

## IN THE SUPREME COURT, DARWIN, NO. 14 OF 1951

## 9

R. v. VITNELL

KRIEWALDT A.J.

5  
10 *Criminal Law—Unlawful assault on police officer in execution of duty—Resisting arrest by police officer—Criminal Law Consolidation Act 1876 section 51—Police and Police Offences Ordinance 1923 section 27 and section 47.*

15 The defendant was in the lounge of an hotel in Darwin with some friends while a dance was in progress. The defendant used an offensive word to a police officer making a routine inspection, whereupon the police officer told the defendant that he was under arrest for offensive behaviour. The police officer tried to take hold of the defendant who resisted and a struggle ensued.

*Held:* the defendant was entitled to resist unless the arrest was lawful.

20 *Held:* the police officer was entitled to arrest the defendant without warrant under section 27 of the Police and Police Offences Ordinance because he had just cause to suspect that the defendant was guilty of the offence of offensive behaviour in a public place mentioned in section 47 of that Ordinance.

*Held:* words alone may amount to behaviour.

25 *Held:* the lounge of an hotel may be a public place within the meaning of the Ordinance.

*Held:* the fact that the police officer knew all the facts does not mean that he did not have just cause to suspect.

30 *Odlum* for the prosecution

*Lyons* for the defendant

35

## JUDGMENT

(Delivered 4 December 1951)

40

**Kriewaldt A.J.** The defendant stands charged on indictment with two offences both under section 51 of the Criminal Law Act, Act 1876. The first count in the indictment is that on 29 September 1951 at Darwin he unlawfully assaulted Sergeant Mutch in the due execution of his duty. The second count is that he resisted Sergeant Mutch in the due execution of his duty.

45

The two charges arise out of an incident which took place in or just outside the lounge of the Darwin Hotel. Sergeant Mutch on 29 September in the course of his duties went to the lounge of the Darwin Hotel in accordance with the normal police practice to ensure that liquor was not consumed after the statutory closing time of 10

o'clock. On arrival at the hotel, where a dance was in progress, he saw bottles and glasses on a number of tables. After speaking to the persons at one or more of these tables, he went a little further into the room where he found two tables with three glasses. According to Sergeant Mutch, whilst speaking to the people at these tables, the defendant said 'You can't do anything here, you haven't seen them drinking', and also 'You can't do a bloody thing here, you haven't seen them drinking'. The Sergeant says he asked the defendant to keep out and moved away to another table. As he passed the defendant, the defendant said to him 'Don't push me around', to which the Sergeant replied 'Don't be silly. Will you please keep out.' The Sergeant then spoke to two men at another table, when he heard the defendant use a very offensive word, referring the same to the Sergeant. On this the Sergeant said to the defendant 'That is offensive to me. I am arresting you on a charge of offensive behaviour.' He attempted to catch the defendant by the arm, but the defendant pulled away. When the Sergeant made a further attempt to catch hold of the arm of the defendant, the defendant punched the Sergeant, whereupon the two grappled with each other and after a short struggle fell to the floor.

After a few moments both stood up and the Sergeant again attempted to catch hold of the defendant, who once more aimed blows at him, with the result that the two fell down a second time. Again both got up and on the Sergeant making a third attempt to arrest the defendant, a third struggle occurred, during the course of which the defendant put his fingers inside the Sergeant's mouth and inflicted injuries to the inside of his mouth.

On the parties being separated an incident which concerned another patron of the hotel took place, in which the defendant was not concerned. A little later the defendant came up to the Sergeant and offered to shake hands and forget all about it, but was told by the Sergeant that he was under arrest and would have to come to the Police Station, to which the defendant replied that he would come. It is not necessary to state the rest of the evidence given by Sergeant Mutch because both charges relate to the matters I have already recounted. It will be sufficient to say that the defendant waited for some time by himself in the police vehicle outside the hotel and later of his own accord went to the Police Station.

