

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

Heirs of John B. Williams (United States) v. Great Britain (Fijian Land Claims)

8 November 1923

VOLUME VI pp. 104-109



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disallowed by the Governor in Council on September 12, 1887. These appear to us to be all the facts necessary for the decision of this claim.

For the purpose of our decision we make the following assumptions:

1. That Cakobau and his co-signatories gave a valid title in the Suva lands to the Polynesia Land Company Limited.
2. That the Polynesia Land Company Limited gave to their transferees valid titles in the Suva lands.
3. That a land warrant was a good muniment of title, whether perfected by a conveyance or not.
4. That no breach of the regulations of the Polynesia Land Company Limited had been committed.
5. That the title of the transferees of the Polynesia Land Company Limited was not affected by the fact that the payment of the second instalment of the indemnity by the Polynesia Land Company to the United States of America was made 16 months after the appointed date.

We now address ourselves to the decisive question:

Was the claimant Henry on October 10, 1874, the date of the cession of Fiji to Great Britain, proprietor, in his own right, of the 480 acres of land in question or of any part of them?

The onus of satisfying the Tribunal on this point lies on the claimant.

Our answer to that question is in the negative.

The reasonable inference in our opinion to be drawn from Henry's operations and conduct, viewed in the light of the documents, and, in particular, of:

- (1) The land warrants themselves;
- (2) The agreement between Jacob Brache, Copeland and Henry dated August 12, 1870 (memorial, p. 264);
- (3) The receipt signed by Henry dated August 12, 1870;
- (4) The assignment by Jacob Brache to Charles Brache dated August 12, 1873 (memorial, p. 316);

is that Henry was acting from the beginning, whether he be correctly described as trustee or as agent, not on his own behalf. In any case, the evidence falls far short of discharging the onus of proof which is imposed upon the claimant.

But, further, even if it be assumed that, in the first instance, Henry acquired these 480 acres of land for himself, having regard to the facts and documents already referred to and to the sale on September 1, 1873, for valuable consideration of Henry's 160 acres of the Harbour Block to Alfred Asbeck (answer, p. 14), we can not, in the absence of any explanation of these transactions by Jacob Brache, find ground to warrant us in making any award in favour of the claimant.

Now therefore:

The decision of the Tribunal in this case is that the claim of the Government of the United States of America be disallowed.

HEIRS OF JOHN B. WILLIAMS (UNITED STATES)
v. GREAT BRITAIN

(*Fijian Land Claims. November 8, 1923, Pages 606-611.*)

CESSION OF SOVEREIGNTY, ANNEXATION: PRIVATE PROPERTY RIGHTS ACQUIRED
PREVIOUS TO.—INTERPRETATION OF (PRIMITIVE) MUNICIPAL LAW.—

EVIDENCE: DOCUMENTS. VALIDATION, DELETIONS.—CONTRACT: INTERPRETATION. FACTS, FAIRNESS. INTENTION OF PARTIES.—DAMAGES: LUMP SUM. Conveyance in 1846 to Williams, United States Commercial Agent in Fiji, of three lands of 100, 20 and 1,000 acres in Fiji Islands by native chiefs. Cession of sovereignty in 1874 by native chiefs to Great Britain. Subsequent claims for Crown grants concerning three lands disallowed.

Since conveying chiefs were rebels and fugitives and therefore unable to give good titles, deeds for first two lands signed by them not valid. Endorsement by two native landholders adds nothing to their legal effect. Property, moreover, in dispute: Williams occupied two lands not before intervention in 1855 by United States naval commander, who also obtained endorsements on two deeds from chiefs of Vutia. Circumstances, however, largely rob endorsements of value as evidence of free consent to conveyance. Two further documents signed in 1856 by two Vutia chiefs merely acknowledge conveyances executed in 1846 and do not affect Williams' title. *Held* that no title proved sufficient to justify favourable award.

Grantors of third land were in position to give good title. Property not in dispute. Land conveyed to Williams and two others whose names deleted, while no evidence that Williams, who died in 1860, survived two others. *Held* that deed created tenancy in common, not joint tenancy: fairness, facts, intention of parties. Award made for one third of compensation due in respect to whole property. Lump sum allowed.

Cross-reference: Am. J. Int. Law, vol. 18 (1924), pp. 827-831.

