

POLICE v SILULU

High Court Apia
3 February; 17 March 1939
Harley CJ

REGULATIONS (Validity) - The Road Traffic Ordinance, 1931, s 23 - Form of Report of Accident prescribed by Regulation pursuant to s 23.(1C.) - Regulation and Form of Report ultra vires.

Defendant, who had been involved in a serious motor vehicle accident, declined to complete the Form of Report prescribed by Regulation pursuant to s 23.(1C.) of The Road Traffic Ordinance, 1931, and although his solicitor reported details of the accident by letter, he was charged with failing to file a report on the prescribed Form. The prescribed Form contained sixteen questions, the answer to any one of which might disclose an offence.

Held: To require answers to questions which were self-criminating contravened one of the basic principles of British justice, and the Form of Report prescribed went far beyond what was reasonable and within the ambit of the Ordinance. Both the Form and the Regulation were held ultra vires and void: Kerridge v. Girling-Butcher [1933] N.Z.L.R. 646 at p. 675 referred to; Carroll v. Attorney-General for New Zealand [1933] N.Z.L.R. 1461 at p. 1472 applied.

Inspector Braisby for informant.
Pleasants for defendant.

Cur adv vult

HARLEY CJ. The defendant was charged under section 23 of The Road Traffic Ordinance, 1931 as amended by section 6(d) of The Ordinances Amendment Ordinance, 1936 with failing to report an accident on the prescribed form. The actual words of the section which constitute the offence are as follows:-

Every person driving a motor vehicle which is in any manner involved in an accident in which a person is killed or injured shall forthwith report such accident in writing to the Inspector of Police on the prescribed form.

The Regulation made under The Road Traffic Ordinance, 1931 and published in the Western Samoa Gazette of the 1st April, 1938 on page 604 set out the Form in which such report had to be made.

Various matters are raised at the hearing but by consent of both sides it was agreed that the only question which the Court should be asked to determine was whether or not the defendant could be compelled to fill in the form mentioned in the section and whether he could be successfully proceeded against for not having done so.

The facts showed that defendant had called at the Police Station after the accident and had procured a copy of the Form. This he had taken to his solicitor who, after consideration, advised him not to fill it in but to allow him (the solicitor) to report the fact of the accident with appropriate details to the Inspector of Police by letter. This course was duly followed by defendant, who declined to fill in the Form required by the Regulation, and this action is the result.

The submissions made at the hearing by counsel for the defendant fall under two heads. Firstly, that the terms of the section quoted above are defective in that they fail to say who is to prescribe the form or to make

the regulation prescribing it, and secondly, that all that is authorised by the terms of the section is a form of report of the accident and not what might be termed "a form of inquisition".

The Form itself consists of two parts. The first page deals with those questions which in my mind may be properly asked of any person who finds himself involved in a motor accident. The second part of the form goes very much further, and under the heading "Driver Violations" sets out ten questions, to answer any one of which in the affirmative would disclose an offence. Further on, under the heading "Condition of Driver", there are two questions "Driver intoxicated" and "Driver had physical defect". The next set of questions deals with the condition of the vehicle and it is clear that an answer to any of the six questions under that heading might also disclose an offence. The remaining questions in this part of the Form seem to be of a kind to which answers would appear in a statement regarding the accident which a driver, if in New Zealand, could make to the Police if he wished. In all, there are sixty-one questions and a group of diagrams in this second part of the Form.

In Halsbury's Laws of England, vol. 27, page 124 is found the general proposition, which states that delegated authority must be exercised strictly in accordance with the powers creating it, and in the spirit of the enabling statute.

It is clear to me that what was intended by the Ordinance was that drivers involved in an accident of this nature should inform the Police of the fact of the accident at the earliest possible time, so that the Police could at once undertake an investigation before all traces of the accident were obliterated and witnesses dispersed. It is reasonable to suppose also that such harmless details as the names of the drivers of the motor cars, the names of their occupants, the time, exact place and so on would form part of the information to be supplied to the Police. I feel sure, however, that it was never contemplated by any one that a driver who had been involved in an accident should be bound to go to the Police and confess in one or more of a dozen ways that he was responsible for the accident. The words of Ostler J. in Kerridge v. Girling-Butcher [1933] N.Z.L.R. at p. 675 seem applicable to this case:-

If Parliament really desires to give such power to the Government it can of course do so. But as such a power, if exercised, would be a serious inroad on the liberties of the subject it will have to be given in clear terms.

Counsel also refers me to the remarks of Myers, C.J. in Carroll v. Attorney-General for New Zealand [1933] N.Z.L.R. 1461 at p. 1472:-

I agree at once that where the Governor-General is given power to make such regulations as he thinks necessary and any particular regulation that he makes is within the ambit of the Act, this Court would have no power to interfere, or even to inquire into the reasonableness of the regulation. But it is the duty of this Court, where the validity of a regulation is challenged, to consider the Act and to say whether the regulation is within its ambit; and if upon the true construction of the statute the Court comes to the conclusion that the Act does not authorise the regulation, then it must hold the regulation to be ultra vires and void.

Certain principles underlie the whole fabric of the system of British justice and one of the chief of these is that every man shall be considered innocent until he is proved to be guilty. In very few cases has this rule ever been infringed, and then only by direct command of the legislation itself, and such infringement as there has been has given rise to some degree of popular resentment. In this case there is no indication at all that the Legislature either of New Zealand or of Samoa intended the rule to be broken. I am convinced that all that was intended was to make some reasonable form of report in writing compulsory to every driver involved in an accident in which a person was injured. The Form laid down by the Regulation goes far beyond this, as I have said, and it goes to such detail that it is probable that few persons involved in an accident could answer

it truthfully and in full without rendering themselves liable to proceedings.

For the above reasons I hold that the Form itself and the Regulation prescribing it published in the Western Samoa Gazette of the 1st April, 1938 at pages 604 to 606, inclusive, are ultra vires and void and that consequently proceedings against the defendant must fail. As I have dismissed the information upon the point raised in the defendant's second submission it is unnecessary for me to deal with the other point raised by him.