limited to the Marshall Islands. This court said in *Adelbai v. Ngirchoteot*, 3 T.T.R. 619, 628:—

"We conclude that exceptions to the general custom developed by actual practice in the clan are recognized and frequently occur."

The practice followed with regard to the specific lands involved in these appeals does not necessarily relate to other eastern Arno lands, despite the court's erroneous conclusion to that effect. In a decision decided the year following the decisions now on appeal, it was held that appellant was indeed the *leroij lablab* for three Arno eastern-side *watos*. *Jetnil v. Buonmar*, 4 T.T.R. 420.

From the record, it must be concluded the appellant has not been recognized by the *alabs* as the *leroij lablab* over these specific lands. In accordance with the customary land law applicable to this ultimate fact, it must be held appellant may not exercise *leroij lablab* rights over the following lands on the eastern side of Arno Atoll:

Malel and Kilane Islands;

Monwadrik, Kebeltobok, Mwetera and Lobol *watos*.

The four judgments on appeal as limited by this opinion are affirmed.

LIJBALANG BINNI, and TOJIRO LOMAE, Appellants

v.

ADRE MWEDRIKTOK, SAMUEL LEMTO, MAINA JAJO, MAKA P., and DAINA MAE, Appellees

Civil Appeal No. 71

Appellate Division of the High Court

June 1, 1971

Appeal from decision sustaining determination of an *iroij lablab* to transfer *alab* rights on Eru Island, Kwajalein Atoll, Marshall Islands District. The Appellate Division of the High Court, D. Kelly Turner, Associate Justice,

held that an *iroij lablab* does not have authority to cut off, change or transfer *alab* rights, once they have vested, for any reason except good cause and the case was remanded for new trial for sufficient findings of fact and conclusions of law.

1. **Marshalls Land Law—"Iroij Lablab"—Limitation of Powers**

   The "iroij lablab" does not have authority to cut off, change or transfer *alab* rights, once they are vested, for any reason except good cause.

2. **Evidence—Presumptions**

   Where facts appear presumptions recede.

3. **Evidence—Presumptions**

   Just as it is true, any fact in contradiction of a presumption destroys the presumption, it is also true that the same set of facts may give rise to conflicting presumptions and that one presumption may overcome another in conflict with it.

4. **Marshalls Land Law—"Alab"—Powers**

   Alab rights will be presumed to continue to exist until it is shown they were terminated in accordance with Marshallese custom and law.

5. **Marshalls Land Law—"Iroij Lablab"—Limitation of Powers**

   The presumption that vested rights will continue to exist unless terminated in accordance with law offsets the general presumption that an *iroij* acts in accordance with the law until the contrary is shown.

6. **Evidence—Presumptions**

   Conflicting presumptions offset each other and remove the burden of overcoming by evidence either presumption.

7. **Civil Procedure—Trial—Cross-Examination**

   Under Trust Territory Rule 12(e), Rules of Criminal Procedure, also applicable to Civil Procedure, cross-examination is solely limited to its relevancy to the issues.

Counsel for Appellants: TOJIRO LOMAE
Counsel for Appellees: SAMUEL LEMTO

Before BURNETT, *Chief Justice*, TURNER and BROWN, *Associate Justices*

TURNER, *Associate Justice*

This is an appeal from a decision which sustained a determination by *Iroij lablab* Albert Loeak to transfer *alab* rights on Eru Island, Kwajalein Atoll, Marshall Islands District. The trial judgment held that appellants, who were plaintiffs below, are no longer the *alabs*, and that

Lijekboke, who was not a party and was said to be incompetent, is the *alab*. The defendants represented Lijekboke and it appears her son, Adre, is handling the money paid by the Trust Territory for distribution to holders of land rights on Kwajalein mid-corridor islands.

During 1966, *Iroij* Albert decided to cut off the *alab* rights of Lijbalang Binni who succeeded her brother, Belekej, as *alab* on his death in 1961. Lijbalang received the *alab* share of copra sales from 1961 until the people of Kwajalein's mid-corridor islands were moved to Ebeye because of the missile testing program. Payments in lieu of copra sales were made to these people by the Trust Territory Government through their leaders, including *Iroij* Albert and *Alab* Lijbalang for Eru Island, commencing in 1966. After Lijbalang received the first payment, the Ebeye Magistrate (who held the money for distribution) began making payments to Lijekboke's representative, Adre, upon orders from the *Iroij*.

