

IN THE SUPREME COURT
OF THE TERRITORY OF
PAPUA AND NEW GUINEA

CORAM:

13th February, 1959.

B E T W E E N

R.

and

PATRICK ROBERT HARBOUR

THE UNIVERSITY
 OF
 PAPUA & NEW GUINEA
 THE LIBRARY

J U D G M E N T

The accused PATRICK ROBERT HARBOUR of H.M.S. "Cook" is charged with stealing in the dwelling of WILFRED JOSEPH HOLT a number of articles to the value of £34.10.0 on Sunday the 8th January, 1959.

There is no doubt that the accused took the articles from within the dwelling of Holt. There is no doubt that the accused carried away the articles and converted them to his own use.

The accused, however, maintains that the articles were given to him by Holt.

The accused met Holt, and one, Harmon, who shared a Burns Philp cottage with Holt, for the first time on the Sunday the 13th January at the Returned Soldiers' League Club at about 1 p.m. The accused was in uniform and sitting at a table next to the one occupied by Holt and Harmon. Holt and Harmon came into contact with the accused through his asking them to direct him to the lavatory. As Harmon wished to go to the lavatory himself, he took the accused with him. Upon their return accused introduced himself and there was mutual introduction by Holt and Harmon. The accused then sat down at Holt and Harmon's table and the three continued drinking there until almost three o'clock. Accused inquired about how one employed one's time on a Sunday afternoon. Holt replied that he was going swimming, and the accused said that he would like to go swimming too. Holt invited him to his cottage, which he referred to as a donga, there to change into swimming trunks which he, Holt, would lend him, and to have dinner afterwards. The three of them arrived at the cottage some time after 3 p.m. Holt got out his spare

swimming trunks, the accused selected a pair and donned them. Holt also put on his swimming trunks. Harmon was not going swimming because he was on duty at their Mess close by at 4.30 p.m. They were all three in Holt's room when accused saw a record player which belonged to Holt. He asked Holt to put on some records, which Holt agreed to do. Harmon went to the refrigerator, which stood outside but near to the door to Holt's room and brought in a bottle of gin, a bottle of lime juice and a bottle of water. The three of them then had drinks, listened to the records, and talked. Harmon was in Holt's room till about 4.15 p.m., except when he went to the toilet and to get water, but at about 4.15 he went to have a shower and get ready to go on duty at the Mess bar at 4.30.

During the afternoon Harmon had three drinks, and he supposed the others had the same. The accused had got Holt's dressing gown and beach cap from the wardrobe where both were hanging up and put them on. Before leaving for the Mess, Harmon saw the accused lounging on Holt's bed, and Holt was sitting on the settee next to the bed. Harmon said he heard Holt ask the accused if he was coming for a swim. He saw Holt standing and bending over shaking the accused. Harmon went into his own room after that to get cigarettes and a handkerchief, called out to Holt - "I will see you later", but did not hear Holt reply. Harmon went out the front door to go to the Mess, and as he did so, he heard the back door bang. The accused, wearing the dressing gown and cap, was seen by Harmon in the bar of the Mess a short time after Harmon got there to take over the duty in the bar, and he was in the process of taking over from the previous bar tender when accused arrived.

Accused says that he passed out and when he woke up he was alone. The duration of the passing out period could not have been long, because he was awake and sitting up on the bed just immediately before Harmon left to go to the Mess. He was no time at the Mess but returned to Holt's cottage, and it was then he says that he remembered that Holt had told him he could have anything he liked which was interpreted by the accused as anything in Holt's room. Then after changing back into uniform, he collected the record player, which it was said he had admired when first he entered Holt's room, two shirts, the dressing gown and cap, which he had been wearing, and a towel, put them in a

bundle under his arm and went off to the Returned Soldiers' League premises, engaged a taxi and went back to H.M.S. "Cook", where subsequently the goods taken were found; the garments in his locker and the record player on a shelf beside it.

The accused says, in different places in his evidence, that he had been drinking and that he was drunk. But the defence is not that he was intoxicated and through his intoxication he took the contents of Exhibit "B". Such a defence could not have succeeded, anyway, but he does not even offer intoxication as an excuse. His defence is that Holt had said he could have anything at all. So relying on that, he took away the goods. There was an allegation against Holt which was made to A/Inspector McNeil in his investigation. The purport of this allegation was not disclosed until the cross-examination of the accused. The accused, however, said that that incident had nothing to do with the matter. Accused said the impropriety committed by Holt took place just after the three had arrived at the donga from the Returned Soldiers' League premises and while the accused was trying on the trunks. Harmon was present at the time. I believed Harmon's evidence. I thought he was a truthful witness. I do not believe that incident occurred and it has been concocted by the accused for some purpose of his own.

The accused knew when he took the goods where Harmon was, for he was acting as barman, and he knew where Holt was, because he had gone swimming. Accused was alone in the house when he remembered Holt's words - words which Harmon did not hear - by which Holt invited accused, so he says, to take what he pleased. Is it not fair to presume that if Holt had said that accused could take what he wished that accused, having decided to take something, would have waited for Holt's return to point out to Holt what he was really taking and to have confirmation that it was in order. This is particularly when Holt had only met the accused at 1 p.m. less than three hours before. But he took the things and went away in the absence of Harmon and Holt. He was certain that Holt had invited him to take whatever he wished, although everything was dreamlike. It was not that accused could not have waited, because he was not on duty, and left the ship again after depositing the goods in the mess, seeking more to drink, so he said. He left the room in a shambles, according to Holt, and all his underwear had

been pulled out of the wardrobe and strewn about. A pleasant return indeed for the hospitality which had been afforded him.

The accused describes the afternoon as a dream; a strange atmosphere; an ethereal atmosphere, I suppose. He was not so affected by alcohol that he did not know what he was about. He changed into his uniform, gathered the things, found a taxi and returned to his ship, depositing the goods in his mess room. He remembers all this. He was not so drunk that he was unable to leave the ship to seek more alcohol, wherever it could have been obtained.

His assertion that Holt gave him the goods, in fact invited him to take the whole of the contents of his room if he liked, is too fantastic for me to swallow. I believe Holt when he says that at no time did he tell the accused he could have the goods. I am quite unable to find that accused could have believed that he had been given the goods from anything Holt said. There is nothing upon which to found any such belief. I do not see that because he was in some ethereal dream, from his own account, and might have thought he had been given the goods, helps; but he was in no dream and had his wits about him. We are dealing with cold facts and not fantasies. He knew the goods belonged to Holt; he carried them away and converted them to his own use, and he intended to deprive the owner, Holt, of them. I have not any doubt that the accused stole the goods comprising Exhibit "B" which have been valued at £34,10,0. I find the accused guilty as charged.

J.