

REGINA v. SEMISI KOLOAMATANGI.

(Criminal Court : Hunter J. without a Jury : Nuku'alofa, 24th November, 1958).

Interference with the course of justice — Cap. 10. S. 64 — Submission of "No case to answer" — Matters to be considered on such a submission — Conduct of Counsel — What amounts to a wrongful interference with the course of justice.

The accused was charged with wrongfully interfering with the course of justice. The facts were briefly these: The accused was acting as the legal representative of a person against whom the police had obtained a search warrant. While the police were in the act of searching the premises in connection with which the warrant had been issued the accused appeared on the scene and endeavoured to persuade the police to discontinue the search, apparently on the ground that the warrant was defective. No physical acts were done by the accused to prevent the police making their search. All he did was to tell them to stop; saying that he had already been in touch with their superior officer.

HELD: On the facts there was no case to answer.

Hama for the Crown.

Finau & Tupou for the Accused.

HUNTER J. The Accused is charged under S. 64 Cap. 10 with wrongfully interfering with the course of Justice. Under that section the offence is attempting to interfere, but since S. 6 provides that a person charged with committing an offence may be convicted of an attempt to commit and as no objection has been taken to the indictment I am of the view that the indictment is good.

Counsel for the defence submits that there is no case to answer. Assuming, as I must do at this stage, that all the evidence given by the prosecution is true, where is there any evidence that the accused attempted wrongfully to interfere with the course of Justice? What the accused did was, in his capacity of a lawyer, to endeavour to persuade the police to cease from executing a search warrant. That in itself is not attempting wrongfully to interfere with the course of justice. The portion of the evidence that gave me some concern is this. The police officer who was executing the search warrant said in evidence "he (accused) said to me, You stop your search. Don't you know that I have already got in touch with your head.

I said "Mr. Lahmert?" He said "Yes." I then stopped the search."

Mr. Lahmert was called and he said that the accused had not got in touch with him. Even if I assume, which I think I should on this submission that what the accused implied was that Mr. Lahmert had given instructions for the search to cease, is this an attempt to interfere wrongfully with the course of justice? I think not. No doubt the accused was making a nuisance of himself to the police and no doubt he stated something to the officer that was untrue but I do not think this can be said to interfere

with the course of justice. Had the accused concealed the book for which the police were searching that would clearly be an attempt to interfere wrongfully with the course of justice but simply to ask the police to cease their search cannot be said to be a wrongful interference with the course of justice.

It would not be right for me at this stage to comment on the accused's behaviour as I have not heard his explanation, but I would point out that if the facts were as stated then the accused's conduct deserves censure. If there were some valid reason why the search should have been stopped then the accused's proper course as a lawyer would have been to apply to the Judge for an injunction.
