

IN THE HIGH COURT OF THE COOK ISLANDS

HELD AT RAROTONGA

(CIVIL DIVISION)

CR NO. 327/98

**POLICE**

**V**

**D CRIGHTON**

Date: 24 May 1999

**JUDGMENT OF QUILLIAM CJ**

The trial of the case of the Police and Crighton has had to be adjourned to the next sitting of the Court because a witness who had been summoned to give evidence on behalf of the defendant was not present. He was on the island of Penrhyn and not expected to return until after the elections. The witness was Inspector Tini.

The defendant has informed me that he had written to the Inspector and the Commissioner on the 25<sup>th</sup> of March last saying that he required the Inspector's presence. Then when he knew the date of his trial he obtained from the Court a witness summons which required the Inspector to attend at Court today. He served the summons the same day.

Last Friday he learned that the Inspector was in Penrhyn. In the Inspector's absence the trial has not been able to proceed today and had to be adjourned. I have had to consider the responsibility for the summons having been ignored and I required the attendance of the Commissioner of Police for that purpose. He has acknowledged that he knew of the summons but needed to send the Inspector to Penrhyn in order to control a potentially dangerous situation there. He said he told the Inspector to see whether it could be adjourned or in some way if he could be excused from attending the Court but it appears the Inspector did not do so and went to Penrhyn when he was instructed to do so. The Commissioner has volunteered that he accepts full responsibility for what has happened but I am bound to say that the principal culprit appears to be the Inspector. I do not for a moment doubt the difficulty which the Commissioner would have faced in trying to

meet that request for a senior officer to go to Penrhyn. It seems clear that there is a strict limit on the availability of staff for such a task and it appeared that this Inspector was the obvious person to send.

The administration of justice cannot proceed in this country unless it is clearly understood that the orders of the Court must be obeyed. A summons to attend the Court is an order and the person summoned must attend unless an application to the Court has been made and the summons has been varied or cancelled. Neither the Police nor anyone else is entitled to decide that there is something more important which should take precedence. Although I have not the slightest doubt a proper application to the Court indicating the gravity of the case and the nature of the problem would have been listened to and could have resulted in this case not having to be adjourned. I have to point out that a defiance of a Court order is normally met by imprisonment or a substantial fine.

What has happened in this case has resulted in the Court not being able to deal with the case today with a consequent waste of the Courts time, and wasted expense in witnesses having attended unnecessarily. With some considerable hesitation I have decided that there may be nothing to be gained in this case by imposing punishment, but I must make it as clear as I can that if such a situation occurred again, and particularly by the Police who should know better than most what their obligations are, then I should certainly expect some punishment to be imposed. In the circumstances I am prepared to leave the matter at that but these remarks will be recorded in the Court records so they will be available if there is any future similar occurrence.

William C. J.