

IN RE THE SAMOA REGISTRATION OF EUROPEANS REGULATIONS, 1920
AND IN RE HARRY STEPHEN SCHUSTER

High Court Apia
2 November 1938
Harley CJ

EUROPEANS (Registration) - The Samoa Registration of Europeans Regulations, 1920 - Definition of "Samoan" for purpose of Regulations - Samoa Act, 1921 as amended by the Samoa Amendment Act, 1926.

Petitioner's grandfather was a white European by birth. His father was born in Samoa of a Samoan mother and was not registered as a European. Petitioner was also born in Samoa of a Samoan mother, and was legitimated by Order of the Imperial District Court 23 March 1914.

Held: Petitioner, being three-quarters Samoan and one-quarter European and not the legitimate child of a father, who was European either by birth or registration, fell within the definition of a "Samoan" and was accordingly qualified to file a petition under The Samoa Registration of Europeans Regulations, 1920.

Fitzpatrick for Petitioner.

HARLEY CJ. The Petition is one under The Samoa Registration of Europeans Regulations, 1920 for inclusion of the Petitioner in the Register of Europeans. The facts are as follow.

The original Schuster, whom I call Schuster I, was a European having been born in Europe of white parents. He contracted an alliance with a Samoan woman and had issue in Samoa, James Schuster, whom I call Schuster II. Schuster II, the father of Petitioner, contracted an alliance with a Samoan woman, Vai. Petitioner, whom I call Schuster III, was born in Samoa on the 20th March, 1894, and was legitimated by Order of the Imperial District Court on the 23rd March, 1914.

Schuster II is not on the Register of Europeans.

From the above facts it is clear that Schuster I is a European by birth. Schuster II is half Samoan and half European by birth and ancestry, and Schuster III is three-quarters Samoan and one-quarter European by birth and ancestry.

The first point to be noted is that clause 3 of The Samoa Registration of Europeans Regulations, 1920 states that, "Any Samoan who is not of pure descent from the Polynesian race may, . . . apply . . .", and that immediately raises the question whether Schuster III is a Samoan. These Regulations were made by the Governor-General pursuant to the powers conferred on him by the Western Samoa Order in Council, 1920 (Imp.), and also pursuant to clause 4 of the Samoan Constitution Order, 1920.

A reference to the Samoa Act, 1921, section 373, shows that the Samoa Constitution Order, 1920 has been repealed by implication, although all Orders in Council, orders, and all acts of authority which originated thereunder, shall enure for the purposes of the Samoa Act, 1921 and shall when necessary be deemed to have so originated.

The Samoa Constitution Order, 1920 has gone and in its place and necessary to provide the authority for the passing and continuance of The Samoa Registration of Europeans Regulations, 1920 has come the Samoa Act, 1921. It must then be of necessity that we look to the Samoa Act, 1921 for the definition of a "Samoan".

This is not such a jump as it might seem, however, for in the preamble to The Samoa Registration of Europeans Regulations, 1920 we find the definition of a Samoan taken from the Samoa Constitution Order, 1920, and this definition is exactly the definition of a Samoan as it appeared in the Samoa Act, 1921.

Taking the definition of "Samoan" given in the Samoa Act, 1921 as amended in 1926, we find that a Samoan "means a person belonging to the Polynesian race, whether by pure or mixed descent; but does not include - (a.) Persons registered as Europeans in accordance with any regulations or Ordinance in force in Samoa; or (b.) Any person being the legitimate child of a father who is a European either by birth or by registration as aforesaid, unless and until, in accordance with any regulations or Ordinance in force in Samoa, such first-mentioned person has been declared to be a Samoan."

The declaration referred to in (b.) above is made by the High Court on the petition of a European of one-half or more Samoan blood under the provisions of The Samoan Status Ordinance, 1934.

For the purpose of this case the definition of "European" under the Samoa Act, 1921, and what races it may include is of no moment, as the Samoa Act, 1921 states definitely that a European is any person other than a Samoan. There are only two classes of persons provided, namely, Samoans and Europeans.

Having got so far, it only remains to consider whether Schuster III is a Samoan. (1) It appears clear that he belongs to the Polynesian race by mixed descent. He is three-quarters Samoan and one-quarter European by birth and ancestry. (2) He is not registered as a European. (3) He is not a legitimate child of a father, who is a European by birth. (4) His father has not been registered as a European.

As, therefore, it appears to me to be clear that Harry Stephen Schuster falls within the definition of a "Samoan" under the Samoa Act, 1921, I hold that he is qualified to file a petition under The Samoa Registration of Europeans Regulations, 1920.