

30/82

IN THE PRIVY COUNCIL

NO. 43 of 1981.

O N A P P E A L  
FROM THE COURT OF APPEAL OF NEW ZEALAND

---

BETWEEN            FALEMA'I LESA

Appellant

and

ATTORNEY-GENERAL

Respondent

---

RECORD OF PROCEEDINGS

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MACFARLANES,  
Solicitors,  
Dowgate Hill House,  
London EC4R 2SJ

Agents for:

GEORGE ROSENBERG,  
Wellington,  
New Zealand.

(i)

IN THE PRIVY COUNCIL      NO.                      of 198

ON APPEAL FROM

THE COURT OF APPEAL OF NEW ZEALAND

---

BETWEEN

FALEMA'I LESA

Appellant

AND

ATTORNEY-GENERAL

Respondent

---

RECORD OF PROCEEDINGS

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IN THE HIGH COURT OF NEW ZEALAND

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Certificate of Registrar of Court of Appeal  
of New Zealand

IN THE PRIVY COUNCIL

ON APPEAL FROM  
THE COURT OF APPEAL OF NEW ZEALAND

---

BETWEEN

FALEMA'I LESA

Appellant

AND

ATTORNEY-GENERAL

Respondent

10

---

R E C O R D   O F   P R O C E E D I N G S

---

No.1  
ORIGINATING SUMMONS FOR DECLARATORY  
ORDER AS TO CONSTRUCTION OF BRITISH  
NATIONALITY AND STATUS OF ALIENS  
(IN NEW ZEALAND) ACT 1928

In the High  
Court of New  
Zealand

IN THE HIGH COURT OF NEW ZEALAND  
WELLINGTON REGISTRY

---

No.1  
Originating  
Summons  
21st May 1980

NO. 156/80

IN THE MATTER of the Declaratory  
Judgments Act 1908

20

BETWEEN

FALEMA'I LESA

Plaintiff

In the High  
Court of  
New Zealand

A N D

ATTORNEY-GENERAL

Defendant

ORIGINATING SUMMONS

No.1

TO: The ATTORNEY-GENERAL the above-named  
Defendant

Originating  
Summons

and

21st May  
1980

Every other person served with this  
summons

Continued

TAKE NOTICE that the Plaintiff

(a) having remained within New Zealand 10  
and being desirous of remaining  
lawfully within New Zealand, the  
legality of which acts depend on  
the construction of section 7 of the  
British Nationality and Status of  
Aliens (In New Zealand) Act 1928;  
and, accordingly,

(b) as a person who was born in  
Western Samoa while that Act was 20  
in force, being interested in the  
construction of that statute,

has taken out this summons under the Declaratory  
Judgments Act 1908 for the purpose of obtaining  
declaratory orders determining the following  
question as to the construction of the British  
Nationality and Status of Aliens (in New Zealand)  
Act 1928, and, in particular, of section 7 thereof:

QUESTION: On the true construction of the  
British Nationality and Status of  
Aliens (in New Zealand) Act 1928 did 30  
the Plaintiff on her birth in Western  
Samoa on 23 November 1946 become a  
natural born British subject?

AND for the purpose of obtaining such further  
relief as in the circumstances may be just

...

ISSUED under the Seal of the High Court at

Wellington this 21st day of May 1980.

L.S.

Deputy Registrar.

In the High  
Court of  
New Zealand

\_\_\_\_\_  
No.1

This summons is to be served on:  
The Attorney-General

Originating  
Summons

21st May 1980

THIS SUMMONS was taken out by GEORGE HENRY ROSENBERG Solicitor for the Plaintiff whose address for service is at 123A Riddiford Street, Newtown, Wellington.

Continued

\_\_\_\_\_  
No.2.

In the High  
Court of  
New Zealand

10

AFFIDAVIT OF LIPALE LESA (INCLUDED IN  
THE RECORD BY CONSENT)

\_\_\_\_\_  
No.2

A536/79

Affidavit of Lipale  
Lesa

4th February 1980

I, LIPALE LESA of Papa, Sataua, Savaii, Western Samoa, Married Woman, make oath and say as follows :-

1. I am a citizen of Western Samoa.

20

2. ON the 28th day of November 1946 at Sataua Hospital in Western Samoa I gave birth to a female child who I named FALEMA'I LESA.