This claim is preferred by the Government of the United States of America on behalf of the heirs of J. B. Williams, asking for compensation arising out of the disallowance of that gentleman's title to certain lands in Fiji.

The lands in question are: (1) 100 acres in the island of Laucala; (2) the island of Nukulau, 20 acres; (3) 1,000 acres at Nukubalavu in the island of Viti Levu.

Mr. J. B. Williams appears to have gone to Fiji about the year 1840; he became United States Commercial Agent there, and died there in 1860.

1. As to the *Laucala* land, the claimants produce four documents as the foundation of Williams' title.

The first is a conveyance, dated June 1, 1846, from the chief Cokana Uto or Phillips to Williams and Ichabod Handy, for a consideration of \$50.20 in trade (memorial, p. 329). This deed is endorsed by mark, by two natives, Koromoves and Korotabaleo, who, as "landholders, acknowledged and consented to the sale". These two persons similarly endorsed the Nukulau conveyance and are referred to by Mr. Carew, the Land Commissioner, in his report on that petition, in the following terms:

"They appeared to have followed Cokana Uto about for the purpose of confirming sales of land made by him whether his own property or that of others and it appears from evidence in other claims to have been a matter of indifference to them" (memorial, p. 393).

The second Laucala deed is a conveyance, in consideration of some articles in trade, from Koquaraniqio to Williams and Handy, dated September 25, 1846.

Both Cokana Uto and Koquaraniqio at the respective dates of their conveyances were rebels against and fugitives from the paramount chief of Rewa.

There is no evidence of occupation of Laucala by Williams or anyone else in right of Williams till in the year 1855 or 1856. That occupation took place under the following circumstances.

In September, 1855, the United States ship *John Adams*—Commander Boutwell—visited Fiji in order to take punitive measures against the natives for the destruction and theft of American citizens' property, amongst such property being Mr. Williams' house on Nukulau. Commander Boutwell seized the occasion to investigate Williams' title to Laucala which was in dispute. In his report to the Secretary of the Navy (memorial, p. 362), after referring to the recent disturbances, he says:

"On learning these facts I determined to make the natives build our consul another house; pay the value of \$1,200 in pigs, gum, and fish, for the loss of his property; and reinstate Mr. Williams in possession of his land, the two small islands of Nukulau and Lauthala, which he had purchased and had deeds for. I examined the interpreter who had made the purchase for the consul and his deeds (and) decided that the land belonged to our consul but was informed by Mr. Moore that the chiefs of Rewa and Vutia disputed the claim of Mr. Williams and Mr. Handy (an American) to this land. On September 18 I had an interview with the chiefs of Rewa on board, who acknowledged that the land had been sold to Mr. Williams, and on the 19th I had an interview with the chiefs of Vutia, who not only consented to Mr. Williams' claim, but countersigned the deeds."

These countersignatures, by mark, appear under an endorsement on the two deeds referred to testifying that:

"This matter of the land has been settled to our satisfaction".

Commander Boutwell also endorsed and signed statements to the effect that the title of Williams and Handy was, in his opinion, good.

Without enquiring in detail into the actions of Commander Boutwell, and quite apart from native evidence, the circumstances in which these endorsements were made appear to us largely to rob them of value as evidence of free assent to the conveyances in question. Nor is Commander Boutwell's opinion of Williams' and Handy's title fortified by the fact that, according to his own report, he interviewed the chiefs after having determined to reinstate Mr. Williams in his disputed property.

But Williams was not yet satisfied as to his title, and two more documents were drawn up in identical terms and signed on the same day, the first by a Vutia chief, by name Ko Ra Daka Waqa, dated September 2, 1856, the other, by another Vutia chief, by name Tuni, dated October 2, 1856, and witnessed by one Charles Rounds. The following is the text of the earlier document:

"Lauthala Rewa, September 2, 1856.

"I, Ko Ra Daka Waqa, one of the chiefs of Vutia do hereby acknowledge the purchase and payment by John B. Williams and Ichabod Handy of all that tract and parcel of land called Lauthala Point, or Island, all that part lying south of the creek called Vunia Vaudra which communicates with Rewa River and the bay on the west side of Lauthala, the said creek being navigable for boats at high water, and being the first approach from the anchorage in the roads; the receipt for the goods in payment whereof was previously acknowledged as per deed granted the first day of June and twenty-fifth day of September in the year 1856. To have and to hold the above-released premises to the said John B. Williams and Ichabod Handy their heirs and assigns to them and their use and behoof for ever.

