ltd by conveyance dated the 10th September, 1958. (Deed Exhibit P4). Against him the Defendant claims that the land is native customary land owned by him and his line. He bases his contention again upon evidence of a tradition among the people of his line that the land was originally occupied as native customary land and that his ancestors never sold the land or at least if they negotiated to sell they were never paid. That is the substance of the evidence. And if that were so, it would follow that the root conveyance upon which the Plaintiff relies to establish his title today in fact passed no title to him at all, for the Fairymead Sugar Company could pass no title if they had none themselves.

7. I shall now examine the title to the lands of Kwa'a.

8. Prior to the occupation of the Kwa'a lands by the Fairymead Sugar Company Ltd. the land was occupied by the Malayta Company Ltd. It is to be presumed that the Malayta Company Ltd. came to the land some time before the 23rd March, 1914 because with effect from that date, being the commencement date for the Solomon Land Regulations 1914, acquisition, except by Government under certain circumstances, of customary land from natives by non-natives was prohibited. During the years which followed a commission of enquiry was appointed by the then Resident Commissioner of the Protectorate, pursuant to powers conferred by Regulation 3 of the Solomon and Gilbert and Ellice Islands (Commissions of Enquiry) Regulations, 1914, (being Regulation No. 4 of 1914) to enquire into a large number of land disputes between natives and non-natives. I cannot trace the actual order of appointment of that commission but it is referred to in the preamble to the Solomon Land Claims Regulations, 1923 (King's Regulation No. 8 of 1923). However that may be, by Gazette Notification dated the 24th August, 1922, notice of a number of recommendations of the Commission was published, and it was declared in the notice, inter alia, as follows-

"2. And notice is further given that the said recommendations have been forwarded to the Right Honourable the Secretary of State for the Colonies who will, unless cause is shown to the contrary (due notice of which must be received by the High Commissioner on or before



the 30th day of April, 1923) be asked to confirm or otherwise deal with the said recommendations."

There then follows, inter alia, the following three recommendations relating to the land of Kwa'a -

No of claim	Land	Principal claimants	Occupiers	Abstract of recommendations
1.	Kwa (Aikoi to Busul-aiasi).	Fomolo Boasimbua	Malayta Co. Ltd.	Claim settled. Company to pay £50 compensation.
2.	Kwa (Busul-aiasi to Lolona Creek	Balilama	do	Claim settled. Company to pay £50 compensation.
3.	Kwa (back boundary)	Kwa natives	do	Claim settled. Company to pay £30 compensation. Natives given 18 months in which to vacate the land.

9. The Solomon Land Claims Regulations, 1923, were enacted in order to give legal effect to any recommendations of the Commission which might subsequently be confirmed by the Secretary of State for the Colonies, and by Regulation 4 of those Regulations it was provided that any person who failed to comply with the recommendations as confirmed would be guilty of an offence and liable on conviction to a fine of £100 or, in default of payment by way of distress, to imprisonment for six months, and in addition, if the occupier of the land was the defaulter, to cancellation of his right of occupation. Regulation 6 of the Regulations charged the Registrar of the then Land Registry Office with the duty of taking all necessary steps to give effect to the recommendations. By a Gazette Notification dated 24th June, 1926, notice was given that the Secretary of State had confirmed the three recommendations of the Commissioner relating to Kwa'a as set out above, so that with effect from that date those recommendations had the force of law. In other words the title of the Malayta Company Ltd., to the Kwa'a lands was confirmed by the law and the company was condemned in the payment of £50 in compensation to Fomolo Boasimbua, £50 to Balilama



and £30 to "Kwa natives", and if they failed to do that then they would be guilty of a criminal offence and liable to penalty. Whether Fomolo Boasimbua or Balilama, or for that matter the "Kwa natives", whoever they may then have been, are ancestors of the Defendants line, is a matter of no concern because the Malayta Company was directed by law to pay those people and nobody else.

10. Against that the Defendant has endeavoured to prove a tradition, it amounts to no more than that, among the people of his line to the effect that no money was paid. Indeed of all his witnesses only one witness was aware of the fact that it was the Malayta Company Ltd., and not the Fairymead Sugar Company Ltd., who were on the land at the relevant period, nor were any of his witnesses aware at all that these same lands had been the subject of the Commission's enquiries and recommendations. As already mentioned previously in this judgment in relation to the Borasu lands, what ought by law to have been done must be presumed to have been done, unless the contrary is positively established. There is not a shadow of evidence to show that Fomolo Boasimbua or Balilama or "natives of Kwa" were not paid by the Malayta Company according to the terms of the recommendations. It is further interesting to note that the two persons Fomolo and Balilama were not mentioned in the evidence at all, though they were ~~the~~ principal claimants to the land at the time of the Commission. If the Defendant's contention were of any substance, I should have expected all this to have been known to the Defendant and very close relatives of Fomolo and Balilama, presuming that both of them are now dead, would have been called to swear positively that despite the law they had not been paid. The Defendant's evidence is based upon nothing but hearsay, and goes no further than to show that he and his witnesses today believe that no payment was made. It goes nowhere towards establishing that payment was in fact not made.

