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IN THE MATTER of the District Courts Ordinance 1924-1952 of the Territory of New Guinea

and

IN THE MATTER of an Appeal from District Court at Kundiawa between DENVOR EDWARD KELLAART as Informant (Respondent) and SIE as Defendant (Appellant)

J U D G M E N T.

Delivered by His Honour the Chief Justice Mr. Justice F. B. Phillips at 11.5 a.m. on Thursday, 28th October, 1954.

I think this Appeal should be allowed and the conviction quashed for the following reasons:-

The Information that was put before the District Court at Kundiawa charged the Appellant with stealing "money or money's worth to the value of £41.18. 3." Obviously that charge is not a good one because the phrase "money or money's worth" lacks the particularity necessary to inform an accused of what he is being charged. All sorts of things could be included in the description "money or money's worth". It is hard to see how the Informant came to use such a phrase or the Magistrate to allow the proceedings to go on, on a charge so worded. The only explanation that I can think of is that the Informant and the Magistrate may have had in mind Section 568 Sub-Section (1) of the Queensland Criminal Code (Adopted). That Sub-Section allows a "general deficiency" to be proved where the charge is one of "stealing money"; and it may be that the Respondent Kellaart thought that this might apply also to a charge of stealing property other than money because he stated, in his evidence, that he found that "there was a deficit in stock to the value of £41.18. 3.". Although, as already mentioned, the Code allows proof of a "general deficiency" when the charge is one of stealing money, the Code does not allow an Informant to rely, when the charge is one of stealing property such as goods from a store, on what may be called a "general deficiency" of stock.

During the hearing at Kundiawa, no attempt was made to amend the Information; and even after some evidence had been given to show that Mr. Kellaart suspected that there had been many instances of stock disappearing and a suspected taking of money over a period, the prosecution was not asked to elect upon which act of suspected stealing it would proceed, as

is provided for in Section 568 Sub-Section (3) of the Code.

The proceedings at Kundiawa were also open to the objection that inadmissible evidence was allowed to be given thereat: e.g. Mr. Kellaart was allowed to state the result of a check made by Mr. Kelly, but Mr. Kelly himself was not called; again, e.g., Mr. Kellaart recounted the results of his "investigations" - (by which he obviously meant the stories allegedly told to him about the accused by other people, as is clear from the questions the Court put to Mr. Kellaart at the close of his evidence:- "Will the woman alleged to have bought the beads at low cost be called as a witness?" and "Will the witnesses be called who saw the money being given to relatives?") The "hearsay" evidence Mr. Kellaart was allowed to give was quite inadmissible and tended to do the accused irreparable prejudice. Curiously, when the witnesses to whom Mr. Kellaart had been referring were called, their evidence did not substantiate the charge of stealing against the accused at all.

It would appear from the proceedings at the District Court that the Magistrate decided not to commit the accused to the Supreme Court, but to deal with his case summarily; and he signed a memorandum which stated, inter alia:- "(The accused) was then asked whether he objected to the charge being dealt with summarily. He said that he did not object. The charge was reduced to writing and read to him and he said he was guilty of the offence."

As to the Magistrate's note that the accused said he was "guilty of the offence", the difficult question arises - Guilty of what offence? It is not possible to say, because the charge in the written Information is far too vague to tell anyone what precise offence the accused was charged with. Apart from that, even if the accused did say he was "guilty" of whatever he may have thought the charge against him was, (whatever that may have been), the record of the proceedings at the Court below include a "deposition" which was purportedly made by the accused, but which certainly did not amount to an admission by him of guilt of the stealing vaguely alleged, although it seems possible that the Magistrate thought it did.

It follows from what I have said that the conviction of the accused cannot possibly stand and must be quashed.

I think I should add that it is most disturbing to find that a case has been tried in the way this one has been dealt with at Kundiawa and to learn that the accused spent some time in prison as the result of the conviction that has now been quashed. It would seem desirable that the Magistrate's attention should be invited to what I have said about this case before he performs further Magisterial duties in the District Court.

(Sgd.) Phillips, C.J.