

Roberts v Bank of British Columbia

Privy Council
Appeal No 2/1985

21 April 1986

*Civil Law Act - Rules of Supreme Court of Judicature of England applicable to
Tonga*

Civil Procedure - Rules of Supreme Court of Judicature, England, applicable

Interrogatories - jurisdiction of Supreme Court to order issue of interrogatories

The Supreme Court made an order in 1985 granting leave to the Bank of British Columbia to issue interrogatories to be answered by Mr and Mrs Roberts who had left Tonga. On an appeal against this order it was argued that there was no jurisdiction for the Supreme Court to issue interrogatories because there was no provision for them in the Supreme Court Act or in the Rules of the Supreme Court.

HELD:

Dismissing the appeal.

That the Rules of the Supreme Court of Judicature of England, which are contained in the First Schedule to the Judicature Act 1875, England were in force in Tonga pursuant to the Civil Law Act, and they provided jurisdiction for the issue of interrogatories.

Statutes considered

Civil Law Act
Judicature Act 1875, England
Rules of Supreme Court of Judicature, England

Counsel for Appellants (leave to withdraw) : Mr Koloamatangi
Counsel for Respondent : Mr Driscoll

Privy Council

Judgment

On the 8th May 1985 Harwood J. made an order granting the Respondent leave to serve certain interrogatories on the Appellants. Although the Appellants had a solicitor acting for them it appears that they personally filed the present notice of appeal against the order. When the appeal was first called before this Council Mr Edwards, who had apparently been engaged by the Appellants to prepare and file a Statement of Defence, sought leave to withdraw as he had had no knowledge of the appeal and was unable to obtain instructions from his clients. It appears that the Appellants have left Tonga on a holiday and their whereabouts are unknown. Mr Edwards was not given leave to withdraw but was asked to renew his efforts to locate the Appellants and obtain instructions. The appeal was called again on the 15th April, being the last day of the Council sitting. On this occasion Mr Koloamatangi appeared for the Appellants and informed us that the Appellants had not been located.

It is quite unsatisfactory that the Appellants left Tonga, knowing that they had an appeal awaiting hearing, without instructing their solicitor or making known where they could be located if necessary.

In those circumstances we decided that the appeal should proceed, particularly as a very narrow point is at issue and little could be added to what appears in the notice of appeal even if the Appellants were present.

The sole ground of appeal is that there is no jurisdiction in the Supreme Court in Tonga to make an order for the issue of interrogatories.

Mr Driscoll for the Respondent raised a number of grounds upon which the appeal should be rejected, but in the circumstances we consider that the appeal should be restricted to the sole ground raised by the Appellants.

It is true that there is nothing in the Supreme Court Act (Cap. 8), or in the rules hereunder, dealing with the issue of interrogatories, but neither is there any provision regarding payments into Court, third party proceedings, discovery, security for costs, orders for interim preservation of property and a host of other procedural matters which are essential to the effective hearing by a Court of a civil action. The answer to the problem is to be found in S. 3 of the Civil Law Act (Cap. 14) which reads:-

"3. Subject to the provisions of this Act, the Court shall apply the common law of England and the rules of equity, together with statutes of general application in force in England."

The English Judicature Act 1875 is an act of general application and the First Schedule to it contains comprehensive rules of procedure applicable in Supreme Court proceedings, including rules concerning the issue of interrogatories. Those rules are set out in extended form in what is commonly referred to as the "White Book" which has been accepted as the basis for Supreme Court practice in Tonga.

The appeal is therefore dismissed with costs to the Respondent of \$150.