

HIGH COURT. Apia. 1957. 1, August. ROTHWELL J.

Application to assess compensation payable for land taken - land adjacent to river - whether title extends ad medium filum - Samoa Act 1921.

Land bounded by a river prima facie includes the river bed ad medium filum and words of misdescription of title are not sufficient to rebut that presumption; and, as in this case, any contention that the river is tidal cannot affect the validity of title perfected before the coming into force of the Samoa Act 1921.

King v. Morrison /1950/ N.Z.L.R. 247, 257 referred to.

Bridger, for the Crown.
Phillips, for applicant.

Cur. adv. vult.

ROTHWELL J.: This application is made to the Court to assess the compensation payable by the Crown to C.F. Nelson and Company Limited (hereinafter referred to as "the Company") in respect of land taken for road purposes by a proclamation dated February 26th, 1956. A preliminary matter which requires decision relates to the amount of land included in the proclamation for which compensation can be claimed as having been previously the lawful property of the Company. The land in question is adjacent to a river and the Company claims that its title extends ad medium filum. The Crown claims that the boundary is mean high water mark relying on its contention that the river is tidal.

By consent of counsel a certified copy search note and certain survey plans were produced for the inspection of the Court and accepted as being accurate. A plan prepared in 1944 shows the boundary as high water mark but all other plans show the boundary ad medium filum.

A brief review of the title shows the following history:

1. The Court Grant of April 7, 1897, does not specify any area and does not indicate any boundary capable of identification by reference to high water mark or the middle line of the river.
2. On February 12, 1921, the Chief Surveyor and Commissioner of Lands sent to the Registrar of the High Court a survey plan and a covering memorandum reading -

"re Court Grant 890

Herewith please find survey plan of the above for attachment to the Court Grant record."

3. The plan attached to this memorandum includes the bed of the river ad medium filum and the boundary tapers off to high water mark only when it reaches the beach at the river mouth.
4. On November 4, 1921 there was an entry in the Samoan Land Records Volume 4 Folio 172 certifying to a title to "all that parcel of land..... described in Court Grant No. 890 and delineated on a diagram affixed to the said Court Grant."

For reasons which I will advert to later in this judgment I hold that the entry in the register settles in favour of the Company its claim to have a title to the land ad medium filum.

By various transactions duly registered, the Company became the registered proprietor of the land on January 7, 1942. A road proclamation

plan of 1931 shows riparian owners on both sides of the river as having title ad medium filum. A plan prepared in 1944 (said to be at the request of the Company to define its holding) shows the boundary as mean high water mark and reduces the area mentioned on the plan annexed to the Court Grant. The proclamation plan for purposes of the proclamation now under consideration in respect of the piece of land on the Company's side of the river shows the Company as the owner of the land bounded by mean high water mark and claims the river bed land ad medium filum as Crown land.

I find as matters of law based on the foregoing facts as follows:-

1. Land bounded by a river prima facie includes the river bed ad medium filum. The effect of any contention that the river is tidal has no application in this instance for reasons that I will discuss later. (See the King v. Morrison /1950/ N.Z.L.R. 247 at page 257 quoting Lord Justice Moulton in MacLaren v. Attorney-General for Quebec /1914/ A.C. 258:

"In construing the parcels in a document affecting land, say for example a grant, the law treats the parties as describing the land of which the full use and enjoyment is to pass to the grantee. But in cases where the possession of the parcel so described would raise a presumption of ownership of the land in front of it ad medium filum aquae or viae the law holds that it is the exclusion of that land which must be evidenced by the terms of the grant and not its inclusion, and that if not so evidenced that land will be deemed to have been included in the grant if the grantor had power to include it. Hence it is settled law that no description in words or by plan or by estimation of area is sufficient to rebut the presumption that land abutting on a high-way or stream carries with it the land ad medium filum merely because the verbal or graphic description describes only the land that abuts on the high-way or stream without indicating in any way that it includes land underneath that high-way or stream."

2. The Court Grant in itself is inconclusive as it states neither area nor boundaries with clarity.
3. The plan and memorandum of February 12, 1921 constituted an official act remedying the deficiency of and perfecting the Court Grant. That plan includes the bed ad medium filum.
4. The validity of the Court Grant and the annexed plan is confirmed by the register entry of November 4, 1921.
5. The Samoa Act 1921 came into operation on April 1, 1922 and any effect which might have flowed from section 276 relating to tidal lands is conceded by the Crown to be negated by the saving section 372(1) with particular reference to section 372(2) and accordingly no derogation of title is effected by those sections of the Samoa Act. The position is therefore governed by the provisions of section 277 which reads as follows:-

"All land in Samoa which at the commencement of this Act is owned by any person or body corporate (other than land owned by Samoans by Samoan title) shall be deemed to be held by that person or body corporate for an estate in fee-simple as by grant from the Crown, subject, however, to all encumbrances or other interests less than ownership which are at the commencement of this Act vested in any other person or body corporate, and all such land is

hereby declared to be European land accordingly."

6. For what it is worth the proclamation plan of 1931 confirms the position regarding boundary line which I have found to be the legal one and operates against the Crown by way of estoppel to the extent that any such estoppel is necessary.
7. The plan of 1944 is erroneous and in the absence of some concrete dealing, release or transfer cannot derogate from the grant as formerly completed.

In the result I hold that the Company is the owner of the land ad medium filum as shown in the plan annexed to Court Grant No. 890 and consequently is entitled to compensation for the whole of the land shown in the proclamation of February 26, 1956, lying within the boundaries so defined. This judgment is delivered as an interim judgment defining the extent of ownership and if the parties are not now able to agree upon compensation that matter will be fixed on a further supplementary application if such should be necessary.