

SLIPPER v. BRAISBY (NO. 2)

[1931] NZLR 268

S.C.
FULL COURT.
WELLINGTON.

1930.
September 15.

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

Samoa Act - Practice - Application for Leave to appeal to Privy Council from Decision of Court on Appeal from High Court of Western Samoa - Whether Matter of Public or General Importance - Power to stay Execution of Judgment of Samoan High Court - Jurisdiction to grant Leave - Samoa Act, 1921-22, ss. 95, 96 - Rules of Appeal to the Privy Council - Rules 2 (c), 6.

On an application by appellant for leave to appeal to the Privy Council from a decision of the Supreme Court upholding a conviction by the High Court of Western Samoa of appellant for an offence under the Samoa Act, 1921-22.

Held by the Full Court (Myers, C.J., Reed and Blair, JJ.), doubting, in any event, whether, in view of the provisions of ss. 95 and 96 of the Act, the Court had jurisdiction to grant leave, That the matter was not of such general and public importance to justify granting leave, particularly as there was no jurisdiction to stay execution of the judgment of the High Court, and leave, if granted, would be of no value to appellant.

Tagaloa v. Inspector of Police, Samoa(1) and Stout and Sim(2) considered.

- (1) [1927] N.Z.L.R. 883; [1928] G.L.R. 58.
- (2) Practice and Procedure of the Supreme Court, 6th ed. 523.

MOTION by appellant for leave to appeal to the Privy Council from a decision of the Supreme Court upholding his conviction by the High Court under the Samoa Act, 1921-22.

Von Haast, for the appellant:-

See s. 96, Samoa Act, 1921. This Court has jurisdiction to grant leave to appeal. The question was argued, but not decided, in Tagaloa v. Inspector of Police, Samoa(1). The distinction made by the late Chief Justice in that case is relied on. The statute prohibits an appeal from the Supreme Court to the Court of Appeal, but not from the Supreme Court to the Privy Council. In re Ell(2) and Ewing v. Scandinavian Water-race Co(3) are distinguishable owing to the use of the words "final and conclusive." In Boyd v. Colby (No. 2)(4) leave was given to appeal direct to the Privy Council from a decision of the Supreme Court where there was no appeal to the Court of Appeal. As to the Court's discretion, see Rule 2 (c) of Privy Council Rules: Stout and Sim(5). This is a matter of general and public importance, because the appellant was

representing Natives in mandated territory and doing what he conceived to be his duty. It is of great importance that any representative of a Native race should have full liberty to do what is necessary to voice that principle. The fact that the Court is unanimous in its judgment is not a sufficient reason for refusing leave to appeal: Bowron Bros. v. Bishop(6); Scales v. Young(7). As to appeals to the Privy Council in criminal cases, see Nadan v. R.(8); Knowles v. R.(9). As to stay of proceedings, see Rule 6, Stout and Sim(10); R. v. Bertrand(11).

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| (1) [1927] NZLR 883, [1928] GLR 58. | (7) [1930] NZLR 327, GLR 176. |
| (2) 4 NZLR (CA) 114. | (8) [1926] AC 482. |
| (3) 24 NZLR 271, 291. | (9) 46 TLR 276. |
| (4) [1918] NZLR 571, GLR 333. | (10) 6th ed. 526. |
| (5) 6th ed. 523. | (11) LR 1 PC 520, 525. |
| (6) 29 NZLR 821, 826; 12 GLR 529,532. | |

Fair, K.C., Solicitor-General, for the respondent:-

As to stay of execution, the decision in Bowron Bros. v. Bishop(1) assumes that there is no power to stay execution. Leave to appeal will not be granted, as no question of general or public importance is involved. The only substantial question that this Court had to consider was whether the occasion was privileged, and it is submitted that on that question the law is well settled by the decisions cited in the judgment of this Court. It is of the utmost importance that a decision on a criminal charge should take immediate effect without a long drawn-out process of appeal: Nadan v. R.(2); Umra v. The King-Emperor(3). In criminal matters the Privy Council will only grant leave where there has been a patent miscarriage of justice, as in Knowles v. R.(4); and in considering whether this Court will grant leave it should be guided by much the same consideration. As to whether there is jurisdiction to grant leave to appeal, it is submitted that if the Act forbids further litigation in New Zealand, a fortiori it forbids an appeal to the Privy Council. In Boyd v. Colby (No. 2)(4) the Court assumed that it had jurisdiction.