11. For the above reasons, the Defendant's claim that the Kwa's land is native customary land under his control as head of his line therefore fails, and his cross claim relating to Kwa's is also dismissed.

12. I now turn to the Plaintiff's application for an injunction to restrain the Defendant from planting coconuts, planting gardens, removing timber and living on the lands of Kwa's and Borasu.

13. Injunction is a discretionary power in the court and will only be granted where no other appropriate remedy will meet the case. Injunctions are granted sparingly and an injunction must not be permitted to become a weapon of injustice.

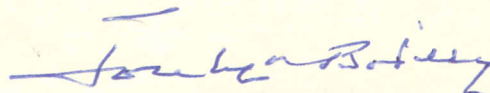
14. The Plaintiff is asking for an injunction to restrain a number of acts by the Defendant. I am quite satisfied that an undertaking by the Defendant would be valueless and I am also satisfied that any other remedy would be



inappropriate and an injunction will therefore issue against the Defendant in the usual form to restrain him from planting further coconuts or making further gardens or removing further timber from the Plaintiff's land, but I will not issue an injunction to restrain the Defendant from living on the land, or require him to vacate any garden which he has already in cultivation or any patch of coconuts which he has already planted, for that would be tantamount to an eviction order; and an application for eviction might well raise other issues which are not in issue in this present case. In other words the Defendant may continue to cultivate any gardens or coconuts which he has already planted and he may continue to live where he is now living, unless or until he is ordered by the Plaintiff to vacate the land. If he then fails or refuses to vacate the land, the Plaintiff will be at liberty to test the matter in other proceedings <sup>now</sup> these. But in the mean <sup>time</sup> the Defendant must not extend those gardens or plant any more coconut trees or take any more timber from the land until further order. The land in dispute is not native customary land but private land and the Defendant has no customary native control or interest in any part of it, nor have any members of his line by virtue only of their kinship to him.

15. The Plaintiff has not in his writ prayed for damages and no order will be made regarding the removal of the three signposts regarding which evidence was given at the hearing, but he has asked for costs. Subject to anything which the Plaintiff may say upon delivery of this judgment I do not propose to make any order as to costs against the Defendant. They are poor people and do not have much money, indeed evidence was given that this claim to ownership against the Defendant would have been brought earlier had the Defendant been able to raise the money with which to pay the fees. As it is, on the evidence, it appears that the fees were raised by collection of contributions from members of his line. I am satisfied that the Defendant has claimed in good faith and although the Plaintiff has substantially succeeded in his case, I would consider it appropriate to make no order as to costs.

16. In the result, the Defendant's claim against the Plaintiff in Civil Case No. 10 of 1968 is dismissed in toto and Plaintiff's prayer in Civil Case No. 9 of 1968 for an injunction to restrain the Defendant is allowed to the extent indicated above.



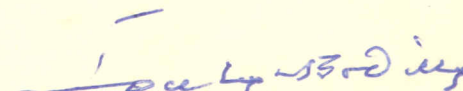
Chief Justice

Date: 3rd December, 1968.

Plaintiff, Mr. Gordon.

I am content for no order to be made as to costs.

Ct. Very well, there will be no order as to costs and each party will bear ~~xxx~~ his own.

  
3. 12. 68



IN THE HIGH COURT  
OF THE WESTERN PACIFIC

1968

Civil Case No. 9.

(CIVIL JURISDICTION)

BEFORE:

The Honourable Mr. Justice  
J. Bodilly, Chief Justice of  
the Western Pacific sitting  
at Auki in the Malaita District  
of the British Solomon Islands  
Protectorate on Tuesday the  
twelfth day of November, 1968.

BETWEEN:

ROBERT HAROLD GORDON

Plaintiff

AND:

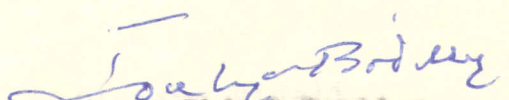
RUANIARA

Defendant

INJUNCTION

Upon hearing the Plaintiff and his witness and upon hearing the Defendant and his witnesses it is hereby ordered and directed that the Defendant by himself, his agents or servants or otherwise be restrained, and an injunction is hereby granted restraining him with effect from the date hereof from planting any further coconuts, planting any further gardens or extending any existing gardens, and removing, damaging or otherwise interfering with any timber upon the Plaintiff's plantations at Boraeu and Kwa on the Malaita Island until further order.

DATED this third day of December, 1968.

  
Chief Justice  
of the Western Pacific