In the main, the account given by the defendant does not differ from that by the Sergeant except as to the conversation preceding the arrest. According to the defendant he was not present at the table when the Sergeant first spoke to the party of which the defendant was a member. The defendant says that when he arrived Sergeant Mutch was complaining that the party had drink on the table and that it was after 10 o'clock, to which the defendant said, 'There are ten in the party and only three glasses half full of champagne.' Sergeant Mutch said, 'That's nothing. You can't drink after ten.' The defendant said, 'You can call a waiter and take the three glasses. We're finished with them.' According to the defendant, Sergeant Mutch then used an offensive term regarding the defendant, and when the defendant repeated that he was only telling the Sergeant that the glasses were not wanted, the Sergeant then arrested him. According to the defendant, he inquired several times as to the reason for the arrest, but the Sergeant refused to tell him any reason. The defendant contended that he resisted the arrest because he was not told why he was being arrested.

The defendant called Miss Greenham, a member of his party, as a witness, who gave a very abbreviated account of the affair. According to her, Sergeant Mutch came to the table and said, 'What right have you to drink after ten?' At that stage the defendant returned to the table and said, 'There is no one drinking here.' Sergeant

Mutch then said for him not to interfere and that he was getting cheeky. The defendant said he was not, whereupon Sergeant Mutch got hold of his arm and they started to scuffle.

This witness in chief said that no bad language was used by either Sergeant Mutch or the defendant. In cross-examination she said that the defendant said 'There is no one drinking at the table, and you haven't seen anybody drinking at the table.' She also said that she heard the Sergeant use the word 'arrest', but in re-examination said that the Sergeant did not give the reason why he was arresting the defendant.

On this evidence, I have come to the following conclusions as to the facts. I am convinced beyond reasonable doubt that Sergeant Mutch on his visit to the hotel was engaged in the course of his duties and that the defendant knew him to be a police officer and realised that he was engaged on his duties. I find that when the defendant returned to his party he queried the powers Sergeant Mutch had, taking the point that the Sergeant was powerless to do anything unless he had seen any of the party in the act of drinking. On the crucial question as to whether during the conversation between the Sergeant and the defendant the defendant used the word attributed to him by the Sergeant, I have no doubt that the defendant did use the word and was immediately thereafter told by Sergeant Mutch that he was under arrest for offensive behaviour. When the defendant was told he was under arrest he resisted all attempts to apprehend him and a series of scuffles took place, during which Sergeant Mutch suffered substantial injuries at the hands of the defendant. Shortly after, however, the defendant cooled off and, as I have already said, later voluntarily went to the Police Station.

It will be apparent from this summary that I have accepted the evidence of Sergeant Mutch and that wherever there is a conflict between him and the defendant, I have rejected the evidence of the defendant. My reasons are as follows:

- (a) The demeanour of Sergeant Mutch in the witness box was faultless. In cross-examination particularly he made no attempt to minimise certain facts which had occurred earlier that day and which were directed to create the impression that at the time of this incident he was under the influence of liquor.
- (b) The evidence Sergeant Mutch gave is in accordance with what I should expect to happen, using such experience of life as a common jurymen is supposed to possess.
- (c) The attack made in cross-examination and in the final address on the credibility of Sergeant Mutch has not carried any conviction to my mind. I find that Sergeant Mutch was not affected by liquor. I accept his evidence that he did not drink any liquor from shortly after 6 o'clock that evening, after which time he had eaten food and driven his car home from Adelaide River. I do not find anything extraordinary in any of his actions before the incident with the defendant. The removal by Sergeant Mutch of some bottles of liquor from one table, if anything, shows that he was not in a truculent mood. I do not find it necessary to come to any finding as to whether Sergeant Mutch, after the defendant eventually submitted to arrest, marched him through the lounge when he might have left the hotel premises by a different route. If this did, in fact, occur I think allowance should be made having regard to the injuries Sergeant Mutch had received that evening. In any event the charges do not relate to this aspect.
- (d) The demeanour of the accused in the box was not satisfactory. Certain statements made by him were so obviously coloured that I could not accept him as an unbiased and truthful witness. For example, he said that there were two

dances after he went to the Police Station, but it appeared that this was based on hearsay, and in any event could not be correct, because there were only two dances after the struggles, and during one of these the defendant was still at the hotel. Moreover, his explanation of why he decided to submit to arrest is not at all convincing. If he thought at the time of the struggle that he was entitled to resist arrest until told of the cause, nothing occurred which would make him change his mind, and in any event I think he was told the reason for his arrest.