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| (1) 29 NZLR 821, 12 GLR 529. | (4) 46 TLR 276. |
| (2) [1926] AC 482, 496. | (5) [1918] NZLR 571, GLR 333. |
| (3) 41 TLR 86. | |

MYERS, C.J. (orally):-

It is unnecessary to determine definitely in this case the point that was expressly left open in Tagaloa v. Inspector of Police, Samoa(1). I refer to the question as to whether this Court has power to grant leave to appeal to the Privy Council in a case of this kind. But I may say that, speaking for myself, I do not think that that power does exist. Section 96 of the Samoa Act says that there shall be no appeal to the Court of Appeal from any decision of the Supreme Court of New Zealand on an appeal from the High Court. Then s. 95 says: "The determination of the Supreme Court on an appeal from the High Court shall be transmitted to the Registrar of the High Court by the Registrar of the Supreme Court under the seal of the Court, and judgment shall thereupon be entered in the High Court in conformity with that determination."

It does seem to me, though it is unnecessary to express a concluded opinion in this case, that these provisions preclude any grant of leave to appeal by this Court to His Majesty in Council. Of course, the appellant is entitled, if he thinks fit, to apply to the Privy Council for special leave to appeal. That may or may not be granted upon an application by the appellant, but the right to

make the application is open to him, as clearly also is the prerogative right of His Majesty in Council to grant leave to appeal if the case is considered one in which leave should be granted.

Assuming, however, that this Court has the power, I think that in this case, just as in Tagaloa v. Inspector of Police, Samoa (1), leave should not be granted. Even if leave were granted, it would be of no value to the appellant, because, so far as I can see, there is no good reason for saying - and, indeed, this is admitted by Mr. Von Haast - that this Court has the power to stay execution. No. 6 (which provides for stay of execution in certain cases) of the rules providing for appeals to the Privy Council does not seem to be sufficient to meet such a case as this: Stout and Sim (2). It would therefore be a futile proceeding to grant leave to appeal, assuming that we have the power. Furthermore, the power - assuming it to exist - is derived only from para. (c) of Rule 2: Stout and Sim (3). That rule reads thus:-

2. Subject to the provisions of these rules, an appeal shall lie -
 (c) At the discretion of the Supreme Court, from any final judgment of that Court if in the opinion of that Court the question involved in the appeal is one which by reason of its great general or public importance or of the magnitude of the interests affected, or for any other reason, ought to be submitted to His Majesty in Council for decision.

I do not think that this is such a case. The real question in the case turns upon the point as to whether the occasion on which the appellant published this defamatory libel was a privileged occasion, or, rather, an occasion of qualified privilege. This Court in its judgment was unanimous on that point. The question is whether that matter is one of great general or public importance such as would justify this Court in granting leave to appeal. In my opinion, it is not; and leave to appeal to His Majesty in Council should be refused.

(1) [1927] NZLR 883, [1928] GLR 58

(2) 6th ed. 526.

(3) Ibid., 523.

REED, J.:--

I agree, and have nothing to add.

BLAIR, J.:--

In my opinion, s. 96 of the Samoa Act, and also s. 95, make it plain that the decision of the Supreme Court is final, and that there is no right of appeal. That seems to me to conclude the case. I agree also, for the reasons given by the Chief Justice, that this case is not one in which leave should be granted, on account of the want of public interest, even if there is power in this Court to grant leave in the cases mentioned in para. (c) of Rule 2 of the rules governing appeals to the Privy Council.

MYERS, C.J.:--

Leave is therefore refused and the motion dismissed.

Leave refused.

Solicitors for the appellant: O. and R. Beere (Wellington).

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

NOTE

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