ISHU (f/n ISMAIL) *v.* THE POLICE

[Appellate Jurisdiction (Seton, C.J.) November 12th, 1947]

Hawking without a licence—articles of native food and produce—s. 17 (1) *of the Licence Ordinance.*

The appellant was convicted of the offence of hawking without a licence contrary to section 17 (1) of the Licence Ordinance.

The facts were that the appellant was selling rice without being in possession of a hawker's licence.

It was argued on behalf of the accused that no licence was required since he was selling " articles of native food and produce grown in the Colony " the sale of which articles being so exempted by virtue of the provisions of section 17 (1) of the Licence Ordinance.

The Magistrate considered that these words referred to native food and native produce both of which had to be grown in the Colony.

On appeal from the Magistrate's Court.

HELD.—The words are to be separated and mean (*a*) articles of native food and (*b*) produce grown in the Colony.

Cases referred to:—

R. v. Hodgkinson, 10 B. & C. 74.

T. R. Sharma for the appellant.

G. J. Horsfall, Acting Solicitor-General, for the respondent.

SETON, C.J.—What is meant by the expressions " native food " and " native produce? " Is it such food and produce as are indigenous to the Colony and, if it is, who is to say at this date what food and what produce are indigenous to Fiji? Moreover, what sense is there in such a provision? You may hawk taro without a licence but not maize ; sweet potatoes but not cabbages ; that is, assuming that taro and sweet potatoes are indigenous to Fiji and maize and cabbage are not? Alternatively, does it mean such food and produce as are consumed or produced by the people (a) who are indigenous to the Colony, or (*b*) who have been born in the Colony irrespective of their country of origin? Faced with these perplexities I have endeavoured to trace the history of section 17 (1) in the hope that it may throw some light on the problem, but it yields very little. The first mention of a hawker's licence in the legislation of this Colony is in Ordinance No. 32 of 1877, section 14 of which was as follows:—

> " 14. A Hawker's Licence shall convey the same privileges and be subject to the same limitations as a Retail Store Licence in regard to the kind and quantity of articles sold but such articles cannot be exposed for sale in any store or building."

Ordinance No. 32 of 1877 was repealed by Ordinance No. 22 of 1883, section 16 of which reads:—

> " 16. A Hawker's Licence shall as regards the kind and quantity of articles that may be sold under it convey the same privileges and be subject to the same limitations as a Retail Store Licence but it shall not permit the sale of goods in any

store or building occupied either permanently or temporarily by the licensee but only in a boat or from a pack or basket carried by the licensee. A Hawker's licence shall not be necessary under this Ordinance for the hawking or sale of native curiosities or of articles of native food and produce grown in the Colony."

Compare the corresponding provisions in section 17 (1) of the current Ordinance:—

"17. (1) A general Hawker's Licence shall, as regards the kind and quantity of articles that may be sold under it, convey the same privileges and be subject to the same limitations as a retail store licence except that it shall not permit the licensee to sell goods in any store or building occupied either permanently or temporarily by the licensee but only in a boat or cart or from a pack or basket carried by the licensee, and shall not permit the hawking of pigeons or other wild birds. A Hawker's Licence shall not be necessary under this Ordinance for the hawking or sale of native curiosities or of articles of native food and produce grown in the Colony other than pigeons or wild birds except in a town constituted under the Towns Ordinance 1935."

All that can be said as a result of this research is that the provisions of the law as to hawking "articles of native food and produce grown in the Colony" have been as they are today since the year 1883. The reason for restricting (if it does restrict) the goods and produce which may be hawked without a licence to natives is not revealed, nor is any help to be gained from a reference to the English Statutes on which Colonial legislation is frequently based. In 1883 the Hawker's Act, 1810 was in force in England, section 23 of which excluded from its provisions hawkers of "any fish, fruit or victuals". This provision was repeated in the Hawker's Act, 1888, which took the place of the earlier Act and is still in force. "Victuals" has been held to mean everything that constitutes an ingredient in the food of man, and all articles which, mixed with others, constitute food (*R. v. Hodgkinson* 10 B. & C. 74).

Frankly, I am unable to say what is the meaning of the expressions "native food" and "native produce" and I do not think it possible with the meagre information available to divine what was in the mind of the Legislature in 1883 when it enacted section 16 of Ordinance No. 22 of that year. In these circumstances I propose to adopt a more liberal form of construction than the learned Magistrate has done since the Licence Ordinance is a tax-imposing Statute and as such has to be construed strictly, with the consequence that in a case of reasonable doubt the construction most beneficial to the subject is to be favoured. I propose to hold, contrary to the learned Magistrate, that the meaning of the words "articles of native food and produce grown in the Colony" is (*a*) articles of native food, and (*b*) produce grown in the Colony. The rice which the appellant was hawking was undoubtedly produce grown in the Colony and therefore in my view he was not required to have a licence under the provisions of section 17 (1) of the Licence Ordinance.

The appeal is allowed and the conviction quashed.