3. THAT this child is now living in New Zealand.

4. THAT annexed hereto and marked "A" is a true copy of a certified copy of her birth certificate.

SWORN at Apia in Western Samoa)  
this 4th day of February 1980 ) 'Lipale Lesa'  
before me:- )

30

L.S.

'J.Bualagalon'

DEPUTY-REGISTRAR OF THE SUPREME COURT OF  
WESTERN SAMOA

In the High Court of New Zealand

No.2.

Affidavit of Lipale Lesa

4th February 1980

Continued

I HEREBY CERTIFY that before the execution of the foregoing Affidavit by the above-named LIPALE LESA of Papa, Sataua, Savai'i Married Woman, I had the same read over to her in the Samoan language and also had explained to her also in the Samoan language the contents of same and when she appeared thoroughly to fully understand the same, she therefore voluntarily sworn and affixed her signature thereto.

'J.Bualagalon'

10

DEPUTY-REGISTRAR OF THE SUPREME COURT OF WESTERN SAMOA

No.3

In the High Court of New Zealand

No.3

Notice of Motion for Order pursuant to Declaratory Judgments Act 1908 removing originating summons into Court of Appeal

19th June 1980

NOTICE OF MOTION FOR ORDER PURSUANT TO DECLARATORY JUDGMENTS ACT 1908 REMOVING ORIGINATING SUMMONS INTO COURT OF APPEAL

TAKE NOTICE that on Monday the 30th day of June 1980 at 10 o'clock in the forenoon or so soon thereafter as counsel can be heard counsel for the abovenamed Plaintiff will move this Honourable Court at Wellington FOR ORDERS:

20

- 1. Pursuant to Section 7 of the Declaratory Judgments Act 1908 and to section 64 of the Judicature Act 1908

THAT the originating summons issued out of this Honourable Court on 21 May 1980 be removed into the Court of Appeal for hearing and determination; and

- 2. THAT the costs of and incidental to this application and the order thereon be reserved

30

UPON THE GROUNDS:



- (a) THAT the issue raised by the originating summons is identical or substantially similar to the issue determined by the Court of Appeal in Levave v Immigration Department [1979] 2 N.Z.L.R. 72;
- (b) THAT this Honourable Court would be bound to determine the issue raised by the originating summons issued herein in accordance with and in conformity to the decision of the Court of Appeal in Levave v. Immigration Department:
- (c) THAT the answer to the question raised in the originating summons will have general application to many persons born in Western Samoa during the relevant period determined by the British Nationality and Status of Aliens (In New Zealand) Act 1928 and the British Nationality and New Zealand Citizenship Act 1948;
- (d) THAT the present proceedings may legitimately be regarded as in the nature of a test case;
- (e) THAT it is expedient that the issue raised by the originating summons should be determined by the Court of Appeal with all due dispatch.

In the High Court of New Zealand

No.3

Notice of Motion for Order pursuant to Declaratory Judgments Act 1908 removing originating summons into Court of Appeal

19th June 1980

- continued

DATED this 19th day of June 1980

G.P.BARTON

Counsel for the Plaintiff

30 TO:

The Registrar of the High Court at Wellington  
The Attorney-General, the abovenamed Defendant

In the High  
Court of  
New Zealand

No. 4.

REASONS FOR JUDGMENT OF DAVISON, C.J.

No.4.	Hearing	10 November 1980
Reasons for Judgment of Davison C.J.	Counsel	G.P.Barton in support C.J.McGuire to oppose
	Judgment	12 November 1980

12th November  
1980

THE APPLICATION

The plaintiff has issued an originating summons under the Declaratory Judgments Act 1908 for the purpose of obtaining declaratory orders determining the following question :- 10

"On the true construction of the British Nationality and Status of Aliens (in New Zealand) Act 1928 did the Plaintiff on her birth in Western Samoa on 28 November 1946 become a natural born British subject?"

