

VANDERBILT v HIS MAJESTY THE KING

High Court Apia
21 April; 9 May 1932
Luxford CJ

IMMIGRATION (Prohibited immigrants) - The Samoa Immigration Order, 1930 - Liability of owner, charterer and master of ship for expenses of detention, maintenance and deportation.

Suppliant owner and master of the American yacht "Alva" petitioned for repayment of £200 he had been required to deposit for anticipated expenses of the Administrator of Samoa in connection with two prohibited immigrants, who had arrived in Apia aboard his yacht and landed unlawfully. He contended that no expense would have been necessary had the Police and the Customs authorities not been negligent in failing to arrest the men, or prevent them from hiding out until after his yacht sailed from Apia.

Held: Clause 8.(2) of The Samoa Immigration Order, 1930 imposes both civil and criminal liability on the master, charterer and owner of a ship on which a prohibited immigrant arrives in Samoa immediately he lands in the Territory in contravention of the Order. Since the Order imposes strict liability for payment of the expenses of detention, maintenance and deportation, and whether or not the person liable has been convicted under the clause, the suppliant's contention failed, and his petition was dismissed.

Petition under the Crown Suits Act, 1908.

Andrews for suppliant.
McCarthy for the Crown.

Cur adv vult

LUXFORD CJ. The suppliant, a citizen of the United States of America, is the owner and master of the yacht "Alva" in which he is making a world cruise. The yacht sails under the American flag. When the "Alva" was in Colon two stewards named Grillmaier and Sellinger were signed on for the cruise. These two men apparently had no intention of fulfilling their engagement for very shortly after leaving Balboa they caused trouble and intimated that they would leave the yacht at Papeete. Finding it impossible to land at Papeete they determined to leave the yacht at Apia. The suppliant very properly decided that he would give the men their discharge in Apia if they were allowed to land there, and if he would not be under any obligation to pay their return passages to Panama.

When the "Alva" arrived in Apia on 30th August last, the suppliant notified the Customs authorities of the men's desire and his decision thereon. The men came ashore to see the Collector of Customs to whom they made various complaints against their treatment on board, and expressed their intention of leaving the ship. The Collector informed them that they were prohibited immigrants.

A further interview took place at which the two men, the Collector, and the mate of the "Alva" were present. The mate ordered the men back to the yacht, but they replied that they would sooner go to gaol than obey.

The men then consulted Mr Klinkmueller. He took them to the Inspector of Police and made an application for them to remain in Samoa as immigrants. While this interview was taking place the suppliant called upon the Inspector to whom he intimated that he would give the men their discharge if they were permitted by the authorities to remain in Samoa.

The necessary forms of application for the permits were completed and handed to the Inspector who stated that the sum of £50 by way of a landing deposit and a definite assurance that the men would obtain employment must be given before the applications could be considered.

They thereupon set to work to comply with the conditions precedent stipulated by the Inspector. As the men were Austrian (or Hungarian) subjects they were prohibited from landing in Samoa without obtaining a permit or a temporary permit under the hand of the Administrator: see clause 4, The Samoa Immigration Order, 1930; but being members of the crew of a vessel passing through Apia they had the right to come ashore without rendering themselves liable to the penal provisions of the Order provided that they were on board the yacht when she cleared outwards: see clause 12(c)(d).

The permits to land as immigrants had not been granted when the "Alva" cleared outwards and sailed for Pago Pago on 1st September, but the two men remained in Apia. They thereupon became subject to the penal provisions of the Order, but no action was taken against them, nor was the suppliant called upon to give security for the expense to which the Administration might be put in removing them from Samoa.

The Collector of Customs gave the reasons why the yacht was given a clearance. I will quote from the note I took of his evidence:-

The ship was to return to Apia in a few days. The men had been to the Police and arrangements were being made through their lawyer, Mr. Klinkmueller, for them to remain in Samoa. I had no doubts about the matter at that time. The clearance for Pago Pago was only for a two or three days trip. The Captain assured me that the ship would come back. I knew that it would have to get a further clearance from Apia, and in the meantime everything was being done to get the men employment in Samoa.

