

T. S. TU'AKOI AND ORS. (Appellants, Plaintiffs)  
 v.  
 THE DEPUTY PREMIER AND ANOR. (Defendants, Respondents)

This is an appeal from a decision of the Supreme Court (Hunter J.) dismissing a claim by the plaintiffs against the Deputy Premier and the Acting Minister of Police for wrongful dismissal. A report of the action in the Lower Court is to be found in Vol. I Tongan Law Reports at Page 108 where the facts are sufficiently set forth.

The Privy Council (Hammett C.J.) dismissed the appeal and on the 12th December, 1958 delivered the following judgment:

The two Plaintiff-Appellants who were members of the Police Force, sued the two defendants for damages for wrongful dismissal by the Cabinet. Since the two cases arose out of the same facts and were for similar causes of action they were, by consent, consolidated in the Court of below and dealt with together.

When the cases were opened before the Court below it appeared that the facts were not disputed but the Defendants submitted that the claims must be dismissed as not disclosing any cause of action.

After hearing these submissions the learned trial Judge held that on the agreed facts these actions did not lie and dismissed them. The two Plaintiffs have now appealed.

The facts relied upon by the Plaintiffs were briefly as follows:—

The two Plaintiffs were members of the Tongan Police Force. On 27th March, 1957 they were dismissed from the Police Force by the Cabinet, of whom both the Defendants are members, as a result of a report made to the Cabinet by the Acting Minister of Police. The claims of the Plaintiffs for damages for wrongful dismissal were brought against the Defendants in their official capacities and not against them personally. It is claimed that the complaints made against them were ill-founded and even if well-founded did not merit such a severe penalty as dismissal.

In the course of his judgment the learned trial Judge said, "A servant of the Crown has generally no remedy for dismissal. This is a well established principle of English Law. There is no law in Tonga which deals with the matter but as I have said on numerous occasions, when the Tongan Law is silent on a question of legal principle this Court will rely on the established principles of English Common Law so far as applicable to circumstances in Tonga."

He held that since under English Common Law principles, the Crown can, in the absence of express provisions in an act of Parliament, dismiss its servants at pleasure these actions do not lie and must be dismissed.

Both the Plaintiffs have appealed on the ground that the learned trial Judge was not correct in applying English Law to a case tried by the Supreme Court of Tonga.

We have every sympathy for the difficulties faced by the Court when a case comes before it involving legal issues to which there appears to be no Act of the Parliament of Tonga setting out the law to be applied. We have no doubt that the difficulties which have arisen in this case would not have arisen had there been a Crown Proceedings Act in force in Tonga. It is however necessary to consider whether it is true that there is no law in Tonga which covers the point in this case.

The Police Act (Cap. 17) Section 34 expressly provides for the means by which members of the Police Force may be dismissed in the following terms:—

"34. The Cabinet on the recommendation of any such Court of Inquiry as is specified in section twenty seven hereof or on the recommendation of the Minister of Police may dismiss any officer or member of the Force."

It is clear therefore that Parliament has given express authority to the Cabinet to dismiss any member of the Police Force on the recommendation of (a) A Court of Inquiry;  
(b) The Minister of Police.

The Legislature has given the Cabinet extremely wide powers by this section and a complete discretion whether to exercise its power to dismiss a member of the Police Force or not.

Where a person, acting in good faith and without malice, performs an act which he is authorised to perform by an Act of Parliament he is not liable in damages for any results of such an action any more than Parliament itself is liable.

There was no suggestion in this case that the 2nd Defendant the Acting Minister of Police acted in bad faith or with malice in making his report and recommendation to the Cabinet which resulted in the dismissal of the two Plaintiff Appellants. He was not therefore liable in an action for damages as a result thereof. Again, the 1st Defendant, the Deputy Premier, was merely one member of the Cabinet which dismissed the two Plaintiffs. There is no suggestion that he or any member of the Cabinet was inspired by bad faith or malice. In fact the Plaintiffs made it clear that this was not so because their actions were not against the Defendants personally, but against them in their official capacities. The Defendants are not therefore liable in damages to the Plaintiffs.

The facts relied upon by the Plaintiffs do not support their claims that their dismissals were in any way wrongful.

In our opinion the learned trial Judge was correct in holding that the facts relied upon by the Plaintiffs disclosed no cause of action against the Defendants, although we have reached this conclusion for somewhat different reasons from those given by the Court below.

The appeal is dismissed with no order as to costs.