She has now moved pursuant to s.7 of the Declaratory Judgments Act 1908 and to s.64 of the Judicature Act 1908 for an order that the originating summons be removed into the Court of Appeal for hearing and determination. 20

The grounds of the application are :-

- (a) That the issue raised by the originating summons is identical or substantially similar to the issue determined by the Court of Appeal in Levave v. Immigration Department [1979] 2 NZLR 72; 30
- (b) That this Court would be bound to determine the issue raised by the originating summons issued herein in accordance with and in conformity to the decision of the Court of Appeal in Levave v. Immigration Department;

- |     |   |                                      |
|-----|---|--------------------------------------|
| (c) | That the answer to the question raised in the originating summons will have general application to many persons born in Western Samoa during the relevant period determined by the British Nationality and Status of Aliens (in New Zealand) Act 1928 and the British Nationality and New Zealand Citizenship Act 1948; | In the High Court of New Zealand     |
|     |   | -----                                |
|     |   | No.4                                 |
|     |   | Reasons for Judgment of Davison C.J. |
| 10  | (d) That the present proceedings may legitimately be regarded as in the nature of a test case.  | 12th November 1980                   |

- continued

In amplification, it should be said that Dr. Barton for the plaintiff accepts that the Court of Appeal is unlikely in the present case to depart from the decision given previously in Levave's case, but a decision of the Court of Appeal would then open the way for the plaintiff to seek the leave of the Court of Appeal to appeal to the Privy Council.

DECISION.

This Court has power to order that the originating summons be removed into the Court of Appeal for hearing and argument. See: Declaratory Judgments Act 1908 s.7 and Judicature Act 1908 s.64.

In considering such an application the principle to be applied is as set out in Green v. New Zealand Waterside Workers' Federation [1921] G.L.R. 366, 367:

"I think that before making such an order in any case the Court should be satisfied that some important or difficult question of law or fact is involved, and that no injury will be done to the other party to the action, or that for some other sufficient reason the order should be made."

In the High  
Court of  
New Zealand

No. 4

Reasons for  
Judgment of  
Davison C.J.

12th November  
1980

- continued

In In re Manson (deceased) [1963] NZLR.850, it was held to be a sufficient reason for making such an order that the Court of Appeal is being asked to review its own decision. In that case it was intended to contend that a previous decision of the Court of Appeal in Commissioner of Stamp Duties v. Pratt [1929] NZLR 163 where the question decided was identical to that to be decided in Manson's case was wrongly decided or given per incuriam and should not be followed.

10

McGregor J. said at p.851 :

"Whether or not the Court of Appeal would feel itself justified in re-considering the ratio decidendi of Pratt's case or would feel itself bound thereby is a matter for that Court, but this Court would undoubtedly be bound by the decision of the Court of Appeal on a question which it is agreed is indistinguishable from the question at issue here. In my view, therefore, any argument in this Court would be completely futile."

20

In Levave's case the appellant Levave was convicted of an offence under s.14(5) of the Immigration Act 1964 in that she had remained in New Zealand after the expiry of her temporary permit. She appealed on the ground that she was a New Zealand citizen by descent. Her claim rested on the argument that all persons born within the geographical limits of Western Samoa after the coming into force of the British Nationality and Status of Aliens (in New Zealand) Act 1923 were natural born British subjects. Her father was born in Western Samoa in 1926. The case involved an interpretation of s.14 of that Act. Section 14 of the 1923 Act was re-enacted in identical form in s.7 of the British Nationality and Status of Aliens (in New Zealand) Act 1928.

30

40

The question raised in the present originating summons as to the true construction of s.7 of the 1928 Act involves a consideration of the

interpretation of the same statutory provision as contained in s.14 of the 1923 Act under which Levave's case was decided.

In the High Court of New Zealand

It is obviously, in the words of McGregor J. (ante) "futile" to argue the matter in this Court. There is an important principle of law involved and no injury will be done to the defendant in making the order sought.

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No. 4

Reasons for Judgment of Davison C.J.

- 10 This is an appropriate case where an order as sought by the plaintiff should be made. There will be an order that the originating summons issued out of this Court on 21 May 1980 be removed into the Court of Appeal for hearing and determination.

12th November 1980

- continued

- 20 As to the question of costs on this present application, Dr. Barton sought costs on behalf of the plaintiff. This application was opposed by the defendant and the plaintiff was required to argue her case for removal in this Court. She is entitled to costs which I fix at \$100.00 and disbursements.