- (e) On what I regard as the vital point, namely whether the accused used the offensive word to Sergeant Mutch or whether the incident arose out of an offensive word used by Sergeant Mutch concerning the defendant, the evidence of Miss Greenham that she heard neither one use any bad language is, I think, of great importance. It is unlikely that this witness would shield Sergeant Mutch. If therefore he did not use an offensive word concerning the defendant it must follow that the defendant in giving evidence is not telling the truth. Generally speaking, the evidence given by Miss Greenham accords more closely with the evidence given by Sergeant Mutch than it does with the evidence given by the defendant.

I propose to consider the assault charge first. There is no doubt that the defendant did cause substantial injuries to Sergeant Mutch. The defendant expressly admitted that he hit Sergeant Mutch and struggled with him. The real question is whether there was any justification for the assault by the defendant on Sergeant Mutch, and this requires a decision as to whether the arrest of the defendant was lawful. If the arrest was unlawful the accused was entitled to resist and in my opinion none of his actions exceeded the limits of resistance allowed by the law. In *Christie v. Leachinsky* [1947] A.C. 573, Lord Simonds said at page 591:

Putting first things first, I would say that it is the right of every citizen to be free from arrest unless there is in some other citizen, whether a constable or not, the right to arrest him. And I would say next that it is the corollary of the right of every citizen to be thus free from arrest that he should be entitled to resist arrest unless that arrest is lawful.

The common law paid so high a regard to the liberty of the subject that arrest by a private person or by a person charged with a duty of keeping the peace was only admitted within very narrow limits. In *Nolan v. Clifford* 1 C.L.R. 429 Griffith C.J. said at p. 444:

Now the common law with regard to this subject was well settled. It was that a constable could arrest, without a warrant, any person whom he suspected on reasonable grounds of having committed a felony. He could not do so in the case of a misdemeanour, or in the case of an offence punishable on summary conviction, unless on the authority of some statute, such as the English Larceny Act, section 99, which was referred to. There is a similar section in the Malicious Injuries to Property Act. But generally he could not arrest for a misdemeanour on suspicion. Another distinction was that in the case of a felony a constable was not obliged to have a warrant in his possession, while in the case of a misdemeanour he was. That was not decided until comparatively recently, but it is settled law in England, and it has been held to be the law of New South Wales.

It might be asked why there should be any difference between the right of a constable to arrest without a warrant in the case of a felony, and in the case of a misdemeanour. But there is a settled rule, the reason for which seems to be the application of the principle that he may arrest on reasonable suspicion, and that, if a constable is aware on credible authority that a warrant has been issued, on a properly sworn information, by a justice against any person, that is held to be reasonable suspicion that the person has committed a felony. We know that is the way in which the administration of the police laws is conducted, and

has been, as long as we have known anything about it. But that is not the law in the case of a misdemeanour.

An illustration of the operation of these rules is found in the case I have already cited, *Christie v. Leachinsky* (*supra*). The respondent brought an action for false imprisonment against the appellants, a constable and a sergeant, who had arrested him. At the time of the arrest the constable suspected and had reasonable grounds for suspecting that the defendant had stolen a bale of cloth. He did not inform him of this suspicion but instead said to the respondent that he arrested him on a charge of unlawful possession under a statute similar to section 61 of the *Police and Police Offences Ordinance* 1923. The Act under which the constable effected the arrest did not authorise an arrest without a warrant unless the name and residence of the party arrested 'was unknown to such constable and could not then be ascertained by him'. It was obvious, therefore, that if the constable arrested on the authority of the statute relating to unlawful possession the arrest was unlawful because made without warrant, he well knowing the name and residence of the defendant. If, however, he arrested by virtue of the common law power to arrest without warrant on a suspicion on reasonable grounds of a felony, the arrest was lawful, unless invalidated because the reason he gave to the respondent was that of unlawful possession, and not suspicion of felony. The House of Lords held that, apart from special circumstances, an arrest without warrant can only be justified if the charge is made known to the person arrested. Viscount Simon summarised the rules relating to arrest in a series of propositions which he formulated as follows (pp. 587-8):

