TEVITA S. TU'AKOI v. DEPUTY PREMIER AND ACTING MINISTER OF POLICE.

PAULA TAMALE v. DEPUTY PREMIER AND ACTING MINISTER OF POLICE.

(Civil Actions. Hunter J. Nuku'alofa, 10th and 15th April, 1957).

Wrongful dismissal — Action against the Government — Police Officers — Civil Servants — Contract of Service — Crown's right to dismiss at will — No legal cause of Action disclosed on Counsel's opening — Right of Court to dismiss action without hearing evidence — The Police Act 1923 (Cap. 12) 53. 3. 9. 33 — Civil Service Regulations Clause 14-19 — Police Rules.

These were two actions, heard together by consent of the parties, brought by two police officers against the Crown for damages for wrongful dismissal. An initial objection was taken by the defendants that no action for wrongful dismissal lies against the Crown by members of the Police Force. The Court allowed Counsel to open the case before deciding the objection. After the opening and after further argument and before any evidence was called the Court dismissed both actions.

HELD. Action for wrongful dismissal does not lie against the Crown.

Tu'akoi and Folau for Plaintiffs in both cases.

The Defendants in person in both cases.

HUNTER J. : These are two actions (heard together by consent) for wrongful dismissal brought by a Police Constable and a Sergeant of Police respectively against the Deputy Premier and the Acting Minister of Police in their official capacities. There is no claim against the Defendants personally. At the close of Counsel's opening address the Defendants submitted that the writs disclose no cause of action legally maintainable, and that verdicts should be entered for them forthwith; the point was actually taken before the opening address but I indicated that I would permit the Plaintiff to open his case and allow the objection to be taken at the conclusion of his address. I adopted this course because I felt that I should know more about the facts than it is possible to glean from the system of pleading at present in use in Tonga. I was strongly pressed by the Counsel for the Plaintiffs that whatever might be my view as to whether or not such an action lies against the Crown it was my duty to allow him to call evidence. I disagreed with this contention.

A number of submissions were put forward on behalf of the Defendants as to why the actions must fail. Whether or not the Minister's submissions are sound, there is one fundamental difficulty in the way of the Plaintiffs which is fatal to their claims. Although the point was not raised in argument by the Defendants (except perhaps inferentially) it is one of which the Court must take notice. It is this : A servant of the Crown has generally no remedy for dismissal. This is a well established principle of English law. There is no law in Tonga which deals with the matter, but as I have said on numerous occasions when the Tongan law is

silent on a question of legal principle this Court will rely on the established principles of English Common Law, so far as applicable to circumstances in Tonga.

In the present case the Plaintiffs are both servants of the Crown (See Cap. 12 ss. 3.9.) and they were dismissed by Cabinet on the recommendation of the Minister of Police.

The English law regarding the dismissal of Crown Servants is stated in Halsbury (Vol. 7 Simonds Edition P. 252).

"In the absence of special statutory provisions all contracts of service under the Crown are terminable without notice on the part of the Crown."

In Terrel v. Colonial Secretary (1953). 2 All E.R. 490. Lord Goddard C. J. speaking of the Crown's right to dismiss a servant at pleasure said (P. 496) "Once a doctrine has become a rule of law, as I think this has, the Court is bound to apply it without enquiring into its origin." In England the Courts have laid it down that the Crown's right to dismiss at pleasure exists notwithstanding a contract between the Crown and the Servant that the employment will continue for a specified period. Even if Clause 2 (i) of the Police Rules, passed in pursuance of S. 8 of Cap. 12 coupled with the enrollment of the Plaintiffs as police officers could be construed as a term in a contract between them and the Crown, and I do not think that it could, this would not prevent the Crown from dismissing them before the expiration of the twelve years. (See Dunn v. Reginam (1896) 1.Q.B. 116, Shenton v. Smith (1895) A.C. 229 and Rodwell v. Thomas (1944) K.B. 596).

Counsel for the Plaintiffs submitted that as there is no law in Tonga to say that the Crown can not be sued for wrongful dismissal it follows that the present actions are well founded. I do not agree with this contention; as I said above the English common law principles should be applied here, and under that principle the Crown can dismiss its servants at pleasure.

Of course the right of the Crown to dismiss at pleasure may be abrogated by statute (see Goddard v. Stuart 1896 A.C. 575) and it was submitted by the Plaintiffs' Counsel that the Civil Service Regulations apply to the present cases and that the Plaintiffs could only be dismissed by the Privy Council after Clauses 14, 15, 16, 17, 18 and 19 of those Regulations had been complied with. I am very doubtful whether those provisions of the Civil Service Regulations apply to the Police Force at all, but even if they do they can certainly not over ride Section 33 of Chapter 12 which gives Cabinet a right to dismiss a member of the police force on the recommendation of the Minister.

It follows that these actions do not lie and must be dismissed.

I enter a verdict for the Defendants in each case.

No order as to costs.