

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

(Civil Case : Carew C. J. Nuku'alofa, 12th June, 1949).

Compensation to Relatives of deceased — Deceased killed while in gaol by wrongful act of Gaoler — Action against Premier and Minister of Police — Right of Action dies with deceased.

This was an action brought by the father of a prisoner named Tungua who was killed while in prison. The particulars in the writ read as follows: "The Plaintiff claims from you and the Tonga Government the sum of £8000 as compensation re the value of his son's life (Tungua) who is now dead whilst still under lawful custody of the Government (Police Department). It has been proved in Court, the unlawful Act inflicted by the Police Department (Prison) which caused the death of the said Tungua.

The Honourable Premier was acting for the said Defendant while the Minister of Police was away. The life of the Plaintiff's son lost owing to this unlawful act. The Government has refused to pay the compensation which was claimed, direct from them. The warden who was responsible for the death of the Plaintiff's son has been convicted of Manslaughter before the Court."

The facts were not disputed and are sufficiently set out in the judgment.

One of the submissions of the Defence was that the Crown is not liable in tort but this was not dealt with by the Chief Justice the decision being given on other grounds.

HELD. The Plaintiff had no right of action.

Kioa for the Plaintiff.

Richardson (Legal adviser to the Government) for the Defendant.

CAREW C. J. On the 18th April, 1946 the elder son of the Plaintiff was serving a sentence of imprisonment in the Central Gaol and was subject to ill treatment at the hands of the warden as a result of which the prisoner died the following day. The warden was subsequently convicted in the Supreme Court of Manslaughter and sentenced to five years imprisonment.

The Plaintiff now brings this action against the Premier, who was acting Minister of Police at the time, claiming damages as compensation for the death of his son, the prisoner.

There are at least two reasons why this action cannot succeed. In the first place, the warden was not a servant of the Minister of Police; he was a servant of the Crown as indeed is the Minister of Police. Secondly, the right of the prisoner to be compensated for the wrong done to him by the warden, died with the prisoner; it does not pass to his personal representatives. It is true that if such a case had occurred in England, the personal representatives of the prisoner would have had a right of action against the warden but not against anybody else; that however is the result of an act of Parliament enacted on purpose to provide for such cases, but there is no such Act in Tonga.

The action is dismissed.

EDITOR'S NOTE: After this decision, an Act was passed giving a right of action in such cases as above. See The Fatal Accidents Act 1949 (No. 10 of 1949)