Solicitor for the plaintiff:

G.H. Rosenberg, Wellington

Solicitor for the defendant:

Crown Law Office, Wellington

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In the High  
Court of  
New Zealand

COURT ORDER FOR REMOVAL OF ORIGINATING  
SUMMONS INTO THE COURT OF APPEAL.

No. 5

MONDAY the 10TH DAY OF NOVEMBER 1980

Court Order  
for Removal of  
Originating  
Summons into  
Court of  
Appeal

Before the Right Honourable Sir Ronald Davison,  
Chief Justice of New Zealand.

10th November  
1980

UPON READING the originating summons issued out  
of this Honourable Court on 21 May 1980 for the  
purpose of obtaining declaratory orders  
determining a question as to the construction 10  
of section 7 of the British Nationality and  
Status of Aliens (in New Zealand) Act 1928

AND UPON READING the notice of motion of the  
Plaintiff for an order removing the originating  
summons into the Court of Appeal AND UPON  
HEARING Mr. G.P. Barton of counsel for the  
plaintiff and Mr. C.J. McGuire of counsel for  
the defendant this Court HEREBY ORDERS  
pursuant to Section 7 of the Declaratory  
Judgments Act 1908 and to section 64 of the 20  
Judicature Act 1908 that the originating  
summons issued out of this Honourable Court  
by the Plaintiff on 21 May 1980 be and the same  
is hereby removed into the Court of Appeal for  
hearing and determination AND this Court  
HEREBY FURTHER ORDERS that the Defendant pay  
the Plaintiff's costs of \$100.00 on this  
application.

By the Court

L.S.

30

Deputy Registrar

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11.

No. 6

In the Court of  
Appeal of New  
Zealand

JUDGMENT OF THE COURT DELIVERED BY COOKE J.

No. 6

Coram: Cooke J. (presiding)  
Richardson J.  
Somers J.

Judgment of the  
Court delivered  
by Cooke J.

Hearing: 16th March 1981

15th April 1981

Counsel: G.P. Barton for Plaintiff  
R.B. Squire for Defendant

Judgment: 15 April 1981

10

JUDGMENT OF THE COURT DELIVERED BY COOKE J

This is an originating summons issued in the High Court and removed into this Court for hearing and determination pursuant to s.7 of the Declaratory Judgments Act 1908 and s.64 of the Judicature Act 1908.

20 The plaintiff is currently being prosecuted in a District Court under the Immigration Act 1964 for remaining in New Zealand beyond the period for which a temporary permit was granted to her - the offence commonly known as overstaying. If convicted she would in the ordinary course automatically be deported. We understand that her case and other like cases have been adjourned pending the ultimate outcome of the present proceedings. She would have a defence to that prosecution, and indeed would not have needed a temporary entry permit at all, if she were a New Zealand citizen.

30 At the hearing in this Court on 16 March 1981 it was agreed between the parties that she was born in Western Samoa on 28 November 1946. She claims that consequently she is a New Zealand citizen. This claim turns on the interpretation of the British Nationality and Status of Aliens (in New Zealand) Act 1928, and in particular s.7 of that Act. The originating summons seeks such an interpretation and asks the question :

On the true construction of the British Nationality and Status of Aliens (in New Zealand) Act 1928 did the Plaintiff on her birth in Western Samoa on 28th November 1946 become a natural born British subject?

No.6.

Judgment of the  
Court delivered  
by Cooke J.

15th April 1981

- continued

The 1928 Act was repealed, with an immaterial exception, by the British Nationality and New Zealand Citizenship Act 1948, whereby New Zealand established its own citizenship for the first time. In turn the 1948 Act was repealed by the Citizenship Act 1977, now the general statute governing New Zealand citizenship. But the transitional provisions in the 1948 and 1977 Acts would appear to have the effect that if, as she claims, the plaintiff was on her birth a natural-born British subject (by virtue of the 1928 Act) she would have become a New Zealand citizen on the commencement of the 1948 Act (for s.16(3) of the 1948 Act conferred such citizenship on a person born in Western Samoa if immediately before the commencement of that Act he or she was a British subject) and she would now continue to be a New Zealand citizen (s.13 of the 1977 Act). We say 'would appear' because the links in the statutory chain have not been the subject of any argument in this Court, the parties being at one in the view that for the purposes of the plaintiff's case everything turns on the 1928 Act. 20

