

HIGH COURT. Apia. 1957. 7, 14, February. MARSACK C.J.

Copra Ordinance 1948 - unlicensed person dealing with undried copra for sale - whether an offence - meaning of "sale" - Sale of Goods Act 1908.

In the absence of a definition in the Ordinance, the word "sale" in section 15(a) of the Copra Ordinance 1948 means a transaction where the consideration for the exchange of goods is for money only, and does not include a transaction by way of barter.

Simpson v. Connolly [1953] 2 All E.R. 474, 476, referred to.

Information dismissed.

Phillips, for defendant.

Cur. adv. vult.

MARSACK C.J.: Defendant is charged that, not being the holder of an undried copra buyer's licence, he did purchase whole coconuts for the purpose of making copra for sale, in contravention of section 15(a) of the Copra Ordinance 1948, the relevant portion of which reads as follows:

"Any person who sells.....or not being the holder of an undried copra buyer's licence purchases..... whole coconuts for the purpose of making copra for sale or export, commits an offence against this Ordinance."

The evidence establishes that on the 28th September 1956, the informant inspected the fale of the defendant at Aleipata and there found, inter alia, ten loaves of bread. There were piles of coconuts by the fale, and there was a quantity of cut copra by another fale occupied by the defendant. The defendant, when interviewed, acknowledged that these coconuts were to be cut and disposed of to a trader named Fonoti, as undried copra. He further stated that it was his practice to exchange loaves of bread for the coconuts, and that these coconuts came from his family plantation.

On these facts, Counsel for the defendant contends that no offence has been disclosed, as no sale has been proved. He relies on the general statement contained in XXIX Halsbury p. 6:

"It is clear, however, that statutes relating to sale would have no application to transactions by way of barter."

No authority is quoted in support of this statement, and the Court was not referred by Counsel to any decided cases or statutory definitions.

It is probable that the Ordinance was intended to prevent any dealing in undried copra by persons other than those holding the appropriate licence. Even this is, however, doubtful, as the section quoted imposes a total prohibition on the sale of undried copra, whereas the purchase of undried copra is prohibited only to unlicensed persons. It is difficult to see in what manner an authorised purchaser could make such a purchase when there are no authorised sellers. In any event, it is not the duty of the Court to endeavour to ascertain the intention of an Ordinance, except insofar as that intention is expressed in words. The Ordinance does not prohibit dealings in copra by unauthorised persons, but only the sale and purchase of copra. It, therefore, becomes necessary to examine what is meant by the term "sale" in the section, as there can be no purchase of undried copra without a sale of that commodity.

In section 3 of the Sale of Goods Act 1908 (New Zealand) which is in force in Western Samoa, a contract of sale of goods is defined as -

"a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for money consideration called the 'price'."

It is important to note that, for the purposes of the Sale of Goods Act, the consideration must be expressed in money. If, in the present case, the defendant had assessed the value of coconuts in money and the vendor had elected to purchase from the defendant bread to the value so assessed, this transaction would no doubt come within the definition quoted from the Sale of Goods Act. But there is no evidence whatever that any such arrangement was made. The only inference to be drawn from the evidence is that the exchange of coconuts for bread was on the basis of pure barter, with no money consideration mentioned or assessed.

The question as to the meaning of "sale" was considered at some length by Finnemore, J. in Simpson v. Connolly /1953/ 2 All E.R. 474. The learned Judge says at p. 476:

"It is laid down quite clearly in the books which deal with sale of personal chattels that a sale or a contract of sale is an agreement to exchange goods for money, although it is possible that part of the consideration might be something other than money.....  
The general principle of English law is that a sale means the exchanging of property for money."

In the absence of any provision in the Ordinance that the words "sale and purchase" shall, for the purposes of the Ordinance, be deemed to include any form of dealing for valuable consideration, I think that the Court is not entitled to extend the definition of sale beyond that which is set out in the authorities quoted. It must be remembered that this information is laid under one of the penal clauses of the Ordinance, and such clauses must be construed strictly and not expanded beyond the normal meaning of the words used in the Ordinance.

For these reasons, I hold that the evidence does not establish the commission of any offence by the defendant, and the information is dismissed.