"Witness to signature:
CHARLES ROUNDS

his
KO RA DAKA WAQA ×
mark."

There is no evidence of either of these documents having been explained to the signatory, or of any consideration having passed. But, apart from their value as evidence, it is somewhat difficult to appreciate their effect as muniments of title. They do not purport to be conveyances, or anything more than acknowledgments of the conveyances executed and the consideration paid in 1846. If the deeds of 1846 are valid and *bona fide* conveyances, these documents are superfluous; if the former are not valid and *bona fide* conveyances, the latter do not make them so.

Williams died on June 10, 1860, and Dr. Isaac Mills Brower took charge of his estate and granted leases of the Laucala lands, as Williams had done in some instances between 1856 and 1860.

After the cession of Fiji to Britain in 1874, the Land Commission was instituted to investigate and report on the titles to land granted by natives to foreigners; and in 1875, the heirs of J. B. Williams presented a petition for a Crown grant of the Laucala lands in question. It was heard and disallowed in 1878. The petition was reheard in 1880 and the disallowance affirmed (answer, p. 100).

We find that:

1. Neither of the two grantors under the deed of 1846 was, at the respective date of those deeds either *de facto* or *de jure*, in a position to give a good title to the Laucala land;
2. The endorsements on the two deeds of 1846 add nothing to their legal effect;
3. The title to these lands was in dispute in September, 1855;
4. There was no occupation of the Laucala land by Williams or on Williams' behalf till late in 1855 or in the year 1856;
5. The two deeds of 1856 do not affect Mr. Williams' title which stands or falls by the two conveyances of 1846.

It is pointed out in the memorial (p. 58), that: "four subclaims to land on Laucala, obtained by purchase from Williams and presented by Messrs. Burt, Hennings, and Ryder, were allowed". the suggestion being that there is some *inconsistency between disallowing the title of Williams and allowing titles of purchasers from him*. There is no such inconsistency. These three purchasers proved substantial occupation and, thereupon, they were entitled under the principles followed in Fiji land cases even in the absence of strict title, to a Crown grant *ex gratia*.

With regard to occupation of Laucala by Williams or in his right, no Crown grant *ex gratia* was made; and the refusal of such a grant is not a matter for the consideration of this Tribunal. It may be said that the fluctuating fortunes of native chiefs in civil war afford but slender foundation for any conclusion in one direction or the other as to their right to convey lands, but, apart from that feature of this claim, we think that no title is proved sufficient to justify an award in favour of the claimants. The claim in the Laucala case is, therefore, dismissed.

2. With regard to the *Nukulau* claim, it is to be noted that the Land Commissioner reported favourably upon it, though it was disallowed by the Governor in Council both on the report and after rehearing. With this exception, the facts are substantially the same as in the Laucala claim.

The deed alleged to found Williams' title is a grant of the island of Nukulau by Cokana Uto or Phillips to Williams and Andrew Breed and Samuel T. House, for a consideration of £ 30 in trade, and dated June 8, 1846 (answer, p. 101). Qaraniqo endorsed the deed on September 11, 1848:

“Nukulau, September 11, 1848.

“I acknowledge and consent to the sale of the within-named land, Nukulau, payment having been made to Cokana Uto, myself one piece blue and orange print, twelve dollars.

“Witnesses:

“JOHN H. DANFORD
“DAVID WALKER”

“QARAINQIO,
“his X mark

(Answer, p. 102)

At these respective dates Cokana Uto and Qarainqio were rebels against and fugitives before the paramount chief of Rewa and, therefore, unable to give good title to Nukulau.

Koromovei and Korotabalea endorsed on this conveyance an acknowledgment and consent similar to that on the Laucala deeds.

Commander Boutwell endorses this deed as follows:

“Having examined this deed I consider John B. Williams’ title to the land good.

“E. B. BOUTWELL

“Commanding U.S.S. *John Adam*.”

“Lauthala Roads

“September 17, 1855”

Our observations therefore on the Laucala deeds of 1846 and our first three findings in that case apply to this claim also.

The claim therefore in this case is dismissed.

3. *Nukubalavu*. This claim is different.