Counsel for the plaintiff informs us that the question raised by the originating summons is substantially identical with that decided by this Court in the judgment delivered by Somers J. in Levave v. Immigration Department [1979] 2 N.Z.L.R. 74 and that counsel's argument would be substantially identical with the argument he presented in that case. Counsel for the Attorney-General agrees that the decision in Levave's case would cover the present case also. The Crown further agrees that this originating summons is an appropriate procedure for obtaining a determination of the question which the plaintiff wishes to have determined. It was because the High Court is bound to follow the decision in Levave's case that the Chief Justice accepted that it would be futile to argue the originating summons in the High Court and on the application of the plaintiff ordered its removal to this Court. 40

Mr. Barton has also made it clear that he expects this Court to follow its own decision in Levave's case.



As he does not contend that the cases are distinguishable, he does not wish to be heard further in this Court. He indicates that an application for leave to appeal to Her Majesty in Council is intended to be made from our expected decision. Naturally no such application is at present before us and we express no opinion regarding one.

In the Court of  
Appeal of New  
Zealand

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No.6

10 Levave's case reached this Court by way of appeal on a question of law, by leave of the Supreme Court (as the High Court then was), against the dismissal by that Court of an appeal from a conviction in the Magistrate's Court (now a District Court). The appellant in that case was born in Western Samoa on 13 October 1951. Her father was born in Western Samoa on 1 October 1926. She claimed that the effect of s.14 of the British Nationality and Status of Aliens (in New Zealand) Act 1923 was that her father was from birth a natural-born British subject according to New Zealand law; and that the effect of the series of later New Zealand Acts was that she was consequently a New Zealand citizen by descent. The 1923 Act was repealed and replaced by the 1928 Act with which the present case is directly concerned.

Judgment of the  
Court delivered by  
Cooke J.

15th April 1981

- continued

30 There are some differences between the two cases. In Levave's case the appellant, having been born in Western Samoa after the commencement of the 1948 Act, claimed to be a New Zealand citizen by descent. Her claim turned on whether her father was a New Zealand citizen from birth by virtue of the 1923 Act. In the present case the plaintiff, having been born in Western Samoa before the commencement of the 1948 Act, claims to be a New Zealand citizen by birth. Her claim turns on whether she was a New Zealand citizen by birth by virtue of the 1928 Act. The provisions of the 1928 Act on which the plaintiff here seeks to build her case are in wording similar to, though not identical with, the wording of the 1923 provisions relied on by the appellant in Levave's case.

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In the Court of  
Appeal of New  
Zealand

\_\_\_\_\_

No. 6

Judgment of the  
Court delivered  
by Cooke J.

15th April 1981

- continued

Notwithstanding those differences, we accept that the two cases turn ultimately on what is for all practical purposes the same question of statutory interpretation. And although the task of deciding it is complicated by the need to refer in some detail to matters of legislative and constitutional history (as will sufficiently appear from the foregoing outline and from the judgment in Levave) it is essentially quite a simple question.

10

Before becoming a fully sovereign independent state in 1962, Western Samoa was mandated to New Zealand in 1919 by the League of Nations and administered by New Zealand from 1946 under a trusteeship agreement approved by the General Assembly of the United Nations: see 6 Halsbury's Laws of England, 4th ed. para. 1013. It is not disputed for the plaintiff that according to the law of the United Kingdom persons born in Western Samoa have never thereby become British subjects. What is claimed, as we understand it, is that the position according to the law of New Zealand is different and that all persons born in Western Samoa between 1924 (when the 1923 Act came into force) and 1948 were automatically British subjects in the eyes of New Zealand law, from which it would no doubt follow that their children born after that date would be New Zealand citizens by descent. These results are said to arise from the way in which certain provisions of a United Kingdom Act, the British Nationality and Status of Aliens Act 1914, were incorporated into New Zealand law by the New Zealand Acts of 1923 and 1928, when the incorporated provisions are read together with other provisions of those two New Zealand Acts.

