

S.H. MEREDITH v. F. STEWART

HIGH COURT. Apia. 1929. 24, 27 September. LUXFORD C.J.

Contempt of Court - failure to pay judgment ordered by Court - validity of rules of High Court - stare decisis. (Samoa Act 1921 and The Rules of the High Court of Western Samoa Consolidation 1924).

The defendant was charged with contempt of Court in that he failed to comply with a judgment of the High Court. Rule 83(5) of The Rules of the High Court of Western Samoa Consolidation 1924, as apparently made under the powers contained in section 76 of the Samoa Act 1921, provides as follows:

"If any judgment debtor disobeys any order made against him under this clause he shall be guilty of contempt of the High Court."

The defendant challenged the validity of the Rule, inter alia, on the ground that failure only to pay a sum of money due under a judgment cannot amount to contempt of Court.

Held: 1. While as a matter of construction there is some doubt as to validity, Rule 83(5) has previously been considered and held by the High Court to be valid.

MEREDITH v. GODINET (unreported) followed.

2. That a Judge of the High Court is bound by the decision of another Judge on the same point of law.

PAPSWORTH v. BATTERSEA BOROUGH COUNCIL (1915)
L.J.K.B. at p. 1885 referred to.

Defendant convicted.

Andrews, for informant.
Slipper, for defendant.

Cur. adv. vult.

LUXFORD C.J.: About 8 years ago the informant commenced a civil action against the defendant in this Court and obtained a judgment in his favour for the sum of £94.8.1. An application was subsequently made for an order under Rule 83 of the Rules of the High Court, and on the 19th day of August, 1924, the Court ordered the defendant to pay the sum of £86.5.11 at the rate of £1 a month per month. The defendant has not fully complied with the order: indeed he has paid only the sum of £26 during the five years which have elapsed since the order was made.

The informant on the 3rd day of September, 1929 laid an information against the defendant charging him with contempt of Court in that he failed to comply with the order of the 19th day of August, 1924.

The defendant has pleaded not guilty to the charge and has set up two grounds of defence, namely:-

- (a) The offence of contempt of Court cannot be committed by reason only of a defendant's failure to pay a sum of money due under a judgment of the Court.
- (b) The defendant has never been in a position to comply fully with the order of the Court of the 19th day of August, 1924.

The first ground of defence challenges the validity of Sub-rule 5 of Rule 83. The defendant contends that the Sub-rule is ultra vires

the powers of the Governor-General.

The power to make rules to determine the practice, procedure and powers of the High Court in its Civil or Criminal jurisdiction is given to the Governor-General in Council by section 74 of the Samoa Act, 1921.

The Governor-General acting specifically under that power by an order-in-Council on the 30th day of June, 1924 made the Rules of the High Court at present in force.

The Rule which has been challenged as ultra vires appears in the rules under the title of "Execution of Judgments". These rules provide for writs of sale and possession and for charging orders and are in conformity with the procedure usually prescribed for similar processes.

Then follows Rule 83 which sets out a procedure for enforcing the payment of a judgment debt under the sanction of liability to criminal prosecution.

The judgment debtor may be summoned before the Court at any time after judgment has been given to show cause why an order should not be made that the judgment debt be paid forthwith or at such time as the Court thinks fit.

The jurisdiction of the Court to make an order is defined by Sub-rule 4 as follows:-

- "(4) Except where the judgment debtor fails to appear in Court
" in pursuance of a judgment summons no such order shall be
" made unless the Court is satisfied either -
- " (a) That the judgment debtor is of sufficient ability
" to pay the judgment debt in accordance with the
" terms of the order; or
- " (b) That the liability in respect of which judgment was
" given against him was incurred by fraud; or
- " (c) That before or after the date of the judgment the
" debtor has made away with any property for the purpose
" of evading payment of such liability."

The argument addressed to me by Counsel for the defendant did not question the validity of the first four sub-rules of Rule 83; Mr Slipper based his argument solely on the validity of Sub-rule 5 which is in the words following:

" If any judgment debtor disobeys any order made against him
" under this clause he shall be guilty of contempt of the
" High Court", which means that he is guilty of a criminal
offence under section 76 of "The Samoa Act, 1921" and is liable to a fine of £50 or to imprisonment for a period not exceeding 6 months.

The provisions of Sub-rule 5 apparently have been made under the powers contained in section 76 of the Act. That section makes the following provisions:

- 76 "Every person is guilty of contempt of the High Court who -
" (a) disobeys any judgment or order of that Court, or
"of any Judge or Commissioner thereof, otherwise than by
"making default in the payment of a sum of money (other
"than a penalty) payable under such judgment or order,

"(b)

"(c)

"(d) deal with abusive behaviour and obstructing administration of justice in the Court.

"(e) does any other thing which elsewhere in this Act or by any ordinance or regulation is declared to be a contempt of Court."

Mr Andrews in his argument said that paragraph (e) gave the Legislative Council of Western Samoa by Ordinance and the Governor-General by regulation power to declare any act or omission to be a contempt of the Court, and that Sub-rule 5 of Rule 83 was an exercise by the Governor-General of that power.

If the validity of the Sub-rule had come up for decision before me for the first time I should have considered very seriously -

(1) Whether rules made specifically under section 74 could make an effective declaration under section 76, Subsection (1) paragraph (e).

(2) Whether the non-payment of a sum of money (not being a penalty) due under a judgment could be declared a contempt of the Court under paragraph (a)(sup).

The word 'other' appearing in paragraph (e)(sup) would seem to indicate that the thing must be ejusdem generis the things specified in paragraphs (a), (b), (c) and (d) of the subsection. At first glance I am very doubtful whether the 'thing' which is declared a contempt of Court in Sub-rule 5 is ejusdem generis the things set out in the said paragraphs.

However I am not at liberty to find that Sub-rule 5 is ultra vires - even if after full consideration I should have come to such a conclusion. The identical question came before the Court in the case of Meredith v. Godinet and His Honour Acting Judge McCarthy decided in favour of the validity of the Sub-rule.

There is therefore a decision by a Judge of co-ordinate jurisdiction to myself, of the same Court on the very point of law raised in this case.

A rule of practice exists: indeed it can well be called a substantive rule of law - so universally has it been adopted in all British Courts - that a Judge of any particular Court follows and should follow the decision of another Judge on a point of law, leaving it to the appropriate tribunal of appeal to say whether or not that decision was wrong.

(PAPSWORTH v. BATTERSEA BOROUGH COUNCIL, 1915 L.J. (K.B.) at page 1885).

I am bound accordingly by the decision of His Honour Acting Judge McCarthy and must continue to be so bound while the present rule remains in force unless the Supreme Court of New Zealand should find that that decision is wrong in law. The first ground of defence raised by the defendant fails.

Unfortunately the second ground must fail also. I say unfortunately because I am satisfied that the defendant's failure to comply with the order of the 18th August, 1924 was due - not to contumacy but to an

- 4 -

inability to pay the money in the terms of the order, in addition to providing his wife and seven young children with the necessaries of life. Yet the law is such that I am compelled to record a conviction against him for a criminal offence.

The defendant is convicted accordingly and is sentenced to be imprisoned until the rising of the Court.