

IN THE SUPREME COURT OF FIJI

Revisional Jurisdiction

No. 3 of 1956

E. W. MORGAN

v.

P. RICE

Magistrate issuing summons charging lawyer with criminal libel of himself—complaint unsigned

Mr. E. W. Morgan, a Magistrate, issued a summons charging a local barrister and solicitor with criminal libel against himself. The complaint was unsigned.

Held (on revision).—Not only was the summons issued irregularly by the Magistrate, who was in fact the complainant in the case, but it should never have been issued at all.

Proceedings ordered to be terminated.

HAMMETT, J. [27th February, 1956]—

Revisional Order:

This case was instituted in the Magistrate's Court, Ba. The charge reads as follows:—

Statement of Offence

LIBEL: Contrary to sections 210 and 216 of the Penal Code, Cap. 5.

Particulars of Offence

PHILIP RICE in or about the months of December, 1954 and January, 1955, in the Western District, published a defamatory libel affecting E. W. Morgan the Magistrate, Ba, in the form of a letter containing an innuendo that E. W. Morgan was unfit to be a Magistrate.

On 16th February, 1956, under the provisions of the Magistrates' Courts Ordinance section 10 the Chief Justice directed that the case be heard and determined by the Magistrate's Court of the 1st Class at Nausori, on the ground that the complainant in the case, Mr. E. W. Morgan, was the Magistrate, Ba, and the summons had been issued by the Magistrate, Ba, namely the same Mr. E. W. Morgan.

The case is now reviewed on being received for onward transmission to the Magistrate's Court, Nausori.

I observe that the complaint in the case was not signed by the complainant as is required by the Criminal Procedure Code section 82 (3).

Until a complaint has been signed by the complainant, the Magistrate has no jurisdiction to issue a summons under the Criminal Procedure Code against the proposed defendant.

In these circumstances, not only was the summons in this case issued irregularly by the Magistrate who was in fact the complainant in the case, but it should not have been issued at all.

If this had been known by the Chief Justice at the time, I am quite satisfied he would not have directed that this case be heard by the Magistrate's Court at Nausori.

In the terms of Criminal Procedure Code section 361, I have perused the papers in this case to satisfy myself as to the regularity of the proceedings. In my opinion the whole of these proceedings are irregular. No complaint has yet been made in accordance with the provisions of Criminal Procedure Code section 82 (3) and no summons should therefore have been issued.

I direct that these proceedings be terminated and that the papers be filed.