

PRODUCE INSPECTOR v LAUSULUI

High Court Apia
28 November 1946
Herd CJ

STATUTORY OFFENCES (Licensing laws) - Breach of The Cocoa Beans Ordinance, 1945 - No vicarious liability of licensee employed by trader who takes delivery of cocoa beans not "of good quality" - Liability of licensee under The Copra Ordinance 1929 compared.

PROSECUTION under s 19 of The Cocoa Beans Ordinance, 1945.

HERD CJ. This is a case in which the Inspector of Produce acting under the provisions of The Cocoa Beans Ordinance, 1945 filed an information against the defendant, who is the son of Tuala-Tulo of Leauva'a.

The charge in the information reads that Lausului of Leauva'a, trader, "did on or about the 8th day of October, 1946 at Leauva'a take delivery of cocoa beans which were not of good quality contrary to The Cocoa Beans Ordinance, 1945."

The informant (the Produce Inspector) called evidence to show that his officers had found cocoa which, in their and his opinion, did not come up to the good quality standard required by the Ordinance. The beans were in a sack in the store-room of the defendant's father where, on behalf of another person, the father acts as a general trader.

The defendant is the holder of the only cocoa buyer's license under section 18 of The Cocoa Beans Ordinance, 1945 which has been issued in respect of this trading station.

Evidence of the defendant's father showed that he is a trader, that he owns the store, and that it was he and not the defendant who took delivery of the cocoa beans in question. He admits that he holds no cocoa buyer's license, but that it was taken out in defendant's name. He further alleges on behalf of the defendant that the cocoa beans were of good quality.

The Produce Inspector as informant argues that the holding of the license under section 18 renders the defendant liable for the alleged breach of the Ordinance, that is, the taking delivery of the beans in question under section 19 of the Ordinance. He states that it has been customary to treat the holders of similar licenses under section 3 of The Copra Ordinance 1929 as responsible for taking delivery of undried copra at a trading station even though some person other than the licensee may have actually taken delivery. He intimates that enforcement of the sections of The Cocoa Beans Ordinance, 1945 would be impracticable unless licensees are similarly held responsible.

It was upon these points that the decision was reserved. The main questions for discussion is whether a licensee can be held vicariously liable for the actions of another person and, incidentally, whether custom under the one Ordinance can establish custom under the other.

With regard to the latter, I think that a custom affecting one Ordinance could not be relied upon as evidence in respect of another unless, at least, the wording of the sections creating the offence in regard to which the custom is brought forward be similar.

In this case there is a marked dissimilarity in that the section creating the offence under The Copra Ordinance 1929 includes not only buying, selling, offering for sale, and taking delivery, but also keeping in baskets, sacks, or bags, or heaped in bulk. The result of this difference is, I believe that where delivery is taken a trader who keeps the copra at his station could be held liable for the latter even though someone else takes delivery. In the case under review the

defendant is not the trader at the station who is responsible to his principal. According to his father's uncontradicted evidence the father is that person. There is no evidence of custom that in such circumstances the employee licensee under The Copra Ordinance 1929 would be held liable for his employer's act.

On the question of vicarious liability there does not appear to be any basis similar to an employer's responsibility for employee's actions, even if this would render an employee liable under section 19 for taking delivery as well as under section 18 for buying without a license. In the case under review the defendant is not the employer of the person who took delivery. It appears to me, therefore, that no offence by the defendant himself has been proved and the information is therefore dismissed.

It may be useful to intimate to the defendant's father that if he is to continue to act as has been indicated in his evidence, then he, as well as his son, should hold a cocoa buyer's license under section 18 and that this Judgment does not absolve him from liability under section 19.