

JABEZ BUNTING WATKIN AND OTHERS REPRESENTING THE FREE CHURCH OF TONGA v. SETALEKI MANU AND OTHERS REPRESENTING THE WESLEYAN FREE CHURCH OF TONGA.

(Civil Application : H. E. Stronge C. J. Nuku'alofa, 5th August, 1924).

Production of Document — Documents lodged with Privy Council in connection with an appeal — Refused by Clerk to Privy Council to produce — Power of Court.

This was an application by the Plaintiff asking for certain declarations regarding the ownership of property of the Free Church of Tonga. Before the case was argued judgment of the Privy Council in an appeal from the Land Court was given. This appeal covers the points raised in this case (See Government Gazette No. 10 of 1927) and on 12th September, 1924 judgment was formally entered for the Defendants in the present case.

The case is only reported here on the question of production of documents. Certain documents required for the hearing of the case had been made exhibits in the Land Court and had been lodged with the Privy Council with the notice of appeal. The Clerk of the Privy Council had been subpoenaed to produce them and he refused saying that he had been ordered by the President of the Privy Council (the Queen) not to produce them.

Mr. Moody of Counsel for the Plaintiffs.

Mr. Crompton of Counsel for the Defendants, Setaleki Mann and Mataele Fonua.

STRONGE C. J. Under S. 70(2) (sic) [S. 62] of the Magistrates Act 1919 the Court has power to issue a subpoena duces tecum. The documents in question being neither the appellants' notice of appeal nor transcripts of the evidence or judgment in the Land Court are not privileged from production as constituting records for the Privy Council. The Court orders the Clerk of the Privy Council, therefore, to produce the documents at the sitting of the Court tomorrow at 10 a.m. under pain of imprisonment.

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