

ONGALIBANG UCHEL, Appellant
v.
ROBERT P. OWEN, Appellee
Civil Appeal No. 50
Appellate Division of the High Court
May 25, 1970
Trial Court Opinion—4 T.T.R. 132

Appeal from judgment denying recovery for copra seized and destroyed wherein appellant claims error in court's refusal to disqualify itself for prejudicial comments in the course of trial. The Appellate Division of the High Court, Per Curiam, held that where court did no more than to correctly state the law there was no ground for disqualification.

Judges—Disqualification

Where court did no more in an overextended justification of his ruling, than to correctly state the law, there was no basis for disqualification.

Counsel for Appellant: WILLIAM E. NORRIS, ESQ.
Counsel for Appellee: DOUGLAS F. CUSHNIE, ESQ.

Before SHOECRAFT, *Chief Justice*, BURNETT, *Associate Justice*

PER CURIAM

OPINION OF THE COURT

Appellant-plaintiff appeals from judgment in Palau Civil Action No. 392, 4 T.T.R. 132, denying recovery for copra seized and destroyed under the direction of Appellee, Staff Entomologist of the Trust Territory. The trial court found that the copra had been unlawfully unloaded, was infested, and that defendant's action was warranted in order to prevent infestation of copra within the Trust Territory.

No briefs were filed by either party, and counsel waived oral argument.

Only one of the six assignments of error need concern us; the first five do no more than assert, without specifi-

cation, that the judgment is contrary to law and the evidence. The sixth claims error in the Court's refusal to disqualify itself for prejudicial comments in the course of trial.

Prior to instituting his civil claim for damages, appellant was charged with a criminal offense arising out of his possession of the copra in question; he was acquitted in the Palau District Court. On trial of this action the Court received the record of the criminal trial in evidence, but pointed out specifically that it ". . . may not be given in evidence in this action to establish the truth of the facts under which it was rendered. It is not received for proof that any matters decided in that case are *res judicata*."

In an exchange with counsel, the Court offered the further comment: "In order to have convicted a defendant in a criminal action, it was necessary to establish the facts beyond all reasonable doubt. The test as to whether or not the defendant in this action acted wrongfully is a question which has to be decided by the Court under a different degree of proof, that is, in preponderance of the evidence. And with relation to the actions of an agent of the State, I will say this. That his judgment in deciding whether or not to condemn certain property which might have been infected—which was infected so as to be a danger to agriculture in this jurisdiction is not to be bound by the fact that it could not be proved beyond a reasonable doubt that the defendant was guilty of some criminal acts." Counsel for appellant then moved for disqualification, contending that the Court had pre-judged the case without hearing the facts.

The Court refused to disqualify itself, insisting that, rather than ruling on the facts, it had merely stated the law to be that defendant was not barred by the acquittal from proceeding. We agree.

In our view no basis for disqualification existed. The court did no more in an over-extended justification of his ruling, than to correctly state the law. With exceptions not applicable, the great weight of authority supports the rule announced by the Court. See 30A Am. Jur., Judgments, Sec. 472, et seq. Also see the annotation, Conviction and acquittal in criminal prosecution as bar to action for statutory damages or penalty, at 42 A.L.R.2d 634.

Having found no error to justify interference with the judgment of the trial court, we affirm.