

HIGH COURT. Apia. 1957. 1958. 6, December; 24 January. ROTHWELL J.

Road Traffic - defendant charged with carrying passengers for hire without licence - section under which charge preferred disclosed no offence - construction of penal statute - Road Traffic Amendment Ordinance 1934.

The defendant was charged under section 3 of the Road Traffic Amendment Ordinance 1934 with carrying passengers for hire without being the holder of a passenger service licence. The wording of the charge did not follow that of the section.

It appeared this was done purposely because the section, as it stood, created no offence. In fact, the wording of the section enabled the carrying-out of the activities alleged in the charge to be contrary to the Ordinance as the use of an unlicensed vehicle did not constitute a passenger service within the meaning of the Ordinance.

Held: that it is a rule of construction that a statute should be so construed as to give it an effect if possible and not so construed as to deprive it of effect. This rule, however, does not entitle the Court to do violence to the clear wording of a penal statute in order to constitute an offence which does not in fact appear in the statute properly construed.

Information dismissed.

Sub-Inspector Lankow, for Police.
Metcalf, for defendant.

Cur. adv. vult.

ROTHWELL J.: The informations filed in this matter relate to a series of occasions on which the defendant, owner of a truck used for goods cartage purposes, carried certain persons from outlying parts to Apia to constitute a labour force for working the banana cargo for export from Western Samoa.

He is charged with a number of charges of carrying passengers for hire on a vehicle other than a motor-car or motor-omnibus and to these charges he has pleaded guilty. These informations are laid under section 12(2) of the Road Traffic Ordinance 1931 and the offence is clear. There is, however, another information charging the defendant that on divers dates between January and July 1957 he did carry passengers for hire without being the holder of a passenger service licence as required by the Ordinance. This information purports to be laid under section 3 of the Road Traffic Amendment Ordinance 1934. The defendant has pleaded not guilty.

This Ordinance is an interesting study. The prosecutor has not followed the wording of section 3 which makes it an offence "for any person to carry on in any part of Western Samoa any passenger service". He has avoided this wording and substituted a non-existent charge of "carrying passengers for hire". His reason for doing this appears to be clear. As the Ordinance is enacted it is apparently impossible to commit a breach of section 3.

Section 2(1) defines "passenger service" as "a service for the carriage of passengers for hire by means of a public motor vehicle duly licensed under section 11 of the principal Ordinance to carry passengers for hire". A passenger service, therefore, can only be carried on by a vehicle which holds a licence for that purpose and it follows that if an unlicensed vehicle carries passengers or if the licence of a duly licensed vehicle is permitted to expire, the activities of the unlicensed vehicle do not constitute a passenger service within the meaning of the Ordinance.

It is a rule of construction that a statute should be so construed

as to give it an effect if possible and not so construed as to deprive it of effect. This rule, however, does not entitle the Court to do violence to the clear wording of a penal statute in order to constitute an offence which does not in fact appear in the statute properly construed. The prosecutor has not improved his position by adopting different wording in the information because the information as laid does not constitute an offence under the Ordinance. That information accordingly will be dismissed.

Something should be said about the merits of the defendant in carrying on a practice which had been operating for a number of years and was thought to be a legal one. Indeed in the opinion of the Court it is an economic and desirable practice which could be brought within the scope of an Ordinance, subject of course to adequate supervision and control. This is a matter for the legislature and not for the Court.

As the offence alleged was a technical one committed under a misunderstanding of the law and as the service was immediately discontinued upon issue of the informations, a nominal penalty only should be imposed. The defendant will be fined 10/- on information No. 3822 and on the other informations he will be convicted and discharged.