

THE QUEEN -v- OPI-KOLOI.

The Defence (conducted by Mr. Peter Clay of Counsel) has submitted, at the close of the case for the Crown, that there is no case to answer, by reason of the Crown having failed to place evidence before the Court that the complainant (a girl of three years of age) is "an European" within the meaning of the provisions of sub-section (2) of Section 5 of the White Women's Protection Ordinance, 1926-1933 the portion of the Ordinance under which the indictment is laid.

His argument has been advanced both attractively and forcefully and, as I understand it, is that the word "European" is capable of bearing at least three distinct meanings, namely, (1) A person of European descent; (2) A person who speaks an European language; and (3) A White person, and that as there is no certainty from a perusal of the Ordinance itself as to which class of persons the legislature intended, there lacks that certainty which is imperative in a penal statute.

The Learned Crown Prosecutor, on the other hand, submits that the term "European" as used by the Legislature must bear the meaning commonly attributed to it in the Territory, namely, the meaning "white person" - (itself a term not free from difficulty).

The Crown Prosecutor failed, however, to furnish the Court with any evidence that such is the commonly attributed meaning in the Territory, though perhaps it is a matter concerning which the Court might take judicial notice.

It is clear that the choice of the description "European" is not a happy one, and it is also apparent that the Legislature has not been consistent in its use of terms, as, for example, in the Native Offenders Exclusion Ordinance, 1930 Section 2 it has provided that "no native convicted of any offence of an indecent nature against a white woman or girl shall, upon discharge from custody, come or remain within the boundaries of any town."

A careful perusal of the White Women's Protection Ordinance 1926-1933 discloses that unless recourse is had to the "short title," there is, as Mr. Clay contends, nothing

to indicate in what sense the word "European" is used. The Court feels grave misgivings about the use of the short title in aid of interpretation. See Sage -v- Nichols 1919 2 K.F. at p. 177; but it would appear that the Courts have sometimes erred in aid both the long title and the short title. See Per Kokovich J. 1960 1 Chancery Division at p. 752; Attorney-General -v- Company of Proprietors of Herring Pier and Harbour 1 Chancery Division at p. 752; and "The Ydun" 1899 Probate at p. 239 per Sir F.H. Jeans President. For my own part, I feel that it would be a great misfortune if the short title, which is the only thing in the Ordinance indicating the intention of the legislature as to the meaning to be attributed to the word "European," were not available for that purpose.

The Court is aware, as a matter of common knowledge, that the measure under review was introduced by the legislature to protect white women and girls from sexual attacks from an overwhelmingly large indigenous population.

In my view, therefore, the word "European" as used throughout the White Women's Protection Ordinance 1925-1926 should be construed as meaning a white woman or girl, as the case may be, and I think that any other interpretation would defeat the intention of the legislature, and on the choice of meanings submitted by Mr. Clay, obviously a person who speaks an European language could not have been the meaning intended by the legislature, whilst, without calling in aid the title of the Ordinance, it could have meant "a person of European descent," yet in relation to such a meaning there are such difficulties of proof, that I do not think that that meaning could ever have been intended.

Ever since the promulgation of the Ordinance, so far as I am aware, this Court has always construed the words "European woman or girl" as used in it in the sense of "white woman or girl," though this is the first time its construction has been challenged.

The prosecution has called the parents of the girl complainant, who both seem avowed Australians. The child herself was born in Port Moresby, and upon production to the Court, she appears to be a fair, white child.

In my view, there is evidence before the Court from which it might conclude that she is a "European" within the meaning of the Ordinance, and as such, belonging to the class of persons to whom the legislature intended to afford special protection, and I dismiss the application.