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FRANK BLINSTRUBAS v. JAMES PATRICK KELLEHER.

This is an appeal from the decision of Mr. Hall, Stipendiary Magistrate in a matter in which the appellant was charged with supplying liquor to a native woman, Lucia-Pasum on or about 6th October, 1956.

It appears that some difficulty has arisen because of a misunderstanding in relation to the proceedings which ought to be taken to initiate the appeal, and the documents which may be on the Court file at Port Moresby, are not available to the Court sitting at the moment at Rabaul. It is therefore not possible for me to determine precisely whether the procedural requirements have been fully complied with, and I have made an order under Section 234D of the District Courts Ordinance dispensing with compliance with all conditions relating to the initiation of appeals as prescribed by the Ordinance with which the appellant may not have complied.

The appeal is expressed to be against conviction only, and after I indicated to Counsel for the appellant that I was disposed to increase the penalty imposed by the Court below, he invited me to regard the appeal as one from conviction only, and to take the view that I had no jurisdiction to alter the sentence. I have been referred, however, to Sections 227 and 234C of the District Courts Ordinance, from which it appears to me that there is only one appeal proceeding contemplated by Part XI of the District Courts Ordinance, and that upon the hearing of the Appeal the Court has power amongst other things to mitigate or increase any penalty or fine. I therefore take the view that it is the duty of the Court not only to consider whether or not a conviction was properly recorded, but also to apply its mind to the question of penalty, and if it comes to the conclusion that the penalty is inadequate, it is the duty of the Court to impose whatever penalty it thinks proper.

Since the course that I propose to take in this case is unusual, I have asked that my reasons should be taken down in shorthand so that if I am in error in the matter, the appellant can be advised as to his rights.

I have read the evidence recorded in the depositions with care, and the reasons for Judgment of the learned Magistrate. I agree not only with the Magistrate's analysis of the evidence, but also with the comments which he has made thereon.

The question before me is not whether or not the defendant on some particular view of the evidence might have escaped conviction, but rather whether upon the evidence which the learned Magistrate heard and thought reliable there was ground to support a conviction.

Even though not having the advantage of hearing the witnesses in person, I find myself in complete agreement with the learned Magistrate as to his conclusions. I agree therefore that the Appellant was properly convicted.

On the question of penalty, it appears from Section 3 of the Arms, Liquor and Opium Prohibition Ordinance 1931/1938, that the legislature intended to impose an unusually severe penalty upon persons committing the offences described in that Section. The policy of the Ordinance is plain. It is to protect the Native population from a very grave social evil to which individuals of that population might easily be subjected owing to the influence over them which Europeans must inevitably possess.

An outstanding feature of this case is that the appellant relied upon the evidence of a number of his friends and colleagues to establish an alibi, but even apart from the credibility of those witnesses, the alibi must wholly fail. The evidence of these witnesses shows that each was to some extent concerned with keeping out of the matter, and in some cases it appeared that the witnesses had themselves been involved for some time in the same kind of traffic as had been indulged in by the appellant. It is plain that the witness, Maxi Pettersen, was for some time running an institution which might well be made the subject of regular visits from the police. The woman Lucia herself was referred to by more than one of the appellant's colleaques as his "girl friend". The evidence does not specify, but indicates a high degree of probability that the supply of drink to this particular native was for depraved purposes, directly in conflict with the obvious policy of the Ordinance. I therefore think that the Magistrate ought to have imposed a more substantial penalty than he did. The penalty imposed by him was for three months imprisonment.

There are of course some matters which might be taken into account in favour of the appellant, and I think that it is common knowledge that accommodation occupied by a number of employees of the Government or various Government Departments, places many of the single men employed in the Territory in a particularly favourable position for getting themselves into trouble of this general character. I do not, however, think for a moment that these circumstances excuse the conduct of the appellant.

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Having regard to the fact that the evidence disclosed no prior convictions and also having regard to the fact that the defendant was intimately associating with this native woman, and having regard to the general evidence as to the activities going on at the house of Maxi Pettersen, I think that an appropriate penalty to be imposed in this case would be five months imprisonment and in addition a fine of £25. The maximum penalty is £200 or imprisonment for one year, or both.

Having regard to the provision under the Criminal Code, that sentences for imprisonment shall, unless the contrary be ordered, be served with hard labour, I make no order to the contrary in this case.