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RE HAHALIS APPEALS

During the hearing of these appeals, I had occasion to comment on the importance of the Magistrate observing the rules of procedure as laid down and sending to the Registrar of the Court the Record of the Court appealed from. I remarked that the Crown Solicitor, in his capacity as practitioner for the Respondent, had written to the Magistrate and in the correspondence had entered into some discussion about the probable outcome of the appeals. I thought, and intended to indicate that I thought, that this practice was undesirable. I was subsequently invited by Counsel to give some direction as to the course of action which should be taken in like cases, because the Crown Solicitor is naturally most anxious that any procedure that he might adopt, should not be such as to be likely to attract adverse criticism.

I did not mean in any way to imply in my earlier remarks that the slightest impropriety had taken place, and in fact I thought that I had made it clear that Counsel on both sides had worked in complete harmony in relation to these matters and were fully aware of what was taking place. My observations were intended rather to convey that in cases where the same co-operation and frankness were not being observed, the practice of either party communicating with the Magistrate might lead to suspicion or criticism however unwarranted it might be in the particular case.

It is therefore, I think, especially important in the Territory to observe the rules, so that on the hearing of appeals the Court will be furnished with a complete record of the Court appealed from and the Magistrate's reasons for judgment, which should come direct to the Court through the Registrar. It is not satisfactory as a general practice, for the parties before the Court to tender by consent a type-written copy of what purports to be the record of the Court appealed from.

In the various states in Australia these problems do not arise because every Court is equipped with a clerk or other responsible executive officer to whom any communications can be addressed. These communications are quite impersonal and there is not the slightest objection to the practitioners for one party asking the Clerk of Courts to supply them with a copy of the Magistrate's notes, or reasons for decision, or anything else which they may require. In the Territory and especially in relation to the Court for Native Affairs, the situation is rather different and many officers act in their capacity as Magistrate without a Clerk of Courts in the ordinary sense. Accordingly, communications tend of necessity to be directed to the Magistrate in

person, and where there ensues any discussion about the case, about the evidence called or about the Magistrate's recollection of what took place, a situation might well arise in which the Magistrate will be embarrassed should it become his duty subsequently to furnish a report to the Appeal Court. He can hardly ignore the influence of the correspondence which has taken place.

For the time being in the Territory, this possibility of embarrassment is something which everybody in the profession would want to avoid,because it is not possible to predict what effect it might have in any particular case upon the rights of the parties to appeal.

In the cases under consideration,perhaps the whole difficulty might have been avoided if the letter addressed to the Magistrate had indicated that it was being written after consultation between the practitioners representing both parties. This would have been enough to relieve the Magistrate's mind from any difficulty.

I suggest an alternative course,to the effect that in writing to the Magistrate he might be invited to send his reasons or any other records direct to the Registrar of the Supreme Court rather than to either party. Perhaps an alternative approach would be to say in the letter to the Magistrate that a copy of the letter was being sent to the other side and that any information supplied would be provided to the other party.

My real concern is to avoid, so far as possible, a situation which might arise unexpectedly at any time in the future in which it may be contended that some information supplied by the jurisdiction appealed from,after the order in question was made,should be discredited upon the ground that the Magistrate was influenced by considerations which arose after the hearing had concluded. It is a possibility which will of course disappear just as soon as all the Courts are provided with officers having the duty of keeping the records of the Court and answering requests made on behalf of any parties for information, and to supply at the request of any party authenticated copies of the Court Record.

Until this position is reached I think it desirable that any material which is to be considered by the Appeal Court should reach the Court through the Registrar, directly from the hand of the Magistrate or some person authorized by him to keep the records of the Court.

In the present case the Magistrate was apparently sent from Madang to hear the cases in Sohano, and it might have been difficult for him to comply with the Rules. Mr. Clancy, the District Officer at Sohano, has been good enough to go to a lot of trouble to certify the Court Records, and to transmit them to the Supreme Court for the purpose of the Appeals which have now been disposed of. Mr. Clancy is,

by virtue of his office, a Magistrate for the Court of Native Affairs, but I am quite unaware of any provision which imposes on him the duty of acting as Clerk of Courts for Mr. Ormsby. Nevertheless I am grateful to Mr. Clancy for the trouble which he has taken to ensure that the Records in the cases appealed from were complete.