REGINA *v.* MATTHEW LEUPA

[COURT OF APPEAL AT SUVA (Ragnar Hyne, President, Hammett and Higginson, JJ/A), January 21, 1956]

Appeal No. 1 of 1956

Pacific Order in Council 1893 Article 35—Trial before H.B.M. High Commissioner's Court—whether Court of Appeal should amend Order for Trial under Article 35.

The appellant had been convicted before the High Commissioner's Court at Honiara, British Solomon Islands Protectorate. The " Order for Trial ", i.e. the indictment, was bad in so far as it contained no reference to the statute under which the appellant was charged. The Crown asked the Court of Appeal to amend the Order for Trial under Article 35 of the Pacific Order in Council 1893, which reads:—

> " No proceeding under this Order shall be invalidated by any informality mistake or omission so long as in the opinion of any Court before which any question arises the essential requisites of law and justice have been complied with or may be met by amendment."

The Crown conceded that these provisions were enacted when jurisdiction was exercised by persons with scant knowledge of law and procedure but that conditions were now different.

Held.—In view of the present conditions in the area of jurisdiction of the High Commissioner's Court, i.e. the existence of a proper system for the administration of justice, with law officers and established judicial tribunals, the court should not exercise powers of amendment not normally exercised by a Court of Appeal.

Conviction quashed.

Cases referred to:

R. v. Taylor, 18 Cr. App. R. 105.

K. C. Ramrakha for the appellant.

B. A. Doyle, Q.C., Attorney-General, for the respondent.

Judgment:

This is an appeal by Matthew Leupa against his conviction before Her Britannic Majesty's High Commissioner's Court at Honiara, British Solomon Islands Protectorate, on 22nd September, 1955.

The Order for Trial reads as follows:—

> *"Order for Trial*
>
> The Court having heard and considered the evidence at the preliminary examination orders that the abovenamed Matthew Leupa be put on his trial on the undermentioned charge(s) before the Court at the sittings to be commenced at Honiara on the next sessions day of 1955, before the Judicial Commissioner sitting with assessors:—

Charge(s)

That Matthew being a servant of Mr. K. H. D. Hay, stole from the said Mr. K. H. D. Hay 15 bottles of overproof whisky to the value of £37 10s. 0d. only upon Saturday, 28th May, 1955, from the Aerated Water Factory off Mendana Avenue in Honiara.

N. F. C. JELF,
A Deputy Commissioner for the
Western Pacific.

Dated this 3rd day of June, 1955."

The learned Attorney-General, who appeared for the respondent asked for leave to make certain submissions before the hearing of the appeal on its merits. We agreed that he might do so.

The Attorney-General referred to Art. 20 of the Pacific Order in Council 1893 which lays down that the civil and criminal jurisdiction exerciseable under the Order shall be exercised, so far as circumstances admit in conformity with the substance of the law for the time being in force in and for England.

English law therefore, applies in the present case; that is to say there must be a committal for trial and an indictment.

In Part C of the Schedule to the Order, certain rules are set out dealing with criminal proceedings.

Proceedings are begun by a charge.

Under Rule 94, the court, if it considers the evidence sufficient to put the accused on his trial either makes an Order for the removal of the accused for trial, or makes an Order for Trial before the proper court.

Rule 96 deals with an Order for Trial before the court, and under paragraph (5) of this rule, the accused person ordered for trial is entitled to a copy of the charge. He is not given a copy of the depositions. Under Rule 98, notice is given by the court to the prosecutor of the time and place appointed for the trial.

The Order for Trial, drawn up by the Deputy Commissioner, must, the Attorney-General submits, be treated as an indictment, and, being an indictment, it must comply with the requirements of the Indictments Act, 1915. With this we agree.

In the Order for Trial, there is in the present case, no reference to the Statute under which the accused was charged. It is, of course, plain that the accused was charged under section 17 (1) of the Larceny Act, but this is not enough. It should have been clearly stated.

An indictment, in this case the Order for Trial, must set out all relevant matters so that the accused can know precisely what he has to answer.

That an indictment which does not set out the particular section under which an accused is charged is bad, is abundantly clear from the case of *R. v. Taylor*, 18 C.A.R. p. 105.

In that case an indictment alleging an offence under a particular section after the words relevant to that offence had been repealed, was held to be bad and the conviction was quashed.

The learned Attorney-General has frankly admitted that, unless the indictment can be amended, he must consent to an acquittal. He stresses, however, that such an acquittal would be an acquittal on a pure technicality. With this we agree.

The Attorney-General has further submitted that, but for the provisions of Art. 35 of the Pacific Order in Council, 1893, the Court of Appeal could not amend the indictment, or Order for Trial, by the addition of a reference to section 17 (1) of the Larceny Act.

Article 35 of the Order in Council reads as follows:—

> "No proceeding under this Order shall be invalidated by any informality mistake or omission so long as in the opinion of any Court before which any question arises the essential requisites of law and justice have been complied with or may be met by amendment."

The Attorney-General submits that this gives the court much wider powers than are conferred by the Indictments Act, and is specially designed to ensure that a person shall not escape the consequences of his acts by reason of a mere technicality. He admits, however, that these provisions were enacted at a time when jurisdiction would be exercised in out of the way places by persons with scant knowledge of law and procedure. Conditions are, as he says, different now.

He admits the matter is in the discretion of the court, but submits that under Art. 35, the court can amend.

Mr. Ramrakha, for the appellant, submits that it would be wrong to amend. Conditions in the area of the jurisdiction of the High Commissioner's Court, he says, have now changed. It cannot be argued, he submits, that there is that ignorance of law and procedure which formerly prevailed. He pointed out that the appellant's original ground of appeal negatives such a suggestion, and furthermore, since the prosecution was conducted by a Crown Law Officer, he should have asked for an amendment under Art. 35 at the trial.

We have given the submissions of counsel careful consideration. We do, as we have already said, agree that the indictment, the Order for Trial, is bad, and it only remains to decide whether we should allow the amendments asked for. We have come to the conclusion we should not.

We agree that Art. 35 contains very wide provisions for amendment. We do not think, however, in view of present conditions in the area of jurisdiction of the High Commissioner's Court, that is to say the existence of a proper system for the administration of justice, with Law Officers and established judicial tribunals, we should exercise powers of amendment, which are not normally exercised by a Court of Appeal.

We are unable, therefore, to agree to amend the indictment.

It follows, as the indictment is bad, the conviction should be quashed.

The conviction is quashed accordingly, and we direct that a verdict of acquittal be entered and that appellant be discharged from custody forthwith.

The appeal has not been argued on its merits, but after perusing the record, we considered the question as to whether a new trial should be ordered. We do not, however, think the interests of justice so required.