- (1) If a policeman arrests without warrant upon reasonable suspicion of felony, or of other crime of a sort which does not require a warrant, he must in ordinary circumstances inform the person arrested of the true ground of arrest. He is not entitled to keep the reason to himself or to give a reason which is not the true reason. In other words a citizen is entitled to know on what charge or on suspicion of what crime he is seized.
- (2) If the citizen is not so informed but is nevertheless seized, the policeman, apart from certain exceptions, is liable for false imprisonment.
- (3) The requirement that the person arrested should be informed of the reason why he is seized naturally does not exist if the circumstances are such that he must know the general nature of the alleged offence for which he is detained.
- (4) The requirement that he should be so informed does not mean that technical or precise language need be used. The matter is a matter of substance, and turns on the elementary proposition that in this country a person is, *prima facie*, entitled to his freedom and is only required to submit to restraints on his freedom if he knows in substance the reason why it is claimed that this restraint should be imposed.
- (5) The person arrested cannot complain that he has not been supplied with the above information as and when he should be, if he himself produces the situation which makes it practically impossible to inform him, e.g. by immediate counter-attack or by running away. There may well be other exceptions to the general rule in addition to those I have indicated, and the above propositions are not intended to constitute a formal or complete code but to indicate the general principles of our law on a very important matter. These principles equally apply to a private person who arrests on suspicion.

I pause to refer to the case of *R. v. McCabe* (1904) S.A.L.R. 115. The defendant was charged with shooting at a police constable with intent to prevent lawful apprehension. It was proved that several constables, seeing the defendant some distance away, shouted to him to stop, and when he ran one constable called out, 'Stop, or I will shoot', and thereupon did in fact shoot in the direction of the defendant, who then turned and fired a shot at the constable. Way C.J. said (pp. 118-19):

The mere fact that the prisoner knew that the men who were chasing him were constables would not be enough to sustain a charge of having fired the shot to prevent them from lawfully arresting him, unless it were proved that he knew they had a right to apprehend him. It is not contended that he had committed a crime, or that he was doing an unlawful act when he was called upon to stop. It is true the constable suspected him of evil designs which would have justified him in arresting him, but that suspicion was buried in the brain of the policeman, and unless it were communicated to the prisoner he could not possibly have any knowledge of the fact that the officers were endeavouring to arrest him lawfully. Therefore the charge that he had fired to prevent lawful apprehension cannot be sustained.

With all respect, I agree with this statement of the law, but I find myself unable to understand a further statement made after the conviction had been quashed, when Way C.J. said (pp. 119-20):

I would like to add that cases in which prisoners are charged, under section 51 of the Criminal Law Consolidation Act, 1876, with assaulting the police in the performance of their duty are on a different footing from this case, and it will be for the Crown to decide whether McCabe should be prosecuted on a charge of that kind.

I do not, as at present advised, appreciate the distinction which the learned Chief Justice drew in the passage I have quoted.

Returning to the case before me, since there was no authority at common law for the arrest of the defendant without warrant, his offence, if any, not being a felony nor even a misdemeanour, using this word in its stricter sense, but only a simple offence under the Police and Police Offences Ordinance, it is necessary to find statutory authority for the arrest. The only legislative provision to which my attention has been drawn and which I have been able to find myself is section 27 (1) (e) of the Ordinance, which gives authority to a member of the Police Force without warrant to apprehend 'any person whom he has just cause to suspect of having committed or being about to commit any felony, misdemeanour or offence or of any evil designs.' It may be of interest in connection with this section to refer to a further passage from the speech of Viscount Simon in *Christie v. Leachinsky* (*supra*) (p. 588):

