

## BRECKWOLDT AND COMPANY LIMITED

v

## SAMOA IRON &amp; STEEL FABRICATION LIMITED

(NO. 3)

Supreme Court Apia  
1 May 1978  
Nicholson CJ

PRACTICE AND PROCEDURE (Appeal) - Leave - s 51 Judicature Ordinance 1961 - Leave must be obtained in spite of the fact that an appeal lies as of right.

MOTION for leave to appeal.  
Leave granted and conditions imposed.

Retzlaff for applicant.  
Drake for respondent.

REASONS OF NICHOLSON CJ. I have granted leave to appeal to the Court of Appeal in this case. I indicated that I would give reasons in writing. I now do so.

The question of civil appeals in Western Samoa is governed by Section 51 of the Judicature Ordinance 1961, which reads as follows:-

An appeal shall lie in any action, cause or matter, not being a criminal proceeding, to the Court of Appeal from the Supreme Court -

- (a) As of right when the matter in dispute amounts to or is of the value of \$400 or upwards; and
- (b) With the leave of the Court of Appeal or of the Supreme Court if in the opinion of either Court the question involved in the appeal is one which by reason of its general or public importance or the magnitude of the interests affected, or for any other reason, ought to be submitted to the Court of Appeal for decision.

In spite of the presence of the word "and" between (a) and (b) I conclude that an appeal as of right lies where the value of the subject-matter exceeds \$400 without further qualification. Because of the terms of Section 54 of the Ordinance, however, it is necessary for the Court to give leave even where an appeal lies as of right.

I have therefore granted leave to appeal here because an appeal lies as of right, the subject-matter being of a value in excess of \$400. I imposed the following conditions:-

- (1) Security for costs of \$200 to be furnished within one month from 1st May, 1978;
- (2) By consent the judgment sum, inclusive of costs, is to be paid into Court within one month from 1st May, 1978, together with interest as ordered by the Court to the date of payment.

The Registrar is to place such sum forthwith into an interest-bearing savings account with the Bank of Western Samoa pending resolution of the appeal. Each party will bear its own costs of this application.