

HALE VETE v. 'ISILELI TU'ITUPOU.

This is a decision of the Privy Council which lays it down that there is no right of appeal from a decision of the Supreme Court sitting on appeal from the decision of a Magistrate.

On the 5th October, 1960 the Privy Council (Hammett C.J.) delivered the following judgment :

On 11th September, 1957 the Appellant Hale Vete was sued by the two Respondents in the Magistrate's Court at Nuku'alofa for damages arising out of an accident in which a lorry owned by Hale Vete, but driven by his employees was involved. The Magistrate held that the driver was liable but that Hale Vete was not liable for his employee's acts and dismissed the case against him.

The Respondents appealed to the Supreme Court which on 6th April, 1959 allowed the appeal. It was then held that Hale Vete was liable in damages for the negligence of his servant, whilst that servant was acting in the course of his employment.

Hale Vete has now appealed to the Privy Council against the decision of the Supreme Court sitting as a Court of Appeal from the Magistrate's Court.

A right of Appeal against a decision of the Magistrate's Court lies to the Supreme Court under the provision of Section 69 of the Magistrate's Court Act (Cap. 7) of which the relevant part reads :

"In every civil case either party shall have a right of appeal from the judgment of a Magistrate to the Supreme Court".

No further right of appeal is provided in the Magistrate's Court Act.

In the Supreme Court Act Section 4 is set out the original jurisdiction of the Supreme Court which in Civil cases is limited to those in which the amount claimed exceeds £50. Section 5 of that Act provides for a right of appeal from the Supreme Court by way of petition to the Privy Council. It is clear that that right of appeal extends only as far as those cases which in the previous section are within the original jurisdiction of the Supreme Court.

We have examined the law and have been unable to find any provision which authorises the Privy Council to entertain appeals from the decisions of the Supreme Court acting in the exercise of its appellate jurisdiction. The Appellant has been unable to refer to any case in the past in which the Privy Council has exercised jurisdiction in such appeals. M. Finau for the Respondent has informed us that in his experience as a licensed lawyer, stretching back to 1919, no such appeal has ever been entertained by the Privy Council.

In our opinion there is no right of appeal to the Privy Council from the decisions of the Supreme Court in the exercise of its appellate jurisdiction.