

NELSON APPELLANT
 A N D
 BRAISBY RESPONDENT

FULL COURT. (NO. 3).
 WELLINGTON. [1934] NZLR 636

1934.

June 29.

MYERS, C.J.
 REED, J.
 BLAIR, J.

Practice - Appeal to the Privy Council - Judgment on Appeal from High Court of Western Samoa - Whether Supreme Court has Jurisdiction to grant Leave to appeal to Privy Council - Samoa Act, 1921, s. 96.

The Supreme Court of New Zealand has no jurisdiction to grant leave to appeal to the Privy Council from a judgment of the Supreme Court on an appeal from the High Court of Western Samoa.

MOTION for leave to appeal to the Judicial Committee of His Majesty's Privy Council from the judgment reported p. 559, ante.

P. B. Cooke, with him Shorland, in support. In Tagaloa v. Inspector of Police(1) the topic as to whether this Court has jurisdiction to grant leave to appeal was discussed, but it was not decided. In Slipper v. Braisby (No. 2)(2) no formal view on the point was expressed in the judgment.

As was indicated in Tagaloa's case(3) s. 96 of the Samoa Act, 1921, is solely confined to appeals to the Court of Appeal and does not show an intention that an appeal to the Judicial Committee is prohibited, nor can an inference to that effect be based on s. 95. Section 169 of the Magistrates' Courts Act, 1928, is in substance the same as s. 95 of the Samoa Act, 1921, and affords no bases for an inference that an appeal upwards is forbidden. Section 96 is left, and is not enough to take away the right that otherwise exists under the Imperial Order in Council of January 10, 1910, providing for appeals to the Privy Council from the Supreme Court and Court of Appeal; but, if it had that effect, it would be ultra vires as repugnant to the Judicial Committee Act, 1844 (Imp.), and to the Order in Council itself. A deprivation of the right of appeal given by that Act is repugnant within the meaning of the New Zealand Constitution Act, 1852 (Imp.): Tagaloa v. Inspector of Police(4); Robinson v. Reynolds(5); Reg. v. Marais(6).

Rule 2 (c) of the Privy Council Appeals Rules, Stout and Sim's Supreme Court Practice, 7th Ed. 591, applies to criminal as well as to civil proceedings: Bowron Bros. v. Bishop (No. 2)(7) and Nadan v. The King(8).

[MYERS, C.J., referred to Bhagat Singh v. King-Emperor(9).]

In Nadan's case(10) it was held that local legislation, if and so far as it is intended to prevent the Sovereign in Council from giving special leave to appeal against an order of a local Court, is

repugnant to the Judicial Committee Acts, 1833 and 1834, but the question as to whether a local Legislature can interfere with the right of appeal by right of grant was not decided.

A. E. Currie, to oppose. The decision of any Court is final unless an express right of appeal is granted by the Legislature. Sections 95 and 96 of the Samoa Act, 1921, must be reconciled with the Imperial Order in Council of January 10, 1910. There is no inconsistency as there is nothing in the Samoa Act, 1921, to take away the right of petitioning for special leave; the Samoa Act and the Privy Council Appeals Rules deal with different matters: Minister for Lands (N.S.W.) v. Harrington(11). It is a necessary inference - unavoidable from the terms of s. 96 of the Samoa Act, 1921 - that the decision of the Supreme Court is final: see Slipper v. Braisby (No. 2) (12).

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| (1) [1928] G.L.R. 58. | (7) (1910) 29 N.Z.L.R. 821. |
| (2) [1931] N.Z.L.R. 268, 270. | (8) [1926] A.C. 482. |
| (3) [1928] G.L.R. 58, 59. | (9) (1931) 58 L.R. Ind.App.169. |
| (4) [1927] N.Z.L.R. 883, 902. | (10) [1926] A.C. 482, 490, 492. |
| (5) (1867) Mac. 562, 575. | (11) (1899) 68 L.J. P.C. 60. |
| (6) [1902] A.C. 51, 54. | (12) [1931] N.Z.L.R. 268. |

MYERS, C.J. (orally). The question involved here was mentioned in Tagaloa's case(1), but not decided. It was again mentioned in Slipper v. Braisby(2). Again it was not necessary to decide the question definitely; but I myself expressed the view that what the Samoa Act contemplated was that the judgment of the Supreme Court is to be final, and that the Court had no power to grant leave to appeal to the Privy Council. That was my view then, and I am still of the same opinion. It is, of course, competent for the appellant to apply to the Privy Council for special leave. I think the application must be refused upon the ground that we have no power in the matter.

REED, J. (orally). I agree that we have no power to grant leave to appeal to the Privy Council. It has been authoritatively decided that the New Zealand Parliament has unfettered discretion in the administration of Western Samoa. In pursuance of that power it has enacted the Samoa Act, 1921, of which s. 96 provides that there shall be no appeal to the Court of Appeal from any decision of the Supreme Court of New Zealand. This means that the decision of the Supreme Court on this appeal is final and conclusive, which ousts the jurisdiction of the Court to grant leave to appeal to any higher tribunal.

Whether the Judicial Committee of the Privy Council itself has, in view of the peculiar position under the mandate, any power to grant special leave is a question with which we are not concerned and which would have to be determined in limine on application to that body.

BLAIR, J. (orally). I agree that there is no power for us to grant leave to appeal to the Privy Council. We cannot be said to be refusing leave to appeal - we merely say that we have no power to grant it.

Leave refused.

Solicitors for the appellant: Chapman, Tripp, Cooke, and Watson (Wellington), as agents for Klinkmueller and Pleasants (Apia, Western Samoa).

Solicitors for the respondent: Crown Law Office (Wellington).

(1) [1928] G.L.R. 58.

(2) [1931] N.Z.L.R. 268.

NOTE

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