

HIGH COURT. Apia. 1959. 1, 8, July. ROTHWELL J.

Resisting; Police messenger in execution of duty - section provides for offence of resisting constable - whether Police messenger a "constable".

A Police messenger is not a "constable" within the meaning of section 15(1)(a) of the General Laws Ordinance 1931 which makes it an offence to resist any constable in the execution of his duty.

Information dismissed.

Senior Sergeant Schuster, for Police.
Phillips, for defendant.

Cur. adv. vult.

ROTHWELL J.: The defendant was charged with resisting a Police messenger of the Western Samoa Police Force in the execution of his duty. The facts were not in dispute and both the prosecution and defence agreed that the only person who was resisted was in fact a Police messenger. The charge was laid under the General Laws Ordinance 1931 section 15(1)(a) of which the material parts read as follows:

"15. (1) Any person commits an offence.....
who

(a) resists.....any constable in the
execution of his duty....."

"Constable" was originally defined in the Samoa Act 1921 section 3 as follows:

"Constable" means an officer of Police of any rank in
the Samoan Public Service.

By the Samoa Amendment Act 1949, the definition of "Western Samoa Public Service" was amended and inter alia excludes -

"(g) An officer of Police or officer of Prisons in
Western Samoa."

This enactment is either an implied repeal or an amendment of the definition which appear in the principal Act. On either view, it is clear that the definition in the principal Act ceases to have any real meaning. As far as the New Zealand legislation is concerned therefore, there is no effective definition of "constable". Section 3 of the principal Act is not a reserved enactment (Samoa Amendment Act 1957).

The Police Force in Western Samoa as existing at the present time was constituted by the Police Force Ordinance 1951. That Ordinance contains no definition of "constable" but provides for various ranks within the force by section 4 which reads as follows:

"4. The establishment of the Force shall consist of the
following ranks:-

- Superintendent
- Inspectors
- Sub-Inspectors
- Sergeants of different grades, namely,
Senior Sergeants and Sergeants
- Corporals
- Constables
- Messengers."

In the absence therefore of any other definition, a constable can be only such a person as will come within the ordinary or popular conception

resulting from the foregoing classification. Senior Sergeant Schuster made one submission only, namely that a messenger under the Police Force Ordinance 1951 is a member of the Force. That is quite true, but on the present prosecution, that avails him nothing because the wording of the incriminating section is clear and only constables are referred to. The Ordinance has a number of provisions dealing with rights and duties of members of the Force, and has other provisions dealing with rights and duties of different classifications in such membership. For example, section 18 provides powers of dismissal of "any constable or messenger" and further and different powers in respect of "any sergeant or corporal".

It is clear, therefore, that a messenger is not a constable within the meaning of the Police Force Ordinance 1951; that there is no definition in any other place which would make the terms "constable" and "messenger" synonymous; and that the messenger therefore is not a constable for the purposes of the section under which the information was laid. I expressly refrain from commenting on other results which may flow from this judgment with respect to other officers of the Western Samoan Police Force. The information is dismissed.