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30

The 1923 Act is fully dealt with, so far as necessary, in Levave and the present judgment is little more than an appendage to that one. It is enough here to recall that the 1923 Act did not adopt Part II of the United Kingdom Act of 1914, which related to naturalisation, but made its own provisions on that subject. Other sections (in parts I and III) of the United Kingdom Act were adopted by reproducing them in the First

40

Schedule to the 1923 Act and declaring that, save only as modified by that Act, they were to be part of the law of New Zealand and to be read together with and be deemed to form part of that Act. One such section was s.1 of the 1914 Act, which by subs.(1)(a) included in the persons deemed to be natural-born British subjects 'Any person born within his Majesty's dominions and allegiance'. The interpretation section in the 1923 Act contained its own definition of 'British subject' as meaning a natural-born British subject, or a person to whom a certificate of naturalisation had been granted in New Zealand; but that section also provided that it had no application in the interpretation of the sections in the First Schedule, so the mere incorporation of the United Kingdom sections was clearly not intended to alter their meaning.

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The 1923 Act went on to provide in ss.4 to 12 for the naturalisation of aliens and in s.13 for the capacity of aliens as to property. Section 14 was the one on which the argument for the appellant mainly depended. It had the side or marginal note (not of course part of the Act: Daganayasi v. Minister of Immigration [1980] N.Z.L.R. 130, 142), 'Naturalisation of aliens in Cook Islands and Western Samoa'. Some machinery provisions about naturalisation were contained in subs. (2); but the appellant claimed that subs.(1) had a more dramatic scope. That subsection read:

Subject to the provisions of this section, this Act shall apply to the Cook Islands and to Western Samoa in the same manner in all respects as if those territories were for all purposes part of New Zealand; and the term "New Zealand" as used in this Act shall, both in New Zealand and in the said territories respectively, be construed accordingly as including the Cook Islands and Western Samoa.

In the Court of  
Appeal of New  
Zealand

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No.6

Judgment of the  
Court delivered  
by Cooke J.

15th April 1981

- continued

In the Court  
of Appeal of  
New Zealand

—————  
No.6

Judgment of the  
Court delivered  
by Cooke J.

15th April 1981

- continued

The argument was, in short, that s.14(1) should be read together with the incorporated s.1(1)(a) of the United Kingdom Act to produce the result that any person born in Western Samoa was to be deemed to be born within his Majesty's dominions and allegiance.

For the reasons given by Somers J. we affirmed the conclusions of Jeffries J. and Kerr S.M., that the interpretation contended for was not correct. We held that by incorporating into New Zealand law the provisions of s.1(1)(a) of the Imperial Act the New Zealand Parliament did not change the meaning of those provisions; and that s.14 was not intended to convert into British subjects Western Samoans born after the statute came into force.

10

Turning now to the 1928 Act, we note that the main feature differentiating it from the 1923 Act is that it adopted Part II of the Imperial Act, and made some necessary incidental provisions, so that the naturalisation system was to be uniform in the United Kingdom and this country. In other respects the 1928 Act was much the same as its forerunner. In particular the same sections in Parts I and III of the Imperial Act were again incorporated by reproduction in a schedule (this time the Second Schedule). The interpretation section was simplified and contained nothing bearing on the present question; and the incorporating section (s.6) was put in the following simpler form:

20

30

6. Certain provisions of Imperial Acts declared part of law of New Zealand. - The several provisions of the Imperial Acts set forth in the Second Schedule to this Act, in so far as the said provisions are capable of application in New Zealand, are hereby declared to be part of the law of New Zealand.

40

Section 7 of the 1928 Act, with the side note 'Naturalization of aliens in Cook Islands and

Western Samoa', corresponded to s.14 of the 1923 Act. Subsection (1) was identical. Subsection (2) differed somewhat in its wording, though not in its effect, the reason for the changes being manifestly that United Kingdom naturalisation provisions were now being adapted to those territories rather than provisions originating in New Zealand.

In the Court  
of Appeal of  
New Zealand

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No.6

Judgment of the  
Court delivered  
by Cooke J.

