

JOINT COURT OF THE NEW HEBRIDES.

THE PUBLIC PROSECUTOR

V

KAKAI of TONGA.

This twenty-fifth day of August 1916,

In the matter of a charge against KAIKAI native of Tonga, New Hebrides, of having on the 23rd. July 1916 at Vila in the store of his employer, Mr. Kerr, sold a bottle of wine to Toonoon, a native of the New Hebrides, for one shilling and three pence

WHEREAS preliminary to the hearing of the above charge the Public Prosecutor has prayed the Court to determine what law and procedure should be applied to the accused, since, being a native of the New Hebrides, he cannot be either a British or French subject

AND WHEREAS the accused by his counsel, Mr. Seagoe, has also raised the preliminary objection that the Articles LIX and LXI of the Convention of the 20th. October 1906 prohibiting and punishing the sale or supply to natives of intoxicating liquors are not applicable to him but solely to non-natives : that this Court has therefore no jurisdiction to punish him

THEREUPON the Joint Court decides :

(1). In regard to the preliminary question raised by the Public Prosecutor as to the law and procedure applicable to the accused

SEEING that the accused KAIKAI is summoned for a breach of the Convention over which the Joint Court has jurisdiction

(Article XII (3)) in respect of the law applicable to him the

accused :

accused although he cannot acquire English or French nationality, at any rate while he resides in the Group, (Article VIII (2)) is nevertheless subject, when he commits a breach of the Convention or a regulation, to the principles of the present Convention or the regulations framed thereunder (Article XIII, (3))

The mode of execution of judgments in this class of offences committed by natives is moreover provided for by the Article XIX (c)

In respect of the procedure applicable to the accused the Joint Court has power to determine and publish necessary modifications of the national procedures (Article XIV (2)).

(2). In regard to the preliminary objection raised by the Native Advocate :

SEEING that Article LIX (1) provides that ".....no  
"person shall.....sell or supply intoxicating  
"liquors to the natives....."

BREING that Article LX gives authority to police officers specially authorised for this purpose by the High Commissioners or their delegates jointly to report breaches of Articles LVII and LIX; that these officers have powers to arrest natives in a state of intoxication in a public place, shall report for the information of the High Commissioners or their delegates; that the native if guilty is to be punished by the Resident Commissioner having authority over the police officer making the arrest or by the person appointed for the purpose and that the non-native suspected of complicity is to be prosecuted before the Joint Court

SEEING that not only is there no reference in the preceding articles to the case of a sale of liquor by a native to another native but that Article LXI in giving authority to the Joint Court to inflict the penalties speaks merely of

"breaches

"breaches by non-natives of the Articles LVII, LIX and LX...."  
SEEING moreover that criminal provisions must be construed  
strictly must be explicit and cannot be implied; and in the  
absence of a definite prohibition to natives against the  
commission of the offence of which the accused is charged

The preliminary objection is sustained and the charge  
dismissed. Costs at the charge of the Condominium.

*Met. Joana Aragon*

President.

*Curley*

French Judge.

*W. J. Curley*

British Judge.

*H. H. Curley*

Acting Registrar.

