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who satisfy the requirements of Section 14(1) of the Act (as amended by Section 4(1) of the Immigration Amendment Act 1976 and Section 2(1) of the Immigration Amendment Act 1977) as to the purpose of their entry into New Zealand. By Section 12 of the Act Part II thereof applies to all persons except the persons and classes of persons specified in Section 3. One class of person specified in Section 3 is:

"any New Zealand citizen"

It follows therefore if Appellant is a New Zealand citizen she has a complete defence to the charge brought under Section 14(5) of the Act. 10

3. On the 31st day of August 1979 the Court of Appeal delivered judgment in Levave v Immigration Department [1979] 2 N.Z.L.R. 74. That case came before the Court of Appeal by way of an appeal on a question of law of general and public importance with leave of the then Supreme Court. The appeal arose from the conviction of Levave for an offence under Section 14(5) of the Immigration Act 1964. In that case Levave claimed New Zealand citizenship by virtue of her father's birth in Western Samoa at a time when the British Nationality and Status of Aliens (in New Zealand) Act 1923 (hereinafter referred to as "the 1923 Act") was in force. That Act was repealed and replaced by the British Nationality and Status of Aliens (in New Zealand) Act 1928 (hereinafter referred to as "the 1928 Act") with which the present case is concerned. The provisions of the 1928 Act on which Appellant's case is founded are not materially dissimilar to the provisions on which the argument in Levave v Immigration Department was based and it has been accepted throughout by Counsel that the present case involves the same issue of statutory interpretation dealt with in Levave v Immigration Department. 20 30

4. Because Levave v Immigration Department was an appeal brought by way of leave granted pursuant to Section 144 of the Summary Proceedings Act 1957 the decision of the Court of Appeal was final. The issue involved in that case and in the present case affects many persons born in Western Samoa during the currency of the 1923 and 1928 Acts. Proceedings were therefore commenced in the present case as a test case with a view to obtaining leave of the Court of Appeal to appeal to Her Majesty in Council. Because an appeal from any conviction entered on the charge brought against Appellant under Section 14(5) of the Act could for the same reasons as in Levave v Immigration Department proceed no further than the Court of Appeal Appellant commenced proceedings by way 40

of Originating Summons under the Declaratory Judgments Act 1908. On 12 November 1980 by Order of the Chief Justice the Originating Summons was removed into the Court of Appeal for hearing pursuant to Section 64 of the Judicature Act 1908 and Section 7 of the Declaratory Judgments Act. Judgment of the Court of Appeal was delivered on 15 April 1981 and final leave to appeal to Her Majesty in Council was granted by the Court of Appeal on 31 August 1981.

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10 "CONTENTIONS TO BE URGED BY THE RESPONDENT"

5. The Respondent contends that on its proper construction the British Nationality and Status of Aliens (in New Zealand) Act 1928 did not confer on persons born in Western Samoa after the coming into force of that Act, and the Appellant in particular, the status of natural-born British subjects.

6. The Respondent contends that the judgment of the Court of Appeal was correct and the appeal should be dismissed for the following, amongst other, reasons:

R E A S O N S

- 20 (1) THAT Section 7 of the 1928 Act operated only to make provision for the naturalisation of aliens in the Cook Islands and Western Samoa.
- (2) THAT the declaration contained in Section 7(1) of the 1928 Act that the Act applied to Western Samoa as if it were part of New Zealand did not operate for the purposes of the Act and in particular Section 1 of the Imperial Act as defined therein to constitute Western Samoa as within His Majesty's dominion and allegiance.

D.P. Neazor, Q.C.

R.B. Squire

IN THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL OF NEW
ZEALAND

B E T W E E N :-

FALEMA'I LESA

Apellant

-and-

THE ATTORNEY-GENERAL

Respondent

CASE FOR THE RESPONDENT

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