15th April 1981

- continued

10        Accepting as we do that the argument for  
the plaintiff in this case is and must be  
essentially the same as the argument for the  
appellant in Levave's case, we hold against  
it for the reasons given in that case, all  
of which appear to us equally applicable to  
this case. We do not enter upon the  
question whether this Court is bound by its  
own prior decisions, as the present is not a  
20        case where we have any hesitation in following  
the earlier decision.

Our view, in short, is that in declaring that  
the Acts of 1923 and 1928 were to apply to  
Western Samoa, then a mandated territory, as  
if it were part of New Zealand, the New  
Zealand legislature indicated no intention  
of making all persons born there in future  
British subjects. Indeed we think it  
inconceivable that the legislature had any  
such intention.

30        For these reasons the question asked in the  
originating summons is answered No.

There will be no order for costs in this Court.

Solicitors:

G.Rosenberg, Wellington for Plaintiff

Crown Law Office, Wellington, for Crown

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18.

No.7.

In the Court of  
Appeal of New  
Zealand

NOTICE OF MOTION FOR ORDER GRANTING  
FINAL LEAVE TO APPEAL TO HER MAJESTY  
IN COUNCIL

No.7

Notice of  
Motion for  
Order granting  
Final Leave to  
Appeal to Her  
Majesty in  
Council

TAKE NOTICE that on the 31st day of August 1981  
at 10 o'clock in the forenoon or so soon there-  
after as Counsel can be heard Counsel for the  
abovenamed Falema'i Lesa WILL MOVE THIS  
HONOURABLE COURT FOR AN ORDER that final  
leave to appeal to Her Majesty in Council 10  
against the decision of this Honourable Court  
be granted UPON THE GROUNDS that security  
has been lodged and the record substantially  
prepared for dispatch to the United Kingdom  
AND UPON THE GROUNDS SHOWN in the affidavit  
of GEORGE HENRY ROSENBERG sworn and filed in  
support hereof.

DATED at Wellington this 27th day of August  
1981.

'G.H. Rosenberg'

20

Solicitor for the Plaintiff

TO: The Registrar, Court of Appeal

AND TO: ATTORNEY-GENERAL.

19.

No. 8.

ORDER GRANTING FINAL LEAVE

MONDAY the 31ST DAY OF AUGUST 1981.

BEFORE THE RIGHT HONOURABLE MR. JUSTICE  
WOODHOUSE THE RIGHT HONOURABLE MR. JUSTICE  
McMULLIN THE HONOURABLE MR. JUSTICE BARKER

10 UPON READING the Notice of Motion of the  
Plaintiff dated the 27th day of August 1981  
and the affidavit of GEORGE HENRY ROSENBERG  
filed herein, and upon hearing Mr. Rosenberg  
of counsel on behalf of the Plaintiff  
and Mr. Squire of counsel on behalf of the  
Defendant THIS COURT HEREBY ORDERS that  
final leave to appeal to Her Majesty in  
Council against the decision of this  
Honourable Court be granted.

BY THE COURT

L.S. <sup>W.</sup>  
~~R.~~D. L'Estrange

(Deputy) Registrar.

In the Court  
of Appeal of  
New Zealand

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No. 8

Order granting  
Final Leave

In the Court of  
Appeal of New  
Zealand

CERTIFICATE OF REGISTRAR OF  
THE COURT OF APPEAL OF  
NEW ZEALAND

\_\_\_\_\_  
No.9

Certificate of  
the Registrar  
of Court of Appeal  
of New Zealand

I, WILLIAM DORMER L'ESTRANGE Registrar  
of the Court of Appeal of New Zealand DO  
HEREBY CERTIFY that the foregoing 19 pages  
of printed matter contain true and correct  
copies of all the proceedings, evidence,  
judgments, decrees and orders had or made  
in the above matter, so far as the same 10  
have relation to the matters of appeal,  
and also correct copies of the reasons  
given by the Judges of the Court of Appeal  
of New Zealand in delivering judgment  
therein; such reasons having been given in  
writing:

AND I DO FURTHER CERTIFY that the Appellant  
has taken all the necessary steps for the  
purpose of procuring the preparation of  
the record, and the despatch thereof to 20  
England, and has done all other acts,  
matters and things entitling the said  
Appellant to prosecute this Appeal.

