

REGINA -v- WILLIAM ROBERT ALBERT.

1.4.53

In this case the accused WILLIAM ROBERT ALBERT appears before this Court charged that between the 1st September, 1952 and the 24th November, 1952 in the Territory of Papua he stole :-

2 tons 18 cwt. Brass Shell Cases,

3 tons 18 cwt. Copper Wire,

5 cwt. Lead

all the property of Reginald Walter Eginton.

The Accused, acting on advice, elected to offer no evidence at the conclusion of the Crown case.

It is, of course, not for the accused to disprove anything, but for the Crown to overthrow the strong presumption of innocence raised in favour of the accused (in common with every accused) by proving every element of the offence beyond a reasonable doubt, or, in other words, to furnish proof inconsistent with any rational conclusion other than the guilt of the accused.

If the Crown fails to attain that high standard of proof in regard to any element of the offence, then the accused is entitled to the benefit of the doubt and to his acquittal.

The facts of the case are as follows:-

The Port Moresby area contained, as a result of the war, considerable amounts of war surplus material, including non-ferrous metals, the property of the Commonwealth.

Reginald Walter Eginton, in the name of R. Eginton and Coy., purchased from the Commonwealth Disposals Commission the right to collect certain non-ferrous metal the property of the Commonwealth on the dates set out and in the area set out in the following Sales Advice Notes:-

Sales Advice No. NG/G/1023

15th January, 1947.

R. EGINTON & COY.,
PORT MORESBY.

LOCATION: In region 15 miles from Port Moresby Post Office.

ALL AERIAL CABLE, UNDERGROUND CABLE and COPPER WIRE in an area bounded by a distance 15 miles in all directions from Port Moresby Post Office and on the understanding that P.M.G. Dept. have no further use for it.

Sales Advice No. NG/G/1182 21st June, 1947.

R. EGINTON & COY.,
Port Moresby Hotel,
MORESBY.

LOCATION: Moresby.

All shell cases and cartridge cases situated within 15 mile radius of Moresby not previously sold and abandoned by services.

Reginald Walter Eginton has testified that ever since acquiring those rights he has engaged in the business of collecting metals the subject of those Sales Advice Notes. Mr. Middleton of Treasury Disposals Section has testified that Reginald Walter Eginton is the only operator collecting non-ferrous metal in the 15 mile radius of Port Moresby.

On Thursday, the 20th November, 1952, Reginald Walter Eginton's son, Walter Eric Eginton, who assisted in the business of metal collection pursuant to the above Sales Advice Note gave his father certain information.

On Friday, the 21st November, as a result of that information, Reginald Walter Eginton sought the assistance of the Police, and in company with Inspector Evans and Inspector Woodmansey, drove out to the home of the accused at the $3\frac{1}{2}$ -Mile.

On arrival there, it was found that Eginton Junior had already arrived. In the yard of the accused were 48 drums sealed and marked BMC SYD and all numbered.

The accused, on seeing the Police, asked "What is the trouble?" Inspector Evans then told the accused that they had come to see about the 44-gallon drums and asked the accused if they were his. The accused replied "Yes they are my property." Inspector Evans then said "Do you know what they contain?" The accused replied "They contain scrap which has been collected from my dump," adding, "I bought Joe Ah Wong's old dump at the rear of Baruni Village."

The accused, on being asked if the drums contained any shell cases, underground or aerial copper wire, replied "Yes, but not very much." He denied having any idea of the approximate weight of such material, again saying it was not much. Inspector Evans then gave the customary caution to the accused, who said "I would not like to go to Court over this." Inspector Evans replied, in effect, that Eginton had made a complaint and that the necessary action would be taken if the evidence justified it.

The accused then told Mr. Evans that the letters on the drums represented British Metal Company and "SYD" represented Sydney, and that he had obtained a customs clearance and was shipping the drums on the "Bulolo" that day.

Mr. Evans said that he would prefer that they were not moved till the the contents could be examined to see if they contained any of Eginton's property.

The accused demurred, saying it would take a lot of labour and cost a lot. Eginton, by that time, had walked up and undertook at his own expense to empty and re-drum the contents.

Mr Evans then suggested to the accused that young Eginton would come out on Monday to collect the drums & take them away to his yard to examine the contents. The accused did not reply.

On the Monday, Walter Eric Eginton called, as suggested by Mr. Evans, at the residence of the accused, when it appears that the accused would not part with the possession of any of the drums, but pointed out 10 drums as containing copper wire being drums Nos. 38 - 44 inclusive and Nos. 46, 47, 49 and Nos. 1-14 inclusive, plus No. 22 respectively all marked BMC
SYD .

On the following day, Tuesday, 25th November, the same Police accompanied Reginald Walter Eginton, and the accused again identified and drums mentioned in the preceding paragraph, which were all sealed, and the Police removed them.

It is very strange circumstance for me as a Judge and jury to consider that at this interview the accused denied that he had any authority in writing from Reginald Walter Eginton to collect scrap metal, when he has produced such an authority prior in date to the present charge and admitted by Reginald Walter Eginton to be genuine and in his favour under the name of "S. Albert," by which name he was known to Eginton. That authority is as follows:-

" TO WHOM IT MAY CONCERN

I have given permission to Mr. S. Alberts to collect non-ferrous metals and empty shell cases within a radius of fifteen (15) miles of Port Moresby.

The above material is my property as I hold S.A.N.'s covering same.

(SGD.) R.W. EGINTON,
(R. EGINTON).

17th December, 1951.

