IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)
A T L A U T O K A
Appellate Jurisdiction
Criminal Appeal No. 63 of 1982

BETWEEN : R E G I N A — Appellant

A N D : PARSHU RAM s/o Pardesi — Respondent

Director of Public Prosecutions — Counsel for the Appellant
Mr. B. C. Patel — Counsel for the Respondent

J U D G M E N T

This is an appeal by the D.P.P. against a magistrate's decision that a special constable is not a police officer within the meaning of section 247(b) of Penal Code, Cap. 17.

The charge was as follows :-

" Statement of Offence

ASSAULTING POLICE OFFICER IN DUE EXECUTION OF HIS DUTY:
Contrary to section 247(b) of the Penal Code, Cap. 17.

Particulars of Offence

PARSHU RAM s/o Pardesi on the 20th day of February, 1982, at Lautoka in the Western Division, assaulted Special Constable number 144 Mohammed Jan, in the due execution of his duty."

At the close of prosecution case Mr. B. C. Patel for the defendant submitted that a Special Constable was not a Police Officer within the meaning of section 247(b) of the Penal Code. The learned magistrate upheld that submission after a careful judgment and acquitted the defendant.

The D.P.P. appeals against the decision and Mr. Maharaj, Principal Crown Counsel has tendered a copy of the submissions he made during the appeal.

The problem facing the learned magistrate arose because the Penal Code does not define the expression "police officer". According to Mr. B. C. Patel, one must follow the Interpretation Act, Cap. 7, section 2 of which states that the words "police officer" have the meaning assigned to them by the Police Act.

By section 2 of the Police Act Cap. 85:-

"police officer means any member of the Force," and the same section defines 'Force' as 'the Royal Fiji Police Force'.

Under the Police Act a 'police officer' is a member of the Royal Fiji Police Force.

Where does the "special constable" fit into the Police Act? Section 2 defines a "special constable" as a "member of the Special Constabulary established under the provisions of this Act".

This section of the Police Act differentiates between a "police officer" and a "special constable". There must be a good reason for referring to "special constables" and "police officers" separately.

The D.P.P. submits that because the Police Act places the Special Constabulary under the control of the Police Commissioner along with the "Royal Fiji Police Force" then the Special Constabulary must be part of the "R.F.P.F."

He relies upon Section 55(1) of the Police Act which provides that -

"Every special constable while on duty shall have the same powers and privileges, including the carrying of arms, and protection, and shall be liable to perform the same duties as a police officer."

and upon section 55(2) which makes every "special constable" subordinate to the same authorities as a police officer". He says it is absurd in the light of section 55 not to regard a special constable as a police officer.

Section 55 to which the D.P.P. refers appears to recognise a difference between special constables and police officers by the very fact that it refers to them separately. It seems to say that although a special constable is not a member of the Royal Fiji Police Force he shall whilst on duty have the same powers, privileges, protection etc. as if he were, for the time being a police officer. In other words whilst he is on duty he is to all intents a police officer.

The long title to the Police Act Cap. 85 declares that it is :-

"An act to make better provision for the organisation, discipline, powers and duties of the Police Force and for matters incidental thereto".

It does not refer to "the Royal Fiji Police Force" but only to the Police Force.

Under the Police Act there are clearly two police organisations which,

as the Act states, are established for preservation of law and order.

Section 3 confirms the existence of a Police Force called the Royal Fiji Police Force and Part II relates to its administration.

Part IV of the Act, sections 16 - 26 set out the general powers and duties of police officers and by section 55 those powers and duties of a police officer are vested in a special constable when he is on duty.

Part V, by section 53, confirms the existence of a Special Constabulary.

Reference to the Police Force in the long title to the Act envisages a Police Force composed of a regular or permanent constabulary namely "the Force" called the Royal Fiji Police Force and another body called the Special Constabulary. They are both established by the Police Act which as its title shows governs a body known as the Police Forde. It should be noted that the Act is entitled the Police Act and not The Royal Fiji Police Act. Likewise the long title refers only to the Police Force from which I deduce that the expression Police Force is not confined to the Royal Fiji Police Force but also embraces the Special Fiji Constabulary. The Special Constabulary is by statute a part of the Police Force and it follows that a Special Constable is as much a member of the Police Force of Fiji as is a member of the Royal Fiji Police Force.

Section 54 of the Police Act states:-

> "54.- Special constables may be employed with the Force wherever it is necessary to augment the Force for the preservation of the public peace and the prevention and detection of crime, and may be paid from public funds at such rates as may be prescribed".

It says they may be employed with "the Force" i.e. with the Royal Fiji Police Force". It does not say that they may be employed with the Police Force presumably because under the Police Act the special constables are a branch of the Police Force.

It appears to me that under the Police Act a special constable is, to use common parlance, a police man, and that a police officer, that is to say a member of the Royal Fiji Police Force, is also a policeman.

The legislature in enacting a statute frequently includes an interpretation section in the statute which lays down the meanings which must be applied to certain words and expressions used in the statute. There is no need in

such cases to resort to the Interpretation Act for guidance. It is only when a statute does not provide a meaning for an expression or phrase that one turns to the Interpretation Act to see if it ascribes a meaning to the expression.

In fact section 2(1) of the Interpretation Act makes this clear by enacting that :-

> "2(1) In this Act and every other written law and in all public documents enacted, made or issued before or after the commencement of this Act the following words and expressions shall have the meanings hereby assigned to them respectively unless there is something in the subject or context inconsistent with such construction or unless it is therein otherwise expressly provided:-"

The Penal Codes which makes it a statutory offence to assault a police officer in the course of his duty does not specifically define what is meant by the expression police officer. But Section 3 of the Penal Code does provide what it calls a "General Rule of Construction" which reads:-

> "3.- This Code shall be interpreted in accordance with the principles of legal interpretation obtaining in England, and expressions used in it shall be presumed, so far as is consistent with their context, and, except as may be otherwise expressly provided, to be used with the meaning attaching to them in English criminal law and shall be construed in accordance therewith".

It is apparent that the Penal Code has set down its own mode of construing or interpreting expressions found in it, namely a construction which shall be in accordance with the usage adopted in English Criminal Law. It follows that where an expression used in the Penal Code has an accepted and well established meaning in English Criminal Law then such meaning is to be preferred to any meaning expressed in the Interpretation Act.

Therefore I think that the expression "police officer" in the Penal Code should receive the meaning which it has in English Criminal Law.

I am fortified in that view by an examination of the Police Act which has obviously defined "police officer" and "special constable" for its own limited purposes. It was enacted for the creation, administration, and operation of a police force comprised of regulars or permanent policemen i.e. The Force and a reserve body who occasionally serve as policemen, namely the special constabulary. The Police Act intends that a special constable on duty is a policeman as evidenced by section 54 and by section 55.

Turning now to the usage in English Criminal Law it seems that there is no difference between a constable, a police constable, a policeman and a police officer. The expressions seem to be synonymous.

The word constable is an old English word which has been in use for 800 years. According to the Shorter Oxford Dictionary a constable in the 16th century was "an officer of the peace".

Constabulary according to the dictionary means "Of or pertaining to petty constables or to police officers".

It seems then that a member of the Royal Fiji Police Force being a "police officer" is necessarily a constable and that a constable is a "police officer".

The dictionary also describes a policeman as being a member of the police force.

A regular police constable is always on duty. A special constable is only on duty when he is specially called upon to act in the role of a police officer.

Wharton's Law Lexicon, 11th Edn. p.209 says that a constable is an officer to whom our law commits the duty of maintaining the peace.

It appears that words constable and police officer are synonymous.

The way in which the expressions constable, police constable, and police officer are accepted in English Criminal Law as meaning the same thing is demonstrated in Wills v Bowley 1982 3.W.L.R.10 before the House of Lords. There was no attempt in that case to define any of those expressions. It was a case in which the appellant had been convicted of assaulting a constable in the execution of his duty. In the Court of Appeal, Donaldson L.J. used the expressions constable and police constable in his judgment. Lord Elwyn-Jones in his judgment used the expression constable, police constable and police officer in describing the complainant. Likewise Lord Lawry in his judgment commencing at p.20 used all those expressions when he was referring to the complainant. He also quoted from many decided cases where sometimes the expressions "officer", "police officer", "constable", and "police constable" were used in the same sense by the learned judges. Lord Bridge at p.36 refers to the extent of a constable's power of arrest and later to the difficult task police officers have in maintaining law and order. He uses the expressions constable and police officer at pps. 46 and 47 as having the same meaning.

I conclude that in English Criminal Law a constable is a police officer and vice versa and that the same approach should be adopted in construing our Penal Code.

Section 247(b) concerns itself with the protection of all policemen on duty and I think it would be inconsistent with the obvious intention of the legislature in section 55 of the Police Act and of the Penal Code to deprive part of the Fiji Police Force namely the statutory body of special constables of that protection and confine it to the other statutory body of police namely the Royal Fiji Police Force. If one decides that the expression "police officers" when used in any statute shall exclude special constables then there would be virtually no effective special constabulary. The result would appear to be absurd.

With respect to the learned magistrate, I would on this difficult matter of construction differ from him and conclude that for the purposes of the Penal Code the expression special constable when referring to a special constable on duty is synonymous with police officer.

The appeal is allowed and the trial will no doubt continue before the learned magistrate.

LAUTOKA,
29th October, 1982

J. T. Williams
(J. T. Williams)
Judge

TO BE CIRCULATED