I knew the ship would come back because I had charge of the Captain's valuable store of liquor while he made his trip to Pago Pago. The view I took was that everybody concerned realised that the men would be better off the ship, and if arrangements could be made to comply with the local law while the ship was in Pago Pago this would be arranged. As this met with everybody's approval - master of ship and Police - I did not think it necessary to interfere.

Mr Andrews then asked the Collector, "Then upon whom would the responsibility have rested - if the men had deserted and gone to the bush while the yacht was in Pago Pago - the Administration or the master?"

The Collector replied, "The Administration, but if we had known then that the ship was sailing finally I would have insisted on the deposit then instead of later."

The Inspector of Police deposed that Sergeant Downes reported to him that Grillmaier and Sellinger were not on board when the vessel sailed for Pago Pago, and added:-

I then made enquiries to ascertain how it was that the men were left in Samoa. I asked Sergeant Downes for a report, but before the report was made Mr. Klinkmueller came along with the two men. That was between 9 and 10 a.m. on 1st September. They saw Sergeant Downes - not me. Sergeant Downes reported to me what had taken place at the interview. I was satisfied that the men were where we could get them if we wanted them. I decided to do nothing until the "Alva" returned to Apia.

Mr Andrews then asked the Inspector, "Had Sergeant Downes not satisfied you, would you have had the men arrested?"

The Inspector replied:-

Yes. There was no suggestion that the men intended to desert or had done anything wrong whatsoever. They were taking proper steps to obtain permission to land in the Territory. They had seen a reputable lawyer and were attempting to do everything according to law. Of course they had made a breach of the Immigration Order. I got in touch with the Collector of Customs and ascertained that the "Alva" was to return almost at once from Pago Pago.

I am satisfied the Inspector did not anticipate that any difficulty would arise and that the men would go back to the ship if their applications to remain in Samoa were refused. However, they had broken the law and it was for this Court to decide whether they should be at liberty pending the hearing and determination of the charges which should have been brought against them.

The suppliant was justified in believing that the men had been arrested and were in custody, for in answer to a radiogram sent by him on the voyage to Pago Pago, the Collector of Customs replied, "The two deserters are in charge of the Police". The Collector explained that he meant that the men were under Police surveillance, but nobody else would understand his message in that sense.

Had the ordinary and normal course been followed, (which no doubt the suppliant believed would be followed), the two men would have been arrested on the charge of landing in Samoa without a permit, and brought before the Court. In such cases the defendants usually are sentenced to imprisonment, but whenever possible they are placed on board the vessel immediately prior to sailing and the unexpired portion of the sentence is remitted.

The "Alva" returned to Apia on 4th September. Just prior to this, Grillmaier and Sellinger filed proceedings in this Court to recover damages from the suppliant for breach of contract and for wages due. The proceedings were heard on the afternoon of 4th September. The claim for damages was dismissed, but the claim for wages, which was not disputed, was allowed.

After the case the suppliant saw the two men. They went aboard the yacht and apologised to him for what they had done. The evidence does not disclose, however, whether any further arrangement was made. On the following morning a meeting took place at the Police Station between the two men, Mr Klinkmueller, the Inspector of Police and the mate of the "Alva". At this meeting the men were ordered to be at the wharf at 1 p.m. as the "Alva" would sail at 2 p.m. The men, who promised to obey the order, were warned by the Inspector that if they failed in their promise each of them would be liable to six months' imprisonment.

The men left the Police Station, went along the street, bought some curios, then hired a taxi-cab to drive them somewhere, left the taxi-cab and took themselves to a place of hiding where they remained until the following Monday morning.

The "Alva" delayed her departure for twenty-four hours while the Police searched unsuccessfully for the two men. As the suppliant was unable to delay his departure further, he applied to the Collector of Customs for a clearance, but was informed that he must deposit the sum of £200 as security for the costs to which the Administration might be put in deporting the two men. The suppliant paid this amount to the Collector, but forwarded a formal protest to the Administrator. The "Alva" then sailed, and on the following morning the two men gave themselves up to the Police.

Grillmaier and Sellinger were arrested and brought before the Court charged with being prohibited immigrants, who had landed in Samoa in contravention of The Samoa Immigration Order, 1930. They were convicted and fined the sum of £100 and in default of payment of the fines they were each sentenced to six months' imprisonment. They had served about four months of their sentences when they were deported from Samoa.

