

## POLICE v. SIOELI LONGANI.

(Criminal Appeal: Higginson J. Nuku'alofa, 7th November, 1950)

Criminal charge — Variance of evidence and offence charge — Amendment of summons — withdrawal of charge — Cap. 6 Section 82 and 83.

The appellant (Sioeli Longani) was prosecuted under Section 129 (1) (3) of Cap. 10 with a breach of his duty on finding certain articles which appeared to have been lost. The particulars in the summons referred to (among other things) one roll of tapa. At the hearing evidence was given that two rolls of tapa, not one roll, were concerned. The Prosecutor asked leave to amend the summons but the Court suggested that he withdraw the charge and this he did. It is not quite clear from the Record but the Defendant's Counsel stated (in the Appeal) that the Prosecutor's application to amend was refused.

The defendant's counsel submitted to the Magistrate that he should dismiss the case; the Magistrate refused to do this and gave leave to withdraw. The defendant appealed.

HELD. The Prosecutor may withdraw a case at anytime (S. 82 Cap. 6).

Tu'akoi for the Appellant (Defendant).

Sgt. Fotu for the Respondent (Police).

HIGGINSON J. Under Section 83 Cap. 6 where the evidence discloses a distinct offence from that charged the case must be dismissed. In the present appeal the evidence supported the charge and was not distinct.

There was no variance as to time or place and this section does not apply. Under Section 82 of Cap. 6 the Prosecution may withdraw the charge at any stage of the proceedings. He has exercised his right in this case and I am not prepared to interfere. Appeal dismissed.

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