

the said Alison Alten, and the plaintiff Sohna Alten has no rights of ownership therein.

2. No costs are assessed against any party.

TRUST TERRITORY, Plaintiff

v.

AUKUS HARTMAN, Defendant

District Court Criminal Action No. 3486

Trial Division of the High Court

Truk District

June 22, 1970

Review of conviction of selling liquor without having obtained a license to do so. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that while there was no explicit provision authorizing confiscation, sale and payment to Trust Territory of seized liquor, court would treat that as a technical irregularity which resulted in a fine in the amount of the sale of the proceeds which was within statutory limits and which did not cause injury to the defendant.

1. Criminal Law—Forfeiture and Penalty—Confiscation

There is no specific provision of law authorizing the confiscation, sale and payment of proceeds to the Trust Territory.

2. Criminal Law—Forfeiture and Penalty—Confiscation

District Courts' ordering item forfeited to Trust Territory was a "technical irregularity" that resulted in a fine in the amount of the sale proceeds of the seized item rather than the specified sum allowed by law and as such irregularity did not result in injury to accused, order would be affirmed. (T.T.C., Sec. 497)

Counsel for Prosecution:

FUJITA PETER, District Prosecutor

Counsel for Defendant and Petitioner for Review:

ISTARO RABIRECK, Assistant Public Defender

TURNER, Associate Justice

Counsel for defendant Aukus Hartman petitioned this court for review of the proceedings whereby the defend-

ant was convicted of selling liquor without having obtained a license from the Truk District Alcoholic Beverage Control Board.

There was much testimony in the District Court record as to whether Faisara village where the defendant lived and sold the beer is on Tol Island or on Wonei Island. The defendant claims it is on Wonei. The question was considered important because Tol Island prohibits the sale of alcoholic beverages. Wonei does not.

The evidence clearly sustains the District Court finding Faisara is on Tol Island. The point is of no importance, however, because the evidence also is equally convincing that the defendant sold beer from his house in Faisara without having obtained a license to do so. It was upon this charge he was convicted and not that he sold beer on Tol, a "dry" island under local option.

Prior to the defendant's arrest the police obtained a search warrant, on substantial evidence of probable cause, and upon search seized 17 cases and 18 bottles of beer stored under defendant's house. When the court found the defendant guilty of selling alcoholic beverages without a license it ordered the beer forfeited to the Trust Territory to be sold by the Sheriff to a licensed liquor dealer, the proceeds of the sale to be deposited "into the Trust Territory revenue". It was the propriety of this order to which defendant's counsel made its principal challenge on review. The four questions advanced by defendant all largely rested upon the proposition the District Court was without authority or jurisdiction to order the confiscation.

[1] It is true there is no specific provision of law authorizing the confiscation, sale and payment of proceeds to the Trust Territory. However, Section 5 of the Alcoholic Beverages Control Act, Public Law 7-4 of the 1963 Session of the Truk District Congress, provides that a penalty

of not exceeding a \$500.00 fine or a year's imprisonment, or both, may be imposed for violation of the act.

The value of the confiscated beer did not exceed \$90.00 and therefore was well within the maximum fine.

[2] We hold, therefore, that it was a "technical irregularity" that resulted in a "fine" in the amount of the sale proceeds of the seized beer rather than a specified sum up to \$500.00. The difference between the loss of the beer or the payment of a fine in an amount equal to the value of the beer did not cause injury to the defendant. Section 497, Trust Territory Code, provides that a judgment will not be set aside on technical grounds unless the irregularity resulted in injuries to the accused. There being only a technical irregularity without injury to the defendant the District Court judgment is affirmed on review.

TERESIA, Plaintiff

v.

NEIKINIA, Defendant

Civil Action No. 434

Trial Division of the High Court

Truk District

June 24, 1970

Action to determine fishing rights on Sapun reef on the western side of Tsis Island in the Truk lagoon. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held under Trukese custom fishing rights on a reef depend upon transfers from predecessor owners rather than on ownership of abutting land and that decision in case would depend upon evidence relating to prior division of the reef and subsequent transfers.

1. Public Lands—Shorelands

Normally the abutting owner may exercise exclusive fishing rights on the adjoining reef if the water does not exceed four feet in depth at low tide. (T.T.C., Sec. 32)

2. Truk Custom—Fishing Rights

The fishing rights "recognized by local customary law" mentioned in Section 32, Trust Territory Code, under Trukese custom may be separated from ownership of the abutting land. (T.T.C., Sec. 32)