KENYUL, TITHIMED and UAAYAN
(the latter being of weak mentality and represented by FAREN as temporary guardian), Appellants
v.
TAMANGIN, YOU, and YANGRUW, Appellees

Civil Appeal No. 16
Appellate Division of the High Court
June 3, 1964

Appeal from the Trial Division of the High Court, Yap District. Appellants contend that judgment was not supported by evidence and was contrary to Yapese custom. The Appellate Division of the High Court, in a Per Curiam opinion, held that where trial judge could have reasonably reached conclusion, appellate court will review only questions of law and that where custom is unclear, it is a mixed question of law and fact which must be proved by party relying upon it.

Affirmed.

1. **Appeal and Error—Scope of Review—Witness Credibility**
   Appellate courts are constituted for dealing with questions of law and not for passing on credibility of witnesses or weighing of evidence.

2. **Appeal and Error—Scope of Review—Facts**
   Where judicial mind, upon consideration of all evidence, could reasonably have reached conclusion of court below, appellate court will review only questions of law.

3. **Custom—Burden of Proof**
   Where there is dispute as to existence or effect of local custom, custom becomes mixed question of law and fact and party relying upon it must prove it to satisfaction of court.

Counsel for Appellants: DABUCHIREN and RUUAMAU
Counsel for Appellees: YOU and FRANK FALOUNUG

Before KINNARE, *Associate Justice*, PEREZ, *Temporary Judge*, DUENAS, *Temporary Judge*

PER CURIAM

This is an appeal from the judgment entered in Civil Actions No. 10, No. 11, and No. 12, Trial Division of the

High Court, Yap District. The above actions were tried together.

Both sides filed written argument and both sides waived oral argument. Therefore, this appeal is considered on the briefs and the record.

Although the "Notice of Appeal" filed herein purported to be filed on behalf of the "People of Palau Village" it is to be noted that the "People of Palau Village" were not parties in Civil Actions No. 10, No. 11, and No. 12. All the parties named in the caption are residents of Palau Village, and the judgment in Civil Actions No. 10, No. 11, and No. 12 specifically provides "as between the parties, all of whom live in Palau Village, Maap Municipality, Yap Islands, and all persons claiming under them . . . ". The appellants named in the caption were the defendants in Civil Actions No. 10, No. 11, and No. 12, and the appellees were, in the order named in the caption, the plaintiffs in those actions.

The appellants rely essentially upon two points: that the judgment is not supported by the evidence, and that it is contrary to traditional Yapese law and custom.

[1, 2] As to the first point, we have carefully reviewed the record (there were four pre-trial conferences, and the transcript of evidence is one hundred ten pages in length). In the brief, appellants invite this court's attention to the testimony of the defendants' witnesses Kenyul, Tithirow, Fazbayad, Figir, Chugen, Faren, Yinugyad and Tithimed. We have considered their testimony—also we have considered the testimony of the plaintiffs' witnesses Tamangin, Muchuu, Gaan, Yangruw, Gilfalan, Sophu, and Louis You.

"Superior appellate courts are, primarily, constituted for the purpose of dealing with questions of law; the consideration of any question of fact by such a court involves a decision on the record without any opportunity being afforded for judging as to the credi-

bility of witnesses except insofar as discrepancies may appear in the testimony in the record. The trial court is naturally in a better position to pass on the credibility of the witnesses, and the appellate court will not, in fact, generally speaking, cannot, set itself up as a judge of the credibility of witnesses, or weigh the evidence, even though a preponderance of it against the finding or verdict is apparent. The question of credibility of witnesses and the weight to be given their testimony is exclusively within the province of the trial court; the province of the appellate court is to determine whether there is any evidence from which the trial court might properly have drawn its conclusion. . . . If a judicial mind could, on due consideration of the evidence as a whole, reasonably have reached the conclusion of the court below, the findings must be allowed to stand. Such findings will not be disturbed when supported or sustained by competent evidence, especially where the evidence is conflicting or where different inferences can reasonably be drawn therefrom. In such cases the conclusion of law only is reviewable." Am. Jur. 3, Appeal and Error, § 896.

We find that the trial judge tried the case with great care, and that the judgment appealed from is amply supported by the evidence taken as a whole.

[3] As to appellants' argument concerning the existence and effect of traditional Yapese law and custom as applied to the case before us, we think the language in *Teitas v. Trust Territory*, Truk District Criminal Case No. 146, Trial Division of the High Court, may be appropriately quoted here.

"If a local custom is firmly established and widely known, this court will take judicial notice of it. (Trust Territory Code Section 21). When, however, as in this case, there is a dispute as to the existence or effect of a local custom, and the court is not satisfied as to either its existence or its applicability, such custom becomes a mixed question of law and fact, and the party relying upon it must prove it to the satisfaction of the court."

The trial judge had evidence before him, and heard argument, to support appellants' theory of the case. He also had evidence before him, and heard argument, to sup-