Why the change was made does not appear in the record. *Iroij* Albert was not called to testify and the Ebeye magistrate, Jolle Bolkein, could only testify what the *Iroij* told him to do and not why the change occurred.

The *Iroij's* determination, which the trial court adopted, was made at a meeting with the Ebeye council in the absence of the plaintiff or her representatives. At a prior meeting, the parties or their representatives were present but no decision was reached.

Since the *Iroij* was not called as a witness, although the court announced it would "call *Iroij* Albert as its own witness", the testimony of the Ebeye magistrate as to the *Iroij's* decision was hearsay and inadmissible. However, the record discloses a more grievous error of law than this improper admission of testimony.

The judgment below sustained the *Iroij's* determination upon the grounds of the presumption set forth in *Limine v. Lainej*, 1 T.T.R. 107, 112:—

"Determinations made by an *iroij lablab* with regard to his lands are entitled to great weight, and it is to be supposed that they are reasonable unless it is clear that they are not."

[1] In its judgment, the trial court quoted dictum. The actual holding in the case emphasized that the *Iroij lablab* does not have authority to cut off, change or transfer *alab* rights, once they have vested, for any reason except good cause. The holding in *Limine v. Lainej*, supra, which was affirmed by the Appellate Division at 1 T.T.R. 595, is found preceding the above-quoted dictum. The court held at 1 T.T. R. 111:—

" . . . in order for their decisions to have legal effect in land matters, the *iroij lablab* must act within the limits of the law, including Marshallese customary law . . . and where the law left matters to their judgment they must act reasonably as responsible officials and not simply to satisfy their own personal wishes."

Did *Iroij* Albert act "reasonably as a responsible official" in this case when he terminated *alab* rights which had become vested and exercised for five years and assigned those rights to someone else? Unfortunately, the record does not disclose the answer.

Because *Iroij* Albert did not appear as a witness it is impossible to say, as the trial court held, that the *iroij's* action in transferring *alab* rights was reasonable and proper and not "simply to satisfy (his) own personal wishes." The trial decision was based upon the presumptive theory that because an *iroij's* determinations with regard to land are entitled to great weight, it is to be presumed they are reasonable. It appears the trial court believed, although there is no specific holding to this effect, that appellants failed to sustain the burden of proof necessary to overcome the presumption of reasonableness.

[2] If there is only one presumption involved, then it is true there must be some evidence to remove the effect of the presumption. As the cases say, where facts appear, presumptions recede. 29 Am. Jur. 2d, Evidence, § 160.

[3] Just as it is true any fact in contradiction of a presumption destroys the presumption, it also is true that the same set of facts may give rise to conflicting presumptions and that one presumption may overcome another in conflict with it. This principle of law and evidence, the court entirely overlooked in arriving at its judgment.

The facts in this case gave rise to two presumptions. One is the presumption of reasonableness of action of a public official, or in this case, the *iroij*, until the contrary is shown. The other is that when it is established that a condition exists as a result of a state of facts, then it is to be presumed that condition continues to exist until the contrary is shown.

[4] The facts in this case were that *alab* rights for the land in question had vested and been exercised by appellants for five years. The rights will be presumed to continue to exist until it is shown they were terminated in accordance with Marshallese law and custom. *Limine v. Lainej*, supra.

[5] The presumption that vested rights will continue to exist unless terminated in accordance with law offsets the general presumption that an *iroij* acts in accordance with the law until the contrary is shown. 29 Am. Jur. 2d, Evidence, § 167 says:—

> "The establishment of the basic fact of a presumption, it is said, will discharge the burden created by the previous establishment of the basic fact of an inconsistent presumption, and will itself create no burden, and in such case, the existence or nonexistence of the presumed fact must be determined exactly as if no presumption had ever been applicable."

[6] In short, conflicting presumptions offset each other and remove the burden of overcoming by evidence either presumption. The trial court erred by placing the burden of overcoming by proof the presumed propriety of the *iroij's* action.

This presumption of a continuation of an established state of facts is illustrated in a number of United States Supreme Court decisions.

Lazarus v. Phelps, 156 U.S. 202, 15 S.Ct. 271, holds that when possession of land is established in a party it must be presumed that the possession continues until the contrary is shown. *Alab* rights are akin to possession of land.

