

HIGH COURT. 1960. 15, 22, December. MARSACK C.J.

Contempt of Court - rehearing - reasonable opportunity of being heard in defence - Samoa Act 1921, sections 245, 76 and 78(3).

Before a person can be said to have been given a reasonable opportunity of being heard in his defence on a charge of contempt of Court in accordance with section 78(3) of the Samoa Act 1921 (New Zealand), he must first have been informed, beyond the possibility of misunderstanding, of the nature and detail of the offence with which he stands charged.

Charge dismissed.

REHEARING ordered by the Council of State under section 245 of the Samoa Act 1921 (New Zealand).

Penlington, for Police.
Metcalf, for defendant.

Cur. adv. vult.

MARSACK C.J.: This is a rehearing, ordered by the Council of State under section 245 of the Samoa Act 1921, of a charge of contempt of Court for which defendant Berking was convicted and fined £5 before Rothwell J. in the High Court on the 27 September last.

Counsel agreed upon a written statement of facts and accordingly no evidence was called before me. Briefly the facts are these: The sitting of the Court on the 27 September was considerably disturbed by loud hammering in the course of demolition operations on the building of Coxon & Company, Merchants, on the section adjoining that upon which the Court is situated. The Judge sent a policeman to have the noise stopped. This order was obeyed. Shortly afterwards defendant Berking, who was the works foreman, came to the scene and ordered that work should be resumed, as he was in charge of it and not the policeman. Ultimately defendant was brought before the Court and asked by the Judge if it was he who had ordered a resumption of the hammering. He stated that it was. Defendant was then asked if he had anything to say as to why he had disregarded the order of the Court. He replied that though the policeman had stopped the work the men were employed by Coxon & Company and had to complete the demolition before the rebuilding work could proceed. Defendant's attitude towards the Court seemed to be disrespectful, and when asked if he agreed with the order of the Court that the hammering should cease, he stated that he did not. The Judge thereupon convicted him of contempt of Court under section 76 of the Samoa Act 1921 and fined him £5.

The main submission made by Mr Metcalf at the rehearing concerned the proper application of section 78(3). That subsection reads:

"The Court may thereupon, after giving the person so arrested a reasonable opportunity of being heard in his defence, either order him to pay a fine not exceeding fifty pounds or commit him to prison for a period not exceeding six months."

As I think counsel's argument based on this section is well founded I do not need to consider the other submissions put forward.

In my opinion, before a person can be said to have been given a reasonable opportunity of being heard in his defence he must first have been informed, beyond the possibility of misunderstanding, of the nature and detail of the offence with which he stands charged. On the statement of facts presented to me I am left in considerable doubt as to whether defendant

fully realised that he was facing a charge of contempt of Court for which he might, upon conviction, be fined or imprisoned. Defendant was certainly given every opportunity to speak and to make any explanation he wished to the Judge. He did not avail himself of that opportunity. His failure to do so may have been due, as counsel suggests, to his nervousness in unfamiliar surroundings, or it may have been due to doubt in his mind as to exactly what it was he had to explain. The inference might well be drawn from what was said by the Judge that defendant faced the possibility of conviction for contempt of Court. But it does not appear that defendant must necessarily have known that he was facing such a charge. That being so I am of opinion, on the statement of facts agreed to before me, that it would not be proper in the circumstances to enter a conviction for contempt of Court.

Counsel on behalf of the defendant has apologised to the Court for his apparent discourtesy and has expressed his regret. That I think should meet the case, and for the reasons I have given the charge will be dismissed.