

SIONE LOPETI & ANOR v. 'AKAU'OLA & ANOR.

(Civil Action. Hunter J. Nuku'alofa : 17th February, 8th, 9th, 10th, 11th, 24th April, 1958).

Tort — Trespass to goods — Master & Servant — liability of Crown in tort — Minister sued as representing the Government — Registration of Motor vehicles. Cap. 1. S. 16. (1928 Edition) Gazette No. 13 of 1957.

This was an action in trespass heard by a judge without a jury. The writ was issued against two police officers but at the hearing, the writ was amended by adding as a defendant the Minister of Police in his official capacity as representing the Government.

The facts are sufficiently set forth in the judgment.

HELD: The Government is liable in tort for the acts of its servants done in the course of their duty.

The Minister was the proper person to be made a nominal defendant as representing the Government. A motor vehicle registration expiring on the last day of one year remains in force until the first day on which Government offices are open for business in the ensuing year.

Verdict for the Plaintiffs.

Tu'akoi for the Plaintiffs.

Hama for the Defendants.

C. A. V.

HUNTER J.: The Plaintiffs are the joint owners of a motor cycle and they have brought this action against the Minister of Police and two of his officers alleging trespass to the motor cycle and wrongful detention. When the case was called, on the 17th February, 1958, it appeared to me from the writ that the two police officers were being proceeded against in their personal capacities. On an application by the plaintiffs' counsel I allowed the writ to be amended by joining the Minister of Police, and making the Government also a defendant. The Crown Solicitor, who at that stage appeared for the defendants objected to the amendment; I over ruled his objection but offered him any reasonable adjournment he desired. The case was adjourned until the 4th March but did not come on for hearing until the 8th April, 1958 when the Crown Prosecutor announced his appearance for all the defendants in place of the Crown Solicitor. The case then proceeded against all the defendants on the agreed understanding that it was a case against the Government.

The facts of the case are simple. On the 3rd January, 1958 the motor cycle was being ridden with the authority of the owners on a public highway when it was stopped by Sgt. 'Akau'ola and Constable Napa'a, two of the defendants, who demanded to see the registration of the motor cycle for 1958. The motor cycle had not then been registered for 1958 and the police officers refused to let the motor cycle proceed and confiscated it, refusing even to allow the rider to push the machine back to town. The rider of the motor cycle then parked the machine on private property and set off for town on foot. This incident happened in

the country about five miles from Nuku'alofa. The Police caused the machine to be moved from the private property on which it was parked and one of the defendants (Napa'a) eventually rode it back to town and, according to the Plaintiffs damaged it in so doing.

It was admitted by the Defendants that the motor cycle had been registered for the year 1957. All Government offices were closed from 4.30 p.m. on the 24th December, 1957 until 8.30 a.m. on 6th January, 1958 (See Government Gazette No. 13 of 1957) and so by virtue of Section 16 of Chapter 1 the owner of a motor vehicle, registered for 1957 had until 6th January, 1958 before the registration must be renewed.

I am satisfied that at the relevant time the two defendants 'Akau'ola and Napa'a were police officers and that they were acting in the course of their employment. I am also satisfied that their action in seizing the motor cycle and taking it out of the owners' possession was unlawful and amounted to a trespass. Even if the registration had then expired (which in view of Section 16 of Chapter 1 it had not) I can see nothing in the Act or Regulations giving the police authority in such a case to seize the motor cycle. The proper remedy is to prosecute the owner for failing to keep his motor vehicle registered (Cap. 72 Section 11); there is no power to detain the vehicle.

There can be no doubt that both the defendants 'Akau'ola and Napa'a have committed a trespass but is the Department also liable for this trespass? The law is that a master (in this case the Government) is liable for acts even which he has not authorised, provided they are so connected with acts which he has authorised that they might rightly be regarded as modes — although improper modes — of doing them. It is not disputed that the police officers were acting in the course of their employment and in my view the Government, is liable for the trespass committed by its servants.

To what damages are the Plaintiffs entitled? Trespass to goods is actionable per se without any proof of actual damage. However in this case the Plaintiffs allege that the Police damaged the motor cycle through their negligence and further that they suffered damage through not being able to use the motor cycle to visit their plantations which have consequently suffered and the Plaintiff Sione Lopeti said he was prevented from carrying on his business of repairing motor engines in the country from which he made from £70 — £100 per month. In my view damages (if any) arising under these two heads are too remote and cannot be recovered. I find that the police did cause some damage to the machine in their handling of it. For this damage the defendants are clearly liable but I find it extremely difficult to assess the amount. In cases of trespass to goods the Plaintiff is entitled to exemplary damages; that is something, beyond the material loss he has suffered as compensation for the insult or other outrage to his feelings. This is a case in which exemplary damages are appropriate and if

I were sitting with a jury it would be my duty to point this out to them and ask them to take into consideration that this machine was lawfully driven along the highway and was stopped by the defendants and taken out of the Plaintiffs' possession without any justification whatsoever and to assess what they regarded as a just but not over generous compensation for such action. Applying these principles and taking into consideration that the machine has suffered some (though little) damage I find a verdict for the Plaintiffs for £25.

**EDITOR'S NOTE :** On 12. 12. 58 this decision was affirmed by the Privy Council on appeal.