Bean v. Morris, 221 U.S. 485, 31 S.Ct. 703, held that a system of law shown to have been in effect is presumed to continue in effect until it is shown that it has been changed.

A further illustration is applicable to the conflicting presumptions found in this case before this court. In *Phelan v. Walsh* (Conn.) 25 A. 1, the court held that the presumption is a voter obeys the law when voting prevails over the generalization that public officials—and for the purposes of the present case we can include an *iroij lablab* as a public official—that public officials reasonably and properly exercise their lawful authority when they make a determination. In the voter case, the determination was to reject the ballot cast by the voter. In the case before the court, the determination by the *iroij* was the transfer of *alab* rights from appellant to appellee.

Because this case must be retried, it is suggested to appellees that their obligation is to prove that the *iroij* had good and lawful cause for cutting off the recognized and existing *alab* rights of the appellants. The way to do this is to call *Iroij lablab* Albert Loeak to the stand to explain why he cut off appellants' rights. Then the trial court can determine whether the *Iroij* had good cause as a matter of law and will not be required to resort to a presumption that an *iroij's* determinations are entitled "to great weight", therefore this determination must be adopted as reasonable and lawful.

It is apparent the trial court was uncertain as to what the *iroij* did and had absolutely no knowledge as to why it

was done. This is shown by the judgment conclusion, "that *Iroij lablab* Albert Loeak's purported action . . . was properly within the powers of the *iroij lablab*, and that his determination is binding upon the parties." "Purported" means asserted but not proven.

Whatever the "purported action" was, it was binding upon the parties only if it was established that the *iroij's* decision was for good reason or reasons, "especially when these would upset rights that had once been clearly established." *Limine v. Lainej*, supra. *Lalik v. Elsen*, 1 T.T.R. 134. *Lalik v. Lazarus S.*, 1 T.T.R. 143. *Abija v. Larbit*, 1 T.T.R. 382.

[7] It is further noted in connection with suggestions to the parties on retrial of this case that a serious procedural error occurred during the trial when the court cut off cross-examination "because there was no testimony on direct examination about a genealogical chart." Transcript p. 58. This is not the rule in the Trust Territory. Under Trust Territory Rule 12(e), Rules of Criminal Procedure (also applicable to Civil Procedure) cross-examination is solely limited to its relevancy to the issues. If the genealogical chart, which is found in the court file but does not appear to have been offered in evidence, is relevant to the issues, information concerning it should be brought out upon retrial whether it be by cross-examination or otherwise.

In this decision the trial court made no findings of fact and failed to resolve what it described as conflicting evidence. Unless conflicts of evidence are settled in favor of one side or the other, a decision on the evidence is not possible. The decision cannot rest upon a theory one side or the other failed in its burden of proof when there is no determination as to what, if anything, was proved.

The pre-trial conference memorandum, prepared by a special Master and not by the trial judge, sets forth the

issues and questions involved in the case. The record of trial and judgment thereon shows insufficient evidence was obtained to settle the issues, that no findings were made and no applicable conclusions of law set forth. When a reviewing court is of the opinion that the court below should have stated the grounds for its decision, it should remand the case to the trial court for a statement of its findings and conclusions of law. See *Lotan v. Bartimius*, 5 T.T.R. 358, which points out the necessity of findings of fact and conclusions of law when a case is reviewed on appeal. The statement in the Virgin Islands case by the United States Circuit Court of Appeals in *Kruger v. Purcell*, 300 F.2d 830 that: "We are met at the outset by an insurmountable obstacle to an intelligent review, namely, the inadequacy of the findings of fact and conclusions of law." is as applicable to the present case as in the *Lotan* decision. Also see: *Ford Motor Company v. National Labor Relations Board*, 305 U.S. 364, 59 S.Ct. 301; *Public Service Commission v. Wisconsin Telephone Company*, 289 U.S. 67, 53 S.Ct. 514; and Canon 19, American Bar Association Canons of Judicial Ethics.

As has been demonstrated in this opinion, this case cannot be referred back to the trial court for findings and conclusion, which is the normal appellate practice. There are such omissions of facts and errors of law in the record, it is necessary that a new and adequate trial be held.

The judgment is reversed and remanded for further trial in accordance with the foregoing opinion.