MORRIS *ats.* MAGANLAL.

[Appellate Jurisdiction (Maxwell-Anderson, C.J.) July 8, 1931.]

Assault by police officer in execution of duty—Proof necessary to sustain charge—Position of police officers and powers thereof.

Appellant, a police officer, took hold of respondent with intent to arrest him for a breach of s. 54 (24) of the Summary Conviction Offences Ordinance 1876,[1] but did not carry that intention into effect. There was evidence that drum beating continued after the police had ordered it to be stopped. Appellant admitted that he seized respondent by the neck. Medical evidence showed slight bruising of a trivial nature. Appellant was convicted by the Chief Police Magistrate of assault and battery and fined £1 with 8s. 6d. costs. Appellant obtained from the Supreme Court special leave to appeal against his conviction.

HELD.—A police officer lawfully effecting an arrest can justify an assault if the force used is not more than the occasion requires.

[**EDITORIAL NOTE.**—See now Penal Code (Cap. 4), s. 18 (Revised Edition, Vol. I, p. 226.]

R. Crompton, K.C. (with him *R. A. Crompton*) for appellant. Conviction is void. Respondent was committing an offence within the meaning of s. 54 (24) of the Summary Conviction Offences Ordinance 1876 and was subject to arrest under s. 81[2] of the Ordinance. Appellant did not exceed his powers as a police officer and the act complained of occurred in the exercise of those powers. He also referred to s. 18 (2) Constabulary Ordinance 1905.[3] Acts of respondent were direct defiance of police and the action of appellant was fully justified.

MAXWELL ANDERSON, C.J.—This is an appeal by special leave of the Court from a conviction by the Acting Chief Police Magistrate of the appellant for assault and battery upon the respondent. Appellant is a Sub-Inspector in the Fiji Constabulary, while respondent is an Indian barber, and leave to appeal was granted because it is in my view of public importance that any serious charges brought against police officers acting in the exercise of their duties should be investigated fully by the Supreme Court of the Colony.

Although in the course of argument several interesting points of law have been raised by learned counsel on both sides, more especially that as to the true construction of s. 54 (24) of the Summary Conviction Offences Ordinance 1876—a point which undoubtedly will have one day to be determined—I am of opinion that it is at present unnecessary for this Court to decide such points since it is common ground that the assault, such as it was, was in fact made on respondent by the appellant.

It is relevant first to consider the position of police officers in relationship to the public. The police are a body recruited by the proper authority and maintained at the public expense for the benefit and

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1 *Repealed. Vide Penal Code, s. 195 (Revised Edition, Vol. I, p. 283).*
2 *Repealed. Vide Criminal Procedure Code, Schedule I (Revised Edition, Vol. I, p. 81).*
3 *Repealed. Vide Police Ordinance, s. 20 (3) (Revised Edition, Vol. I, p. 615).*

protection of the public as a whole. Their duties mainly are to keep order, to prevent and to detect crime and generally to safeguard the law-abiding citizen from the machinations of less well disposed persons.

For such purposes police officers are properly armed with large and extensive powers, but the moment they step outside the limits of such powers, they become liable for their actions just as any other member of the community.

Now since every arrest is in fact an assault it is necessary to inquire upon what grounds in law proceedings will lie against a police officer for assault.

I apprehend that either one of three alternatives must be proved and these are (*a*) that the officer was acting outside the scope of his authority, i.e. doing something which he was not empowered to do, (*b*) that on the particular occasion no force whatever was necessary, or (*c*) that force being necessary, the amount used was manifestly in excess of what the occasion required.

The first alternative does not arise in this case since obviously the appellant had the right to arrest and was acting within his powers if he arrested the respondent. Whether it was tactful or discreet to make an arrest in the circumstances of this case is a matter of opinion which may properly be left to the determination of the appellant's superior officers, this Court being concerned merely with the legality of the act.

I accept the appellant's evidence that he did intend to arrest the respondent and for that purpose caught hold of the respondent by the "scruff of the neck." Subsequently as he says because of the respondent's scared look and no doubt also realizing the trivial nature of the offence committed, appellant released the respondent.

Now the assault, or perhaps it would be more correct to say the battery, of which appellant was convicted in the Police Court consists in the seizing hold of the respondent. A bare arrest *per se* is no defence to a charge of battery if in fact no force was necessary but I am of opinion that, considering all the circumstances of moment, the appellant was justified in using some degree of force from the instant when he decided rightly or wrongly to make an arrest.

It therefore remains to be determined whether the degree of force used was in excess of what the occasion required. The finding of the learned police magistrate is not of much assistance of this Court being contained as it is in the somewhat cryptographic sentence "Defendant ought not to have acted as he did—Guilty."

I myself somewhat incline to the view that the appellant should not have acted as he did, but that does not mean that he has committed some offence for which he is liable to be convicted and punished. The result however of his action was that respondent some seventeen hours after the assault was found by a doctor to have some bruises on his neck. I must assume that these bruises were in fact caused by appellant, but the doctor describes them as being of a trivial nature and I come to the conclusion that the force used was not in excess of what the occasion required.

That the assault was in fact made is, as I have stated, admitted and accordingly appellant would be prima facie guilty, but if such was the opinion of the learned police magistrate then in my view the case is one

in which having regard to its trivial nature the learned police magistrate should have considered the provisions of s. 5[1] of the Summary Conviction Offences Ordinance and proceeded thereunder.

But if I am correct in my view of the law as above set out then the assault was justified and I so find, but even should I be wrong in my assumption and the appellant be guilty of the offence then I find that the assault was of such a trivial nature as not to warrant punishment and the information should have been dismissed accordingly.

In conclusion I would add that I have grave doubts as to whether this is an honest prosecution on the part of the respondent. It seems to me that, as has been done in many cases, if his grievance was real and honest he would in the first place have complained to the Inspector-General and would not have resorted to the Court until satisfied that in no other way could he obtain relief.

This appeal will be allowed and the conviction of appellant quashed.

INDIAN PRINTING AND PUBLISHING COMPANY *ats.* POLICE.

[Appellate Jurisdiction (Maxwell Anderson, C.J.) March 2, 1932.]

Supreme Court Ordinance, 1875[2]*—s. 37—application in Fiji of Imperial Statutes—Obscene Publications Act, 1857, 20 and 21 Vict. c. 83—right of appeal to Quarter Sessions—interpretation in Fiji.*

Proceedings were taken against the Indian Printing and Publishing Company Limited by way of a summons under the Obscene Publications Act, 1857, 20 and 21 Vict. c. 83 to show cause why certain copies of a publication entitled *Debate with the Arya Samaj in Fiji* should not be destroyed. An order was made by the Acting Chief Magistrate for destruction. The defendant entered an appeal to the Central Criminal Court and secondly an application for leave to appeal under 3 (2) (*d*) of the Appeals Ordinance, 1903.[3]

HELD.—An Act which deals or purports to deal with the protection of the public from a nuisance or crime committed by an individual member thereof is an Act of general application within the meaning of s. 31 of the Supreme Court Ordinance, 1875.[2]

(2) Semble. The Obscene Publications Act, 1857, 20 and 21 Vict. c. 83 is in force in Fiji.

[**EDITORIAL NOTE.**—Obscene publication are now dealt with under s. 191 of the Penal Code, Cap. 5.]

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1 *Repealed.*
2 *Revised Edition Cap. 2.*
3 *Rep.*