

THE QUEEN V. PAITA MIRESEIKA

In this case the accused PAITA MIRESEIKA comes before the Court charged that on the Twenty-fourth day of January, 1959 in the Territory of Papua he attempted to have carnal knowledge of a dog.

The Court has entered a plea of Not Guilty owing to the great difficulty of explaining to the accused the nature of the charge, which involves (as argument has shown) difficult legal problems of some magnitude.

The Prosecution, which is represented by Mr. P. Mallon of Counsel, is thus put to strict proof of every element of the offence. Mr. N. Pratt of Counsel has appeared for the Defence (which elected to give no evidence) and has put his argument forcefully and with admirable clarity.

The evidence satisfies me that at about 10.30 p.m. of the night of the date charged, a bright moonlight night, the accused picked up a bitch belonging to the witness, HEHAME TU, from where it was close to the owner's house and carried it into some bush about forty yards from the house.

The Court is further satisfied that the owner of the dog and his brother-in-law, SOI MITA, having followed the accused, observed the accused from only a few feet away and that the accused, who had unbuttoned the fly of his trousers, was kneeling with his penis in erection in near proximity to the rear of the dog, which he was holding with his left hand under the dog's back legs.

Mr. Pratt has urged with great force that in the absence of some specific evidence to show that at that very time the accused was trying to introduce his penis into the dog's vagina, the only evidence is, at most, evidence of preparation and not of an attempt. I cannot agree with such a restricted interpretation of the definition. Section 4 of the Criminal

Code defines an attempt as follows:- Where a person intending to commit an offence, BEGINS TO PUT HIS INTENTION INTO EXECUTION BY MEANS ADAPTED TO ITS FULFILMENT, AND MANIFESTS HIS INTENTION BY SOME OVERT ACT, BUT DOES NOT FULFIL HIS INTENTION TO SUCH AN EXTENT AS TO COMMIT THE OFFENCE, he is said to attempt to commit the offence.

In the circumstances of this case, the holding of the dog in the position that it was held, the accused's kneeling down, the undoing of his trousers, the exposure of his penis in erection in near proximity to the dog's rear show quite plainly, in my view, what the accused intended; he had in fact in the words of the definition begun to put that intention into execution by means adapted to its fulfilment and manifested his intent by the overt acts previously mentioned, which lead me only to the one conclusion, namely, that he was in the process of having intercourse with the dog though something remained to be done when he was disturbed.

I find the accused Guilty as charged.

J  
B/4/59