

POLICE v MEREDITH

Supreme Court Apia
26 September 1972
Rothwell CJ

STATUTORY OFFENCES (Unauthorized parking on wharf) - Port Control Regulations 1939 as amended by Amendment No. 1 (1970/8) - REGULATIONS (Interpretation) - Repugnancy - Regulation 52 making it an offence to park a vehicle on "any wharf" without the permission of a Police Officer - General permission granted defendant by Port Administrator to park whenever ships for which he was agent loading or unloading - Defendant charged with failing to have required permit and convicted but discharged without penalty as case regarded as test case to settle the law - Regulation 52 giving Police sole control of parking not in any way repugnant to Port Administrator's powers of administration and supervision of shipping - Suggestion of repugnancy countered by specific provision for dual control of Port Administrator and Police in other Regulations.

PROSECUTION for parking vehicle on wharf without permission.

Slade for prosecution.
Phillips for defendant.

ROTHWELL CJ (orally). On the Information which was proceeded with the defendant is charged that he did on the 15th day of May, 1972 at Matautu-tai, being the driver of a motor vehicle, namely, a Pick-Up registration plate number 2.180 park such vehicle on the wharf without the permission of the Police Officer. There is not much dispute about the facts except the nature of the defendant's activity while the vehicle was stationary, but he does admit that he was on the wharf on that day attending to ships for which he was the Agent. The substantial defence is that he had the authority from the Port Administrator of a blanket nature to the effect that his vehicle was allowed to park on the wharf when ships for which he was Agent were entering or leaving and in respect of which he had duties in the way of loading and unloading cargo and carrying out other matters associated with clearing. He does not suggest that he had any other authority, but rests entirely on the authority given to him by the Port Administrator. That authority, according to the evidence of the then Port Administrator, was given at the beginning of this year which, of course, was after the promulgation of the Regulation which came into force on the 11th December, 1970, almost 2 years ago; and Mr Phillips argues that an amendment to the 1939 Regulations brought in by a part of the amending Regulations of December, 1970 is repugnant to a wide general power of supervision and control fixed in the Port Administrator by an Act of Parliament of a later date. The sole question to be decided is that of repugnancy - whether it does or does not exist.

Now it is true that the general powers of administration and supervision are vested in the Port Administrator, but that does not necessarily exclude activities of other people properly authorized and, as Mr Slade has pointed out, there are other Regulations in the 1939 Regulations where powers are given to the Customs or Police Officer in the alternative. And in the case of Regulation 52 what has been done is not to introduce something new but to delete the powers of the

Customs Officer (now represented in the person of the Port Administrator). Traffic control in general is in the hands of the Police. Mr Phillips suggests that in the case of vehicles parking on the wharf the Police should not have sole jurisdiction and that the elimination of the powers of the Customs Officers (as the expression was in the 1939 Regulations before amendment) is repugnant to the general powers of subsequent Act.

I find no substance in that argument. I don't know about other parts of the world but in New Zealand, for instance, Police control traffic and Police control all other matters in the maintenance of law on the wharves and generally run hand in hand with the Harbour administration notwithstanding that the general supervision and control of shipping is in the hands of the Harbour Boards; and any suggestion of repugnancy is in my view definitely countered by the fact that there are still matters in the Regulations after amendment in respect of which there is dual control in the hands of the Police and also of the Port Administrator.

That is not so with reference to the parking of vehicles on the wharf and it follows that on the 15th May, 1972 the defendant had no proper authority to permit him to park his vehicle for whatever purpose or whatever the nature of his activity. There will be no penalty because this is a test case to settle the law. On the Information as to the 15th May you are convicted and discharged, and as to the Information on the 30th May this is withdrawn by leave of the Court.