AS WITNESS my hand and Seal of the Court  
of Appeal of New Zealand this 20<sup>th</sup> day of  
October 1981.

REGISTRAR





No 131523

O le Tulafono Tau le Faamauina o E Fananau  
ma E Maliliu 1961

The Births And Deaths Registration Ordinance, 1961

PEPA-FAAMAONI O LE FAAMAUINA O LE ASO  
FANAU I LE OFISA O LE RESITARA-AUTU  
CERTIFIED COPY OF ENTRY OF BIRTH IN THE  
REGISTRAR-GENERAL'S OFFICE

Nu'u na faamau ai (Place of Registration) APIA, WESTERN SAMOA

No. 15127/S

TAMAITITI (CHILD)	
1. Aso na fanau ai (when born)	28th November 1946
2. Nu'u na fanau ai (Where born)	Sataua Hospital
3. Igoa muamua (Christian or first name)	FALEMA'I
4. Tama po'o se teine (Sex)	Female
TAMA (FATHER)	
5. Igoa atoa (Name and Surname)	Lesu
6. Galuega (Profession or Occupation)	-
7. Tausaga (Age)	-
8. Nu'u <del>muamua</del> ai (Birthplace) e nofo Residence	Papa
TINA (MOTHER)	
9. Igoa atoa (Name and Surname)	Lipale
10. Faa'iu ae le'i faaiipoipo (Maiden Surname)	-
11. Tausaga (Age)	-
12. Nu'u <del>muamua</del> ai (Birthplace) e nofo Residence	Papa

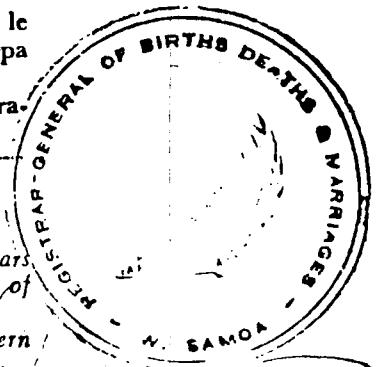
Ua faamaonia o faamatalaga ua ta'ua i luga o le ata moni lea o le faamauina o le fanauga i pepa o i le Ofisa o le Resitara-Autu.

Tuaina atu i lalo o le faamau faailoga a le Resitara-

Autu o Samoa i Sisifo, i le aso \_\_\_\_\_  
o \_\_\_\_\_ 197

Certified to be a true copy of the above particulars included in an entry of birth in the records of the Registrar General's Office.

Given under the seal of the Registrar-General of Western Samoa, this 1st day of August 197



THIS is a true copy of a certified copy of the Birth Certificate marked with the letter "A" mentioned and referred to in the annexed Affidavit of LIPALE LESU sworn at Apia in Western Samoa, this 4<sup>th</sup> day of February 1980; Before me:-

*L. P. ...*

DEPUTY-REGISTRAR OF THE SUPREME COURT OF WESTERN SAMOA

O le totogi o lenei pepa-faamaoni e 50 sene

The fee for this certificate is 50 sene

LAPATA'IGA—O soo se tasi na te (1) faaseseina poo le suiina o soo se vaega o lenei pepa-faamaoni, poo (2) faaaogaina e pei o se mea moni a ua na iloaina e pepelo, o le a mafai ona faasalaina e nofo i le falepuipui mo se vaitaimi e le silia le lima tausaga.

CAUTION—Any person who (1) falsifies or alters any of the particulars on this certificate or (2) uses it as true, knowing it to be false, is liable to imprisonment for a term not exceeding five years.

IN THE PRIVY COUNCIL

NO. \_\_\_\_\_ of 1981.

O N A P P E A L  
FROM THE COURT OF APPEAL OF NEW ZEALAND

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BETWEEN            FALEMA'I LESA

Appellant

and

ATTORNEY-GENERAL

Respondent

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RECORD OF PROCEEDINGS

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MACFARLANES,  
Solicitors,  
Dowgate Hill House,  
London EC4R 2SJ

Agents for:

GEORGE ROSENBERG,  
Wellington,  
New Zealand.