

POLICE v O.F. NELSON AND CO. LTD.

High Court Apia
27 January; 3, 13, 21 February; 21 April 1931
Luxford CJ

SEDITION - Trading Company charged with 28 counts of participating in, and aiding and abetting activities of a seditious organization in breach of clause 3(4) of the Samoa Seditious Organizations Regulations, 1930 - Maximum fine of £200 imposed for each count following conviction.

Held: The evidence proved that the responsible officers of the Company knew that moneys collected and paid in to the Company office for remittance to its Managing Director in New Zealand were for the purpose of furthering the activities of a seditious organization, and that they permitted the Company office to be used for such purpose, and therefore the Company must be convicted on all counts.

McCarthy for informant.
Klinkmueller for defendant.

Cur adv vult

LUXFORD CJ. The defendant Company is charged with having on or about the 18th day of August, 1930 participated in activities and aided and encouraged the continuance of activities of a seditious organization, namely the Mau.

The information sets out a further twenty-seven charges of a similar nature, all of which are laid under subclause (4) of clause 3 of the Samoa Seditious Organizations Regulations, 1930.

The Governor-General in Council, acting under the powers conferred upon him by the Samoa Act, 1921, made these Regulations on the 11th day of January, 1930 for the purpose of giving the executive authority in Samoa power to suppress seditious organizations, and in particular an organization called the Mau, which at that time seriously interfered with the course of government. Following on the coming into force of these Regulations, the Administrator of Samoa by a Proclamation made on the 13th day of January, 1930 duly declared the Mau to be a seditious organization, and so it still remains.

The offences against the Regulations are described in clause 3(4), the relevant portions of which I will now set out:-

No person shall participate in the activities of, or aid, abet, or encourage in any way whatsoever the continuance, activities, or objects of, any seditious organization, or by any badge, symbol, uniform, flag, banner, or any other means whatsoever, identify himself with or express his approval of any seditious organization.

The prosecution in this case alleges that the defendant committed a breach of this subclause on twenty-eight separate occasions by receiving moneys from members of the seditious organization for the purpose of forwarding them to a man named Nelson in Auckland, who, as will be shown presently, is its head and directs and incites its activities.

At the hearing of the informations the following facts were either proved or admitted:-

1. The twenty-eight sums of money set out in the information were paid into the office of the defendant Company by Samoans.
2. Each sum of money represented the proceeds of collections

taken up in the various districts of Samoa.

3. The collections were taken up at the request and direction of Nelson, who calls himself the head of the seditious organization.
4. The collections were taken up for the purpose of furthering the activities of the seditious organization, namely, supplying money to Nelson to enable him to continue the distribution in Samoa of seditious propaganda.
5. Nelson is the Managing Director of the defendant Company, but is at present residing out of Samoa in consequence of an Order of Deportation made against him under section 2 of the Samoa Amendment Act, 1927.
6. The Company permitted its organization to be used for the purpose of receiving the moneys and remitting them to Nelson in Auckland.
7. The responsible officers of the Company knew that the moneys received by the Company to be remitted to Nelson in Auckland were for the purpose of furthering the activities of the seditious organization.

On these findings of fact the defendant must be convicted on each of the twenty-eight charges.

It remains now to fix the appropriate penalty which the defendant Company must pay for its breach of the law. In two previous cases Police v Priscilla Muench and Police v Rosabel Nelson, I had occasion to deal with offences of a seditious nature committed by Europeans. In those cases, I discharged the defendants without penalty, but upon stringent terms, the non-compliance with which renders each of them liable to the sentence which could have been imposed in the first instance. Also, I issued a definite warning as to the sentences I would impose in future cases of a similar nature. I will repeat the words I used there:-

I am determined while I hold my present position to treat with the utmost severity any Europeans who in the future are proved to be guilty of offences of a seditious character unless there are very special circumstances. The Government of New Zealand has recently been put to heavy expense to restore order in Samoa: and all law abiding citizens must indeed be grateful and thankful that its efforts have been so successful but its efforts will have been wasted if people similarly minded to you are allowed to carry on unchecked; also, I might add, if insidious and false propaganda from New Zealand is allowed to issue and to find its way into Samoa unchecked. I have now to consider whether I shall straight away sentence each of you to the punishment which the class of offence which you have committed deserves, that is, a term of imprisonment to be followed by exile from this country. That is the kind of sentence I propose to inflict where persons are found guilty of offences of a seditious character unless there are special circumstances.

Had the defendant been an individual the circumstances disclosed in this case, and which I will refer to more particularly, would have justified me in imposing the penalty referred to in my former Judgment; but, as the defendant is a body corporate, my powers are limited to the infliction only of a monetary penalty. If the necessary power were vested in the Court I would, in addition to the penalty which I intend to impose, have cancelled the defendant's licence to trade until such time as it entered into a bond in the penal sum of £10,000 conditioned upon the defendant Company refraining from aiding or

abetting any seditious movement in this country.

However, that power appears to rest in the executive authority, and it is to be hoped that it will be exercised.

I have had to deal with and sentence to imprisonment a number of Samoans who have been encouraged and incited by Nelson to continue the activities of the seditious organization and who have been assisted in that direction by the defendant Company. I know of nothing more deserving of censure and condemnation than the act a European or a European corporation deliberately encouraging members of a somewhat unsophisticated native race to break the law, a fortiori when the object of the wrong-doing is to procure from members of that race money to enable the European to stir up unrest in their country by insidious and false propaganda.

The facts disclosed in this case show that members of the Samoan race are being deliberately incited to break the law in Samoa by a man resident in the Dominion of New Zealand. I express no opinion as to whether power exists to restrain the actions of this man by the processes of the criminal law. If there be any doubt as to what powers exist under the law as it stands, the Government of New Zealand should not hesitate to clothe itself with the necessary power to punish those persons within its territory who incite a breach of the law in Samoa. It has clothed itself with such power in respect of the liquor laws of Samoa. It is its duty to clothe itself with such powers in respect of persons who incite sedition in Samoa.

The defendant Company will be fined the sum of £200 in respect of each of the twenty-eight charges. A minute of each conviction will be entered in the criminal record book in accordance with this Judgment, and formal convictions will be drawn up if required.

NOTE

On appeal to the Supreme Court of New Zealand sub nom O.F. Nelson and Co. Ltd. v Police [1932] NZLR 337, the convictions were affirmed, but the penalties were varied to the maximum of £200 on one charge and £10 each in respect to each of the others.