The suppliant, having obtained the necessary authority, filed his petition under The Crown Suits Act, 1908 in which he prays that the sum of £200 be returned to him. The cost of repatriating Grillmaier and Sellinger was not disclosed during the hearing. Counsel agreed, however,

that the only point for determination is the liability or otherwise of the suppliant to repay those costs to the Administration. If he is liable then the petition will be dismissed, and such portion (if any) of the £200 which has not been expended will be returned to the suppliant in the ordinary way, but if he is not liable the suppliant's claim will be upheld.

The suppliant's liability arises under the provisions of subclause (2) of clause 8 of The Immigration Order, 1930, which I will now set out:-

In every case where a prohibited immigrant unlawfully lands in Samoa the master, charterer, and owner of the ship by which such prohibited immigrant was brought to Samoa shall be jointly and severally liable to a fine of £100 in respect of each such immigrant, and also to defray the expenses incurred by the Administrator of Samoa in removing any such immigrant from Samoa, and in detaining and maintaining him in Samoa pending such removal.

This subclause in my opinion creates two liabilities upon the owner, charterer, and master of the vessel, a criminal liability and a civil liability. Further, the proceedings for enforcing either liability are separate and distinct. Although counsel for the suppliant did not contend that the order to pay the expense of deportation could only be made after the conviction of the owner, charterer, or master, it occurred to me that that might be the proper construction of the subclause; but on further consideration I decided against that view.

The Administrator is given wide powers under clause 10 of the Order for securing the payment of any moneys which might become owing under subclause (2) of clause 8. Under those powers he required the suppliant to deposit the sum of £200 as security for the cost of deportation of Grillmaier and Sellinger.

The suppliant does not challenge the validity of The Samoa Immigration Order, 1930. He bases his case on the allegation that his liability arose solely on account of the negligence of the officers of Police and Customs. In effect he says:-

These two men were prohibited immigrants immediately the "Alva" cleared for Pago Pago. The Collector of Customs radioed me that they were in charge of the Police. My yacht, to everybody's knowledge, would return to Apia in two or three days' time. I was entitled to assume that the men would be kept in strict custody until my yacht was ready to clear outwards and sail from Apia. Then they would have been placed on board and the expense of deporting them would have been saved. Instead of that the Police and Customs authorities neglected to arrest the men. They never kept them under surveillance, although they knew that they were endeavouring to break their engagement, with the result that they were able to go to a place of hiding and remained concealed until my yacht had finally sailed from Apia. And with the further result that I had to pay the sum of £200 as security for the cost of their deportation. In those circumstances I should have the £200 repaid to me.

The allegations of fact upon which the suppliant rests his claim are substantially correct. If the law had been observed and the proper steps taken I have no doubt that the whole trouble would have been avoided, but not necessarily so. Had the two men been arrested immediately the "Alva" cleared for Pago Pago and brought before the Court, each of them would have been liable to a penalty of six months' imprisonment. The men would have served that sentence unless the Administrator saw fit to remit it wholly or in part under the powers vested in him by subsection 2 of section 244 of the Samoa Act, 1921.

It would be difficult to contend that the suppliant would not have been liable to pay the costs of deportation if the two men had been left in prison to serve their sentences. It follows that he would have been dependent on the Administrator exercising his discretionary powers of remission to avoid that liability.

I have already stated that usually those powers are exercised, but conceivably in any particular case the Administrator may consider that the

offender should serve the sentence imposed by the Court. The suppliant therefore was not necessarily prejudiced by the action or non-action of the Police or Customs authorities. I have dealt with this aspect of the case because it was pressed very strongly by counsel for the suppliant, but it is not relevant to the issue involved.

The Immigration Order imposes a liability on the master, owner and charterer of the ship on which a prohibited immigrant arrives in Samoa if the immigrant lands in the Territory in contravention of the Order. It does not make any provisos to that imposition which, in my opinion, is absolute immediately the unlawful landing is made.

The two men, Grillmaier and Sellinger, were prohibited immigrants, who arrived in Samoa in a ship of which the suppliant is the owner and master. They landed in the Territory in contravention of the provisions of the Order and the suppliant thereupon became liable to defray the costs to which the Administrator has been put in removing them from Samoa.

In these circumstances the petition fails. I will reserve all questions of costs with leave to apply.