He admitted that he had seen Reginald Walter Eginton's advertisement in the "South Pacific Post" in the following terms: -

NOTICE

The general public are advised that under SALES ADVICE NOTES NG/G/1023 and NG/G/1182 issued by the Treasury Disposals Section of the Administration, all underground cable Copper Wire and Shell Cases purporting to pass under the said Sales Advice Notes within a radius of 15 miles from the Port Moresby Post Office, are the property of Reginald Walter Eginton and action will be taken if such property is removed or dealt with, without the authority in writing of the owner.

R.W. EGINTON.

The Accused, on being asked where he had collected a large amount of metal, said he had had 23 natives working on the Baruni dump, but could say neither their names or villages. He further admitted buying scrap metal from villagers generally. In a small enclosure there were some loose copper wire and some 4-gallon drums with shell cases and a $\frac{3}{4}$ - sized 44-gallon drum, which he said contained lead from old collections.

When the Police removed the 25 drums and the scrap in the enclosure, the accused said of the remaining 23 drums "they are definitely my property" and that they contained no shell cases or copper wire.

On Wednesday, 26th November, 1952, armed with a Search Warrant, Mr. Eginton, in the presence of Mr. Evans and accused, opened the remaining 23 drums which were found, contrary to what the accused had said, to contain considerable quantities of shell cases and a small quantity of copper wire and lead-covered cable.

Mr. Evans said to the accused "Where did this come from?" and the accused replied "I have no idea; it must have been placed there by native labourers."

The non-ferrous metal claimed by Eginton, on being weighed from the 23 drums, amounted to 2,052 pounds.

The Crown has produced native witnesses and their evidence and the evidence given of what the accused himself said satisfies me that prior to the taking possession of the drums at 3½-Mile by the Police, the accused was buying scrap metal from village natives collected by them in and around Port Moresby and within the area covered by Eginton's rights under the Sales Advice Notes above referred.

The evidence satisfies me further that the accused purchased rights in the rubbish dump at Baruni previously owned by Ah Wong, and although in law no non-ferrous rights could, in view of Eginton's prior claim, pass, yet as the Sales Advice Note to the rubbish dump gave no notice of any prior right to any non-ferrous metal there, a claim to non-ferrous metal from Baruni dump, if made bona fide, must be resolved in favour of the accused, but on the evidence, that claim was not, in my view, made bona fide in respect of the 23 drums taken under the Search Warrant, for the accused himself, when taxed with the quantity of non-ferrous metal therein contained, endeavoured to pretend that he did not know how it had got there.

Now as to the 25 drums which the accused admitted were the property of Reginald Walter Eginton, it has been urged by Mr. White that any admission by the accused can, in law, furnish no evidence of ownership in Eginton. I do not agree. Bearing in mind that the accused had been his agent for the collection of scrap metal, it may be taken properly by a jury that it is peculiarly within the knowledge of the agent where that material came from, and, in addition, there is the evidence of the native witnesses. I do not see that suggestions made by Counsel that the metal in those 25 drums may have come from Oro Bay or from some widely generalised Sales Advice Note should trouble me as a jury, in view of the evidence of what the accused himself said at his many interviews with the Police, if it had any reality, and I think that the proper construction to be placed on the evidence placed before this Court by the Crown is that it came from the purchase from village natives collecting in and about Port Moresby, as the accused well knew when he admitted the drums as the property of Eginton.

This brings me then, having resolved that the non-ferrous metal in the drums is, in fact, the property of Reginald Walter Eginton, to consider whether

the whole circumstances make out a case of stealing and in this connection it is to be noted that an essential element of stealing is an asportation by the accused or the property the subject of the charge and that asportation involves some physical removal however small it may be.

In this case I can find upon the evidence no asportation because as the accused was the agent of Eginton for the purpose of collection it is not possible to fix the exact moment when the accused conceived the intention to take away with the property except from the moment he marked and sealed the drums and these overt acts did not involve any asportation. If I am correct then upon the peculiar facts of the present charge the evidence does not support the charge of stealing.

It remains then to consider whether the evidence supports a charge of attempting to steal the property mentioned in the indictment.

Section 4 of the Criminal Code reads as follows:

"When a person, intending to commit an offence, begins to put his intention into execution, by means adapted to its fulfilment and manifests his intention by some overt act but does not fulfil his intention to such an extent as to commit the offence, he is said to attempt to commit the offence. "

Section 583 of the Code permits a person charged with committing any offence to be convicted of attempting to commit that offence if the evidence warrants such a conviction.

Now, on the facts disclosed by the evidence, the accused had obtained a customs clearance for the drums; he had marked them consecutively and with the consignee's identification legend "BMC" and had arranged for their shipment by the "Bulolo" then in the Port of Port Moresby.

Surely then the accused had begun to put his intention to steal the non-ferrous metal in the drums into execution by means adapted to its fulfilment, such intention being manifest by the overt acts mentioned. Who can doubt that had the police not intervened the drums would have been shipped on that very trip of the "Bulolo" with their destination Sydney. Those overt acts of the accused do not remotely lead towards the commission of the offence and it seems to me they are much more than mere preparation. They were steps taken which were proximately connected with the asportation of the goods in furtherance of the theft intended by the accused (see Bernard Conrad Bloxham, 29 C.A.R. at page 39).

I exclude from my consideration the lead the subject of the charge as in my view the Crown has failed to establish any property in them in Reginald Walter Eginton. In view of the foregoing I therefore find the accused "Not Guilty" of stealing but guilty of Attempting to steal the metal excluding the lead referred to in the indictment.

Accused, I find you Guilty of attempting to steal the property mentioned in the indictment but "Not Guilty" of stealing.

Allocutus: