

IN RE TAFU LEOTA

COURT OF APPEAL. 1964. 22, 24, July. HUTCHISON J. MCGREGOR J.
GREGSON J.

Contempt of Court - whether Supreme Court has jurisdiction to commit for contempt - whether there is right of appeal from committal and sentence for contempt.

The Supreme Court of Western Samoa has, as a superior Court of record, jurisdiction to commit for contempt in criminal proceedings.

R v. Gray 69 L.J.Q.B. 502; Nash v. Nash : In re Cobb [1924] N.Z.L.R. 495; and Helmore v. Smith (1887) 35 Ch. D. 455 referred to.

An order for committal made by the Supreme Court, being an order made summarily, even if it amounts to a conviction cannot, in terms of section 53 of the Judicature Ordinance 1961, be a conviction on a trial before the Supreme Court; accordingly, the Court of Appeal of Western Samoa has no jurisdiction to consider an appeal from such an order of the Supreme Court.

O'Shea v. O'Shea and Parnell (1890) 15 P.D. 59 (C.A.); Ambard v. Attorney-General of Trinidad and Tobago [1936] 1 All E.R. 704; and Isucra v. Reginam [1953] 1 All E.R. 827 referred to.

Motion dismissed.

MOTION for leave to appeal against committal for contempt.

Sanders (of the New Zealand Bar) and Metcalfe, for appellant.
Frapwell, Attorney-General, for respondent.

Cur. adv. vult.

The judgment of the Court was delivered by MCGREGOR J.: The appellant is a Samoan medical practitioner in charge of a hospital in the Island of Savai'i. He is well educated, having spent four years at the Medical School in Fiji. On the 14th May 1964 he was served with a subpoena requiring him to appear before the Supreme Court at Apia at 9.30 a.m. on the 12th June 1964 to testify concerning a charge of manslaughter, and it was intended that his evidence should be directed to the fact and cause of death of the deceased. He failed to appear as directed, a bench warrant was issued, and he finally appeared at the trial after 5 o'clock in the evening. After the hearing of the manslaughter trial the appellant was brought before the Chief Justice and asked to explain why he had not appeared as summoned. He admitted service of the summons and made an explanation to the effect that he had, owing to pressure of his medical duties, overlooked the date of the hearing. The Chief Justice made an order committing the appellant to one month's imprisonment.

On the following day the 13th June the appellant moved the Supreme Court for leave to appeal to this Court against the sentence of imprisonment imposed by the learned Chief Justice, who thereupon released the appellant on bail. On the 8th July, the Chief Justice removed the motion into this Court pursuant to section 55 of the Judicature Ordinance 1961. The appellant was further granted leave to amend the motion to include a further question whether the Supreme Court of Western Samoa has an inherent jurisdiction to punish for contempt.

This Court has therefore to consider two questions, first whether the Supreme Court of Western Samoa has jurisdiction to commit for contempt, and secondly if such jurisdiction exists whether there is a right of appeal to this Court from any such committal and sentence. A question has also

been raised whether in this instance the appellant was accorded his constitutional rights, but that question, as his counsel agreed, arises only if there is a right of appeal.

There is no statutory authority in Western Samoa to commit for contempt of Court, but under Article 111 of the Constitution "law" is defined as meaning any law for the time being in force in Western Samoa, and includes the Constitution, any Act of Parliament, and among other things the English common law and equity for the time being in so far as they are not excluded by any other law in force in Western Samoa. Contempt of Court has been recognised by the common law of England for many centuries, and the superior Courts by virtue of the common law have an inherent jurisdiction to punish criminal contempt by the summary process of attachment or committal. As long ago as 1900 it was said that the jurisdiction to commit for contempt is not a new fangled jurisdiction, but is as old as the common law itself, of which it forms part (R. v. Gray 69 L.J.Q.B. 502, 505 per Lord Russell of Kilowen C.J.).

Criminal contempt consists of words or acts obstructing or tending to obstruct the administration of justice. The Supreme Court of New Zealand has preserved unimpaired and unaffected its original jurisdiction to secure the efficiency and purity of the administration of public justice by dealing summarily with all conduct which is recognised by the common law as amounting to criminal contempt of Court (Nash v. Nash : In re Cobb /1924/ N.Z.L.R. 495). While there are now statutory provisions in various jurisdictions, such provisions are to a large extent declaratory of the common law, and wilful disobedience without lawful excuse of any order or direction of the Court in the course of the hearing of any proceedings is a recognised instance of criminal contempt. In the present case the learned Chief Justice has adjudged that the appellant wilfully and without lawful excuse disobeyed the summons to appear as a witness.

Although the English common law is now part of the law in force in Western Samoa, it is part of such law only to the extent that it is not excluded by any other law in force in the Independent State of Western Samoa, and it is suggested by the appellant that the inherent jurisdiction to commit for contempt no longer applies by virtue of the rights conferred by the Constitution. In our view, however, there is nothing in the Constitution or in legislative enactments which might be regarded as inconsistent with the preservation of the inherent power to commit for contempt. Article 13 of the Constitution under which freedom of speech and expression is preserved to citizens of Western Samoa provides that such rights shall not affect the operation of any existing law for preventing contempt of Court. Section 7 of the Crimes Ordinance 1961, which provides that no one shall be convicted of any offence at common law, is expressly subject to the proviso that nothing in that section shall limit or affect the power of any Court to punish for contempt.

In all cases of alleged contempt of Court the question to be decided is whether the action complained of is calculated to interfere with the proper administration of justice. It is necessary for the administration of justice that the Court should have full power to exercise control in the hearing of actions, and a power of discipline in the conduct of proceedings. The object of committal is "not to vindicate the dignity of the Court or the person of the Judge, but to prevent undue interference with the administration of justice". (Helmore v. Smith (1887) 35 Ch. D. 455 per Bowen L.J.). We therefore hold that the Supreme Court of Western Samoa has, as a superior Court of record, jurisdiction to commit for contempt in criminal proceedings.

The next question for consideration is whether there is a right of appeal from the Supreme Court where such Court has summarily committed for contempt. The right of appeal in criminal matters is contained in section 53 of the Judicature Ordinance 1961. There it is provided that a person "convicted on a trial held before the Supreme Court" may appeal to the Court of Appeal against his conviction in certain circumstances. In England until the Administration of Justice Act of 1960 there was no appeal from a committal

for contempt in the High Court. If the contempt is criminal, an appeal on the merits would really be an appeal from a summary conviction, and therefore would not lie (O'Shea v. O'Shea and Parnell (1890) 15 P.D. 59 C.A. at p. 64). There was, however, and still is a recognised exception in that an appeal does in certain limited circumstances lie from Colonial Courts to the Judicial Committee of the Privy Council, but this has its origin in the prerogative right of the Queen by virtue of which all her subjects, by special leave, may have access to Her Majesty in Council. (Ambard v. Attorney-General of Trinidad and Tobago /1936/ 1 All E.R. 704, 706).

This Court is a Court of Appeal created by Statute, the Judicature Ordinance 1961 Part III. It has no appellate authority except such as is conferred by the Ordinance. The sole ground relied on to support the present application is section 53 of the Ordinance, whereby a person convicted on a trial may in certain cases appeal to the Court of Appeal. We have been referred to Isuora v. Reginam /1953/ 1 All E.R. 827. Under the West African Court of Appeal Ordinance a person convicted by or in the Supreme Court has a right of appeal to the Court of Appeal. The appellant was brought up on summons and fined in respect of conduct as a barrister which was treated by the Judge as being contempt of a criminal kind. Their Lordships held that the order for payment of a fine and for imprisonment in default made by the Judge of the Supreme Court for contempt of Court of a criminal nature was a conviction within the meaning of section 10 of the Nigerian Ordinance, and they were not prepared to accept the view that to interpret the word "convict" as giving a right of appeal in the case of a criminal contempt involved the disregard of any fundamental principle merely because the English Act was so worded as clearly to exclude such a case. The decision must be regarded as limited to the construction of the Ordinance with which the Board was concerned.

While therefore it may be that the order for committal in the present instance amounted to a conviction, we are of the opinion that such conviction cannot be regarded as being one "on a trial" held before the Supreme Court. The proceedings are of a summary nature, and the Court acts *brevi manu*. The person charged is called before the Court in a summary manner to show cause why he should not be punished. He is not required to plead to any charge. Where the contempt is in the face of the Court the punishable conduct does not need to be proved by evidence. In the present instance the appellant was merely called on to admit that he had been duly served with the summons. The summons directed the appellant to appear before the Supreme Court to testify what he knew concerning the charge of manslaughter, and it contained a warning that in default of attendance he would be liable to a fine of £50 or imprisonment for six months. In our view it cannot be said that the order for committal, even if it amounts to a conviction, was a conviction on a trial before the Supreme Court. The order made was an order made summarily under the inherent jurisdiction of a superior Court of record. The power is one which is a necessary incident in every superior Court of Justice, incidental to the proper conduct of its proceedings. In our opinion there is no jurisdiction in this Court to consider an appeal from the order of the Chief Justice.

Submissions were also made by counsel for the appellant in regard to the sentence which it was contended was excessive. As this is a matter in respect of which we have no jurisdiction it would not be proper for this Court to comment on the punishment inflicted. Appellant's only remedy would be to request that the matter should be considered under Article 110 of the Constitution. The motion is dismissed.