If a policeman who entertained a reasonable suspicion that X has committed a felony were at liberty to arrest him and march him off to a police station without giving any explanation of why he was doing this, the *prima facie* right of personal liberty would be gravely infringed. No one, I think, would approve a situation in which the person arrested asked for the reason, the policeman replied 'that has nothing to do with you; come along with me'. Such a situation may be tolerated under other systems of law, as for instance in the time of *lettres de cachet* in the eighteenth century in France, or in more recent days when the Gestapo swept people off to confinement under an overriding authority which the executive in this country happily does not in ordinary times possess. This would be quite contrary to our conceptions of individual liberty. If I may introduce a reference to a well-known book, Dalton's *Country Justice*, that author, dealing with arrest and imprisonment, says at p. 406: 'The liberty of a man is a thing specially favoured by "the common law."'

The Northern Territory Ordinance (section 27) is in exactly the same words as the South Australian Police Offences Act. The origin of this sweeping provision entitling the police to arrest without warrant on suspicion of a simple offence is, strangely enough, a provision in the Canal Offences Act passed in the tenth year of Queen Victoria. There is similar legislation in, I think, each of the other States of the Commonwealth. Even in England there are a great number of statutes which permit arrest without warrant for an offence against the particular statute. See the list compiled in 9 *Halsbury*, p. 91. The list is so long that one is tempted to say that the exceptions now comprise more cases than are contained in the general rule. The operation of the

South Australian section has been considered in a number of cases. In *White v. Kain* [1921] S.A.S.R. 339 at page 342, Poole J., for the Full Court, said (pp. 342-3):

I come then to the substantial question in this appeal namely the questions put to the jury and the effect of their answers. The defendant does not justify under any warrant. By the common law any person may arrest another without warrant if a felony or treason has in fact been committed, and he has reasonable grounds for suspecting that the person he arrests has committed felony or treason. A constable may arrest any person without warrant whether a felony or treason has or has not been committed, if he has reasonable grounds for suspecting that a felony or treason has been committed, and that it has been committed by the person arrested. But there is at common law no right in anyone, constable or private person, to arrest without warrant for an offence which is neither felony nor treason. The defendant, then, if he is to justify must find some statutory authority, and he relies on section 48 of the Police Act, 1916. That section so far as is material to this case runs as follows: 'Any member of the police force without any warrant other than this Act, at any hour of the day or night, may apprehend . . . any person whom he has just cause to suspect of having committed, or being about to commit, any felony misdemeanour or offence, or of any evil designs'.

'Just cause' not infrequently means reasonable cause—see, for example, *Osgood v. Nelson* (1872) L.R. 5 H.L. 636—and does so here. It is synonymous with the expression 'reasonable cause', 'probable cause'. For a person arresting to have just cause for suspicion he must suspect upon reasonable grounds. He must have suspicion and that suspicion must be based on facts which would, to use Lord Campbell's phrase in *Broughton v. Jackson* (1852) 18 Q.B. 378, create a reasonable suspicion in the mind of a reasonable man. It is quite possible, therefore, for a person to suspect without just cause one who is really guilty of an offence, and also for a person to have just cause for suspecting a person who is really innocent. Proof of guilt of crime suspected does not establish a defence, nor does proof of innocence destroy it. 'The existence or non-existence of just cause for suspicion of the defendant must be judged not by the event, but by the defendant's means of knowledge at the time.' (Pollock on Torts, 4th edn, p. 208).

Conceding then that there was power to arrest without warrant, the question arises as to whether the defendant up to the moment of arrest had been guilty of an offence. The offence for which he was being arrested was described by Sergeant Mutch as that of 'offensive behaviour', by which I have no doubt he intended to refer to section 47 and the offence of offensive behaviour in a public place, and hence it becomes necessary to consider whether the use of an offensive word in an hotel lounge in the presence of a number of people can be rightly described as offensive behaviour. Generally speaking, words are not properly described as behaviour, but under certain circumstances words alone may amount to behaviour and it is but seldom that words will not be accompanied by actions or be uttered under stress, and these actions or this stress in conjunction with the words may well make the total amount to offensive behaviour.

