

JUDGMENT

It is ordered, adjudged, and decreed that appellant have and recover from appellee the sum of \$13.90 which sum is the excess interest paid by appellant to appellee at the *ocheraol* held on or about April 19, 1961. Otherwise the judgment is affirmed. No costs are assessed against either party.

TILOHR TUHPWER, Appellant

v.

PENEDIKDUS IOANIS, Appellee

Civil Action No. 210

Trial Division of the High Court

Ponape District

November 29, 1962

Action by individual who impounded stray pig, against owner of pig for compensation for keep and damages under Ponape District Law 3-9-59. The Ponape District Court held that plaintiff was entitled to compensation. On appeal, the Trial Division of the High Court, Chief Justice E. P. Furber, held that owner is liable for just compensation for keep of pig for entire time it was in custody of plaintiff.

Affirmed.

1. Custom—Applicability

Written law is superior to any previous custom on Ponape Island and changes any customary law there may have been previously which was contrary to it.

2. Legislative Power—Generally

Nature and purpose of legislative power is to clarify and change law when in public interest.

3. Livestock—Impounding

Intent of Ponape law providing for impounding of stray livestock is to put obligation on owner of straying livestock to go after it. (Ponape District Law 3-9-59)

4. Livestock—Impounding

Person who has impounded stray livestock in accordance with statute may claim just compensation for its keep for such time as he reasonably has to hold it, including first two days and regardless of how soon owner is identified, provided person impounding animal gives required

notice and animal is reclaimed within sixty days. (Ponape District Law 3-9-59)

5. Livestock—Impounding

Person impounding stray animal may not properly hold it after owner comes for it and shows willingness to take custody of it. (Ponape District Law 3-9-59)

6. Livestock—Impounding

Although obligation is on owner to take initiative in recovering impounded animal and requesting its return, person impounding it cannot deliberately withhold animal or refuse to give it up until payment has been made for damage caused by it. (Ponape District Law 3-9-59)

7. Livestock—Impounding

Burden is on owner to show he requested return of impounded animal in order to stop right of person impounding to hold it longer or charge for its keep thereafter. (Ponape District Law 3-9-59)

8. Livestock—Impounding

Where owner fails to show that he made proper effort to recover pig prior to court hearing as a result of which it was returned, owner is liable for compensation for keep of pig for entire time it was in custody of person impounding it. (Ponape District Law 3-9-59)

Assessor:

JUDGE CARL KOHLER

Interpreter:

EDWEL SANTOS

Counsel for Appellant:

WILLIAM PRENS

Counsel for Appellee:

YOSTER CARL

FURBER, *Chief Justice*

Counsel for the appellant argued that there was a practice on Ponape Island which was so well known it should be considered part of the customary law that if a person captured a pig damaging his property, and the owner was identified within two days, the pig should be returned without any charge for its care by the person who had captured it. We pointed out that in this case the evidence clearly shows that the owner was identified the second day after the pig was caught. He therefore asked that the part of the District Court's judgment awarding compensation for the keep of the pig be stricken out. He specifi-

cally stated that he raised no question about the part of the judgment awarding compensation for the damage done by the pig, and it was agreed in open court that this part of the judgment had already been paid.

Counsel for the appellee stated that he had never heard of the practice alleged by counsel for appellant and that if there had been such a practice which was generally accepted, Ponape District Law 3-9-59 would not have been passed in its present form, and that this law specifically states that a person impounding a stray animal in accordance with it may claim just compensation for its keep from the owner.

OPINION

[1, 2] Whatever the custom may have been on Ponape prior to the enactment of Ponape District Law 3-9-59 the court is clearly of the opinion that this written law is now superior to any previous custom and changes any customary law there may have previously been which was contrary to it. The very nature and purpose of legislative power is to clarify and change law when that is deemed in the public interest by the law-making authority.

The court therefore believes that the only substantial question raised by this appeal is as to the length of time for which a person may properly claim compensation under Ponape District Law 3-9-59 entitled "A Law to Provide for the Control of Livestock". Section 1 of that law provides, among other things, that any person owning livestock—including specifically pigs—shall provide adequate means of control so that such livestock are prevented from causing damage to property. Section 2, which is the one specifically involved here, reads as follows:

"Section 2. Any stray livestock may be impounded by any person if such livestock is found doing damage to property, injury to people, or creating unsanitary conditions which affect people's health, and that person shall notify the chief magistrate of the

municipality, mayor of the town, or District Sheriff within three days of the capture. The person impounding a stray animal may claim just compensation for its keep from the owner, or may keep the animal if no owner appears within sixty days."

Section 3 imposes criminal liability on any person found negligent in carrying out the provisions of Section 1.

[3, 4] The court is of the opinion that the intent of this law is clearly to put the obligation upon the owner of straying livestock to go after it and that a person who has impounded an animal in accordance with Section 2 may claim just compensation for its keep for such time as he reasonably has to hold it, including the first two days and regardless of how soon the owner is identified, provided the person impounding the animal gives the notice required by Section 2, and the animal is reclaimed within the sixty days mentioned in that section. No issue is raised in this case about the matter of notice, and the pig was returned well within the sixty days.

[5, 6] On the other hand, the court is also of the opinion that under Section 2 a person impounding a stray animal may not properly hold it after the owner comes for it and shows a willingness to take custody of it, or sends someone to do this for him who is clearly authorized to do so. In other words, the person impounding the animal is not entitled to deliberately withhold the animal from the owner and thereby run up unnecessary charges for its keep, or refuse to give up the animal until payment has been made for the damage caused by it. The obligation is on the owner, however, to take the initiative in recovering the animal and making a definite acknowledgment of ownership and request for its return if the animal is not offered to him first.

[7] The court holds that the burden is accordingly on the owner to show that he has made such a request for

return of the animal in order to stop the right of the one who impounded the animal to hold it longer or charge for its keep thereafter. In the present case the only evidence of any request on behalf of the owner for the return of the pig before the hearing as a result of which it was returned, is the testimony of the defendant's brother that he asked for the pig at the time he assisted in identifying it the second day after its capture. This was flatly contradicted by the testimony of two people, including the policeman investigating the matter who appears to have been a disinterested witness. This policeman testified not only that the defendant's brother did not ask to take the pig back, but that when the brother was asked about taking it back, he said it was up to the defendant.

[8] On all the evidence, the court holds that the defendant owner failed to show he had made proper effort to recover the pig prior to the court hearing as a result of which it was returned, and that therefore the owner is properly liable for just compensation for the keep of the pig for the entire sixteen (16) days it was in the custody of the plaintiff.

JUDGMENT

The judgment of the Ponape District Court in its Civil Action No. 800 is affirmed.