

detention imposed upon her by sentence of the Community Court for Moen Island on December 8, 1954.

KALIFIN and TISAN, Appellants

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Case No. 30

Trial Division of the High Court

Truk District

March 22, 1955

Appeal from conviction in Truk District Court of violation of Truk District Order No. 3-49. Appellant claims that provision in Administrative Procedure Manual nullifies all district orders which were not approved by High Commissioner. The Trial Division of the High Court, Associate Justice James R. Nichols, held that intent of High Commissioner in exercising his legislative power was not to repeal district orders.

Affirmed.

1. Statutes—Construction

Primary rule of construction of statutes is to ascertain and declare intent of legislature and to carry intention into effect.

2. Statutes—Construction

Intention of legislature, when discovered, must prevail in interpretation of statutes, despite any contrary rule of construction declared by previous acts.

3. Trust Territory—Applicable Law

District orders in force and effect on July 1, 1951, including those issued before requirement that they be approved by High Commissioner, regardless of whether they were issued before or after that date, have not been repealed. (Executive Order No. 32; T.T.C., Secs. 20, 26, 28; Staff Memorandum No. 68)

KALIFIN v. TRUST TERRITORY

Interpreter: F. SOUKICHI
Counsel for Appellant: SMART LAMPSON
Counsel for Appellee: F. PETER

NICHOLS, *Associate Justice*

The appellants in their written argument advanced, as their ground for appeal, that Truk District Order No. 3-49, under which the accused were prosecuted, having never been approved by the High Commissioner, was nullified by the promulgation, on March 2, 1953 of the Administrative Procedures Manual, which contains the following provision on page I.4:

"All District Orders hereto approved by the High Commissioner are hereby authenticated and shall remain in full force until rescinded. Prior approval of the High Commissioner shall be secured before any such order is rescinded. Any District Orders of this class which have not been approved by the High Commissioner are hereby nullified until such approval has been obtained."

The appellee contends that Truk District Order 3-49 was in force at the time of the alleged offense.

Although the accused pleaded guilty at the trial, the court will, in the interest of justice, consider the merits of the appellants' claim without going into the question as to whether any part of it was waived by their pleas of guilty.

CONCLUSIONS OF LAW

Kentiy v. Trust Territory of the Pacific Islands, 1 T.T.R. 188, is in point with this case. It was there decided by this court, on appeal from the Palau District Court, that a District Order attacked on the same ground as in this case, was valid, notwithstanding the provision quoted above from page I.4 of the Administrative Procedures Manual.

In addition to the provisions referred to in the Administrative Procedures Manual, reference must be made to

High Commissioner's Proclamation No. 2, issued on July 1, 1951; Executive Order No. 32, dated December 22, 1952, which promulgated the Trust Territory Code; Sections 20, 26, and 28 of the Trust Territory Code; and Staff Memorandum No. 68 (also designated as Field Memorandum No. 28) of March 2, 1953, covering the distribution of the Administrative Procedures Manual.

[1, 2] General principles pertaining to the construction of legislation are set forth in 50 Am. Jur. Statutes. In § 223, we find the following statement:

"Accordingly, the primary rule of construction of statutes is to ascertain and declare the intention of the legislature, and carry such intention into effect to the fullest degree."

Section 224 of the same Article deals with "Relation of General Rules of Construction to Legislative Intent", as follows:

"In the interpretation of a statute, the intention of the legislature is gathered from the provisions enacted by the application of sound and well settled canons of construction. However, every technical rule as to the construction of a statute is subservient and must yield to the expression of the paramount will of the legislature, since all rules for the interpretation of statutes of doubtful meaning have for their sole object the discovery of the legislative intent, and are valuable only in so far as, in their application, they enable the courts the better to ascertain that intent. It has even been declared that the intention of the legislature, when discovered, must prevail, any rule of construction declared by previous acts to the contrary notwithstanding."

[3] While Section 28 of the Trust Territory Code does not confine the High Commissioner's law making power to the issuance of Executive Orders, this court holds that by construing together High Commissioner's Proclamation No. 2, Executive Order No. 32, Sections 20, 26, and 28 of the Trust Territory Code, Staff Memorandum No. 68, and the provision quoted herein from page I.4 of the

Administrative Procedures Manual, it was clearly the intent of the High Commissioner not to repeal any of those District Orders in force and effect on July 1, 1951, including those which had been issued before the requirement that they be approved by the High Commissioner, regardless of whether they were issued before or after that date.

JUDGMENT

This court therefore holds that Truk District Order No. 3-49 was in full force and effect on March 13, 1954. The findings and the sentences appealed from in Truk District Criminal Case No. 112 are therefore affirmed.

AISEA, Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Case No. 31

Trial Division of the High Court

Truk District

March 22, 1955

Appeal from conviction in Truk District Court of obtaining divorce without good reason, in violation of Truk customary law (T.T.C., Sec. 434). The Trial Division of the High Court, Associate Justice James R. Nichols, held that divorce does not constitute crime under Truk customary law and is not violation of Trust Territory Code regarding local custom.

Reversed.

1. Domestic Relations—Divorce—Custom

Divorce effected in accordance with local custom is recognized as valid. (T.T.C., Sec. 712)

2. Truk Custom—Divorce—Recording

Under Truk custom, marriage may be dissolved at any time at will without action by court, Magistrate, or official, by either spouse "throwing away" other spouse. (T.T.C., Sec. 714)

3. Truk Custom—Divorce—Recording

Failure to record divorce in municipal office has no effect on validity of divorce under Truk custom. (T.T.C., Sec. 714)