In *Brady v. Lenthall* [1930] S.A.S.R. 314, Richards J. decided, on it being contended that the evidence disclosed only a speaking of offensive words and that spoken words, even though offensive, could not constitute offensive behaviour, that words alone might amount to offensive behaviour. He said (pp. 316-17):

Offensive behaviour might include the speaking of words, and the words need not be of any of the descriptions already mentioned; but it would be no less offensive behaviour if the words themselves were obscene, threatening, abusive or insulting. Again, what section 63 deals with is threatening, abusive or insulting 'words'. Words of any of those descriptions might be regarded as offensive words but if spoken in a quiet and outwardly inoffensive manner, although in a public place, the speaking of them might not be aptly described as offensive 'behaviour'. It appears to me that anything which answers the description 'offensive behaviour' in its natural meaning, must be taken to be covered by section 57 as amended, whether it is or is not covered by some other provision of the Act.

But it was further contended that in the instance now under consideration there was nothing except the words that were spoken. I do not agree with that contention. The tone of voice in which words are spoken, and the circumstances, such as the presence of a crowd of people in addition to those of whom the words are spoken, may well turn the speaking of offensive or insulting or other words into offensive behaviour. It was suggested that the words used by the appellant were merely idiotic rather than offensive. Possibly they might be in some circumstances, but apparently that is not the character they had for those who heard them; they seem to have been spoken in such a manner as to turn the laugh on the police, not on the speaker. I think that what the appellant did, as disclosed by the evidence, was, in the circumstances, sufficient to make his conduct offensive behaviour within the meaning of the section.

In *Densley v. Martin* [1943] S.A.S.R. 114, Napier J. held that it could be offensive behaviour to turn off the lights in a hall where a dance was being held, the intention being to perpetrate a practical joke. He said (p. 145):

The objection, taken on the hearing of the appeal, was that no 'offensive behaviour' had been proved. It was contended that for the purpose of this charge the prosecution must show some intention to cause discomfort or annoyance, and that the evidence, in the present case, failed to disclose any such intention.

I think that this objection can be answered, as it has been answered by Mr Hannan, upon the evidence as well as upon the construction of the statute. The section under which the charge was brought is in the following terms: 'Every person who is guilty (a) of any riotous, offensive . . . or indecent behaviour . . . in any . . . public place . . . shall be liable' etc.

I think that the meaning of offensive in this context is 'giving, or of a nature to give offence; displeasing; annoying; insulting', and it seems to me that the word is used objectively, i.e. it includes any conduct which is calculated to annoy or give offence to other people, even if that result is not actually intended. But, however that may be, it is a salutary rule in the administration of justice that everyone should be presumed to intend the natural and probable consequences of his acts, and the justices were entitled to find that the appellant intended to cause the annoyance that must, almost necessarily, have been caused.

In my opinion the word used by the defendant by itself would be regarded as offensive behaviour, and where it followed upon his challenge of the powers of the Sergeant it did amount to offensive behaviour, provided the incident occurred in a public place, and to this I now direct my attention. Prima facie, the lounge of an hotel would not be considered a public place. The Police and Police Offences Ordinance has, however, a very extensive definition covering the words 'public place'. The part which is applicable to this prosecution reads as follows: 'Public place or places of public resort includes every place to which free access is permitted to the public with the express or tacit consent of the owner or occupier thereof.'

In *Webster v. Richards* (1919) S.A.L.R. 298, Buchanan J. held that a similar interpretation clause did not apply to the section of the South Australian Act which is similar to the 'offensive behaviour' section in the Northern Territory Ordinance. His decision was, however, overruled in *Nicholson v. Morgan* (1920) S.A.L.R. 142 by the Full Court. The question was whether a person who used indecent language in the Town Hall of Adelaide at a meeting addressed by the Prime Minister of Australia could be convicted of using indecent language in a public place. The Full Court held that the definition clause in the Act was applicable to the interpretation of the section, and consequently remitted the complaint for further hearing by the Special Magistrate, the Court intimating that a place where a public meeting was being held might be a public place, and whether or not it was would depend upon whether the evidence brought the meeting and the place within the definition contained in the Act. In my



view, applying the definition clause, the lounge of the hotel was a public place. There can be no question that the general public was in fact present in the lounge and they must have been present with either the express or tacit consent of the owner. Clearly a private party was not in progress. The persons present were not treated by the police as trespassers nor by the owner of the hotel as being there without his consent. I think that the lounge of this hotel, during the hours when a dance is in progress, is a place to which free access is permitted to the public with the express or tacit consent of the owner, and accordingly comes within the definition of a public place.

(Since the delivery of this judgment, but before it was committed to writing, my attention has been drawn by Mr Odlum, the learned Crown Prosecutor, to two recent cases decided in the Supreme Court of South Australia by Napier C.J. In *O'Sullivan v. Arriola* [1951] S.A.S.R. 108 he held that a pug hold appurtenant to a factory was portion of a factory and hence a public place within the definition of a public place in the Lottery and Gaming Act, 1926. In *Roberts v. O'Sullivan* [1950] S.A.S.R. 245, he held that a sand pit privately owned, but habitually used by children for the purposes of play, was a public place within the meaning of the Police Act. The last case seems to me to provide substantial support for the conclusion I had previously formed.)

There then remains only one point for consideration, namely whether, because section 27 (1) (e) speaks of the arresting constable having 'just cause to suspect', the power to arrest exists when the mind of the constable has passed the stage of suspicion and has reached the stage of certainty. It would seem strange that a constable has power to arrest where he has suspicion but no power where he has ocular proof of an offence. *Rosey v. Reynolds* [1929] S.A.S.R. 408 is a direct decision that the power to arrest is not lost because the constable was aware of all the facts required to prove the commission of an offence.

I therefore hold that Sergeant Mutch was entitled to arrest the accused. It follows that the accused was not entitled to resist, and, not being entitled to resist, his actions amounted to an assault on Sergeant Mutch. See *R. v. Woolmer and Palmer* 1 Mood 334; 168 E.R. 1293.

The charge of resisting arrest is so closely bound up with the charge of assault that the remarks I have made on the first count will also cover the second count. There will accordingly be a conviction on both counts.

(Addendum)

At 66 *Law Quarterly Review* 465 appears an instructive and often amusing article by Dr Glanville Williams on 'Demanding Name and Address'. I append a short extract (p. 469):

All this, of course, does not represent the practical position. Although police powers of arrest and of demanding name and address are in law limited, they are eked out by bluff. The law relating to summary arrest is so complicated that even a lawyer would not like to say on the spur of the moment whether a particular arrest is legal or not; consequently, if a constable demands an offender's name and address, the latter will generally deem it the wiser course to comply, or at any rate to seem to comply by giving a false one. Should the demand be rejected, in a case where the constable has no power to arrest, the constable will probably in practice make the arrest just the same. This will technically be an assault and false imprisonment; but the offender will get no official assistance in prosecuting the constable, who will probably in any event be discharged without punishment; and if the offender sues in tort, the damages will probably be nominal, and both these damages and the constable's costs will probably be paid out of the police fund. From the constable's point of view, the most serious result of the arrest being illegal is that he is legally unprotected against resistance by the person arrested. Everyone has a right to resist illegal arrest by

force, provided that he does not intentionally inflict death or great bodily harm. Thus if it comes to a fight, the blows struck by the offender are legally innocent, while the blows struck by the constable increase the possibility of substantial damages being awarded against him in a subsequent action. This cannot be regarded as a happy position. Even the possibility of a successful legal proceeding against the constable is not satisfactory if he has acted in good faith and in the reasonable necessity of enforcing the law.

In reading this passage the power conferred on police officers in the Northern Territory by section 27 of the Ordinance to demand name and address must not be overlooked.