

SEKONAIA TU'AKOI v. THE PREMIER AND THE MINISTER OF POLICE.

(Civil Action : Sir Claud Seton C. J. Nuku'alofa, 25th May, 1945).

Wrongful dismissal — Premier and Minister sued in personal capacities — Court of Inquiry under 326 of the Police Act 1923 — Sergeant Major of Police — Defendant not his employers.

The Plaintiff, a member of the Tongan Police Force, brought an action against the Premier and the Minister of Police claiming £1000 damages for wrongful dismissal. He originally sued the defendants in their official capacities as representing the Government but at the hearing applied for and obtained an amendment claiming against the Defendants in their personal capacities.

HELD. The action failed as the Plaintiff failed to prove that the defendants were his employers. The facts sufficiently appear in the judgment.

Hale Vete with him S. Kioa for the Plaintiff.

Richardson (Legal Adviser to the Government) for the Defendants.

SIR CLAUD SETON C. J. : The Plaintiff was for fourteen years a member of the Police Force and in July, 1947 was a sergeant-major.

As a result of a court of inquiry held to inquire into alleged breaches of discipline on his part under Section 26 of the Police Act 1923 (Cap. 12) he was suspended from duty on the 4th August, and by a decision of Cabinet made on the 8th September in exercise of the power given to it by Section 33 of the same Act, he was dismissed from the Force with effect from the 4th August.

He brought this action for damages for wrongful dismissal in the first place against the Government but subsequently he sought and obtained leave to amend his claim so as to make the Premier and the Minister of Police in their personal capacities defendants in his action instead of the Government.

The allegations made on behalf of the Plaintiff are that the Court of Inquiry was improperly constituted, that there were irregularities in the proceedings before it, and that the Plaintiff had been guilty of no offence and so on and so on. But these allegations are all irrelevant. In an action for wrongful dismissal, before the Plaintiff can succeed, he must at least show that it was defendants who were his employers and that they it was who dismissed him. But the defendants were not the employers of the Plaintiff nor was it they who dismissed him.

The action is misconceived and must be dismissed.