Kaibau and Koroiduadua, the grantors of this land under a conveyance of October 12, 1846, for a consideration of \$46 in trade, were in a position to give a good title.

There is title or no evidence of dispute about the property, and, probably in consequence of that very fact, Commander Boutwell plays no part in this claim. As in the Nukulau case, the conveyance was to Williams, Breed and House, the two latter names having been erased wherever they occur throughout the deed, presumably by Williams who profited thereby. Having regard to the fact that these same erasures occur both in the Nukulau and the Nukubalavu deeds at an interval of four months, they must have been made after the execution of the latter deed. There is no evidence that Williams survived Breed and House. If, therefore, this deed were taken as creating a joint tenancy in the strict sense, this would be sufficient to defeat this claim. But in our opinion, it would be fairer and more in consonance with the real facts of the case and the intentions of the parties to treat the deed as creating a tenancy in common, with the result that the heirs of J. B. Williams are entitled only to one third of the compensation which we find to be due in respect of the whole property. The range of value is very wide. The claim is for \$10,000; the valuation of Messrs. Page, Scott, and Joske in 1882 (memorial, p. 390) is £ 2,000; that of Mr. Allardyce in 1893 (answer, p. 26) is as follows:

“*Nukubalavu*. This block is situated on the south coast of Vanualevu and is of no particular value. If put up to auction it would not fetch above a few pounds.”

We think that the justice of the case would be met by an award of a lump sum of £ 150.

Now, therefore:

The decision of the Tribunal in these cases is:

(1) *Laucala*. That the claim of the Government of the United States of America be disallowed.

(2) *Nukulau*. That the claim of the Government of the United States of America be disallowed.

(3) *Nukubalavu*. That the British Government shall pay to the Government of the United States of America the sum of £ 150.

ISAAC M. BROWER (UNITED STATES) *v.* GREAT BRITAIN

(*Fijian Land Claims. November 14, 1923. Pages 612-616.*)

CESSION OF SOVEREIGNTY, ANNEXATION; PRIVATE PROPERTY RIGHTS ACQUIRED PREVIOUS TO.—INTERPRETATION OF (PRIMITIVE) MUNICIPAL LAW.—EFFECTIVE OCCUPATION. Purchase in 1863 by two United States citizens of six small islands in Fiji from Fiji chieftain. Purchase in 1870 of a half interest in same islands by Brower. United States citizen. Cession of sovereignty in 1874 by native chiefs to Great Britain. Subsequent claim for Crown grant presented by Brower disallowed in 1881. *Held* that chieftain had power to give title (reference made to Burt case, see p. 93 *supra*) and that, since islands never had been inhabited, no question as to their effective occupation by Brower could arise.

CONTRACT: INTERPRETATION, MOST REASONABLE VIEW.—PRESENTATION OF CLAIM ON BEHALF OF INTERESTED PARTY. Terms of arrangement entered into by Brower with two individuals some time before disallowance of claim for Crown grant. In the absence of precise facts, the Tribunal interpreting the arrangement takes the most reasonable view. *Held* that title to a half interest was properly vested in Brower at time of cession of sovereignty and at date of filing of claim before Tribunal and that Great Britain, as succeeding Power in the islands, under the obligation assumed at time of cession should have recognized title.

DAMAGES: SPECULATIVE AND PRECARIOUS VALUE, NOMINAL DAMAGES. Since value of islands rested entirely upon rumour of buried treasure, only nominal damages awarded.

Cross-reference: Am. J. Int. Law, vol. 18 (1924), pp. 832-835.

This claim is presented by the United States on behalf of Isaac M. Brower for the sum of \$1,250, with interest. It arises out of the disallowance of Brower's application for a Crown grant to certain lands in Fiji. The facts are as follows:

In 1863, two American citizens, Thompson and Gillam, purchased from a Fiji chieftain known as Tui Cakau a group of small islands, six in number, forming a part of the Fijian group. The islands were designated on the charts as the Ringgold Islands, the native appellation being Yanuca-i-Lau, meaning "bad islands". They were not inhabited. Not more than three of them were of any potential value, the rest being described as "mere rocks" (memorial, p. 439) or "sand banks" (memorial, p. 424). The natives appear to have gone there intermittently to get turtles.

The circumstances surrounding the purchase were somewhat peculiar. Gillam and Thompson came to Fiji apparently with the idea that buried