

INSPECTOR OF POLICE v. SAMOA GUARDIAN NEWSPAPER  
& PRINTING CO LTD AND WILLIAM TARR

HIGH COURT. 1929. 15, July. LUXFORD C.J.

Assessors - application for appointment - discretion of Court - principles.

There is no absolute right of an accused person, under section 223 of the Samoa Act 1921, to elect trial by a Court sitting with assessors; the composition of the Court being a matter for discretion; and the Court should exercise its discretion in favour of an application for the appointment of assessors made by a person accused of a crime punishable by imprisonment not exceeding 5 years unless the prosecution can show: (a) that circumstances exist which would render improbable a fair and impartial trial by such a tribunal; (b) that circumstances exist which would render a trial by such a tribunal inexpedient; or (c) that the application is made for the purpose of delaying the trial or is otherwise vexatious or frivolous.

Application granted.

APPLICATION for the appointment of assessors, made pursuant to section 223 of the Samoa Act 1921.

Slipper, for applicants.  
Baxter, for Police.

Cur. adv. vult.

LUXFORD C.J.: The defendant Company is the proprietor and publisher of a newspaper which is known as "The Samoa Guardian" and which circulates in the town of Apia and the surrounding districts. The defendant William Tarr is the Editor of the paper.

Four informations have been filed against each defendant in respect of certain words which appeared in the Samoa Guardian in its issue of the 14th day of March 1929; it is alleged by the prosecution that the words offend against section 102 of the Samoa Act 1921: that the words contain a seditious libel within the meaning of that section.

An application has been made on behalf of the defendants, for an order directing that the cases be tried by the Court sitting with assessors. The application is opposed by counsel for the prosecution.

The Samoa Act 1921 prescribes the method of trial in criminal cases: if the offence is punishable by death or imprisonment for a period exceeding five years the Court shall sit with assessors: if the offence is punishable only by a fine the Court shall sit without assessors: in all other criminal trials the Court shall sit without assessors unless the Court in its discretion orders otherwise either of its own motion, or on the application of either the prosecutor or the accused.

The offences with which the defendants are charged are punishable by imprisonment for a period of two years.

During the argument on the present application it was stated at the Bar that there had been previous applications for the appointment of assessors, but that the applications had not been seriously contested: consequently the Court has not laid down any definite principle upon which it exercises the discretion vested in it by the Legislature.

The scheme of trial by the Court sitting with assessors is a form of the ordinary trial by jury modified to meet the conditions of this country.

In the administration of the criminal law in Great Britain and the Dominions it has been found advantageous to make provision for the summary trial of persons accused of the less serious crimes: the right is reserved, however, in most cases, to the accused person to elect to be tried by a jury.

This is a very jealously guarded right in British countries and cannot be overlooked in the consideration which I must give to section 223 of the Samoa Act 1921. Under that section there is no absolute right by the accused to elect to be tried by the Court sitting with assessors: whether the Court shall sit alone or shall sit with assessors is in the discretion of the Court.

In my opinion the Court should exercise its discretion in favour of an application for the appointment of assessors made by a person accused of a crime punishable by imprisonment unless the prosecution can show: (a) that circumstances exist which would render improbable a fair and impartial trial by such a tribunal; (b) that circumstances exist which would render a trial by such a tribunal inexpedient; or (c) that the application is made for the purpose of delaying the trial or is otherwise vexatious or frivolous.

There is no evidence before the Court to show that any such circumstances exist in the present cases.

I order therefore that the cases be tried before the Court sitting with assessors to be appointed under section 224 of the Samoa Act 1921.