

N: 660

IN THE JOINT COURT OF THE NEW HEBRIDES.

---

*Police v. Mak Cheung*

Before:-

Manuel Bosch Barrett, President,  
W.D. Carew, British Judge,  
C.A. Doley, French Judge,  
assisted by Monsieur Steinmetz, Acting Registrar.

Police v. Mak Cheung

J U D G M E N T.

On the 21st June, 1939, Mak Cheung was convicted by the Court of First Instance, Central District No.1, for that he did at Tongoa on or about the 25th December, 1938, supply to the natives Toara, Carlo and Pakoa liquor, contrary to the provisions of Article 59 of the Anglo-French Protocol, 1914.

He was fined £20, and the liquor, which had already been seized, was ordered to be confiscated. He now appeals to the Joint Court against sentence and the order for confiscation.

Mr Blackwell appears as Public Prosecutor ad hoc.

Mr Ballard appears for the appellant.

Mr Ballard submits that in deciding what penalty to impose the Lower Court was incorrectly influenced by hearsay evidence given by Doctor Monfort relative to sales of liquor other than those for which the appellant was charged; and that also a statement containing the names of natives to whom liquor is alleged to have been sold, other than those  
/mentioned

mentioned in the charge before the Court, was relied on by the Court as showing, to use the words of the Court, "that " the accused ..... had carried on a trade in alcoholic " liquor on an extensive scale .....". This list was inadmissible, but it was, nevertheless, referred to by the President of the Court of First Instance in the following words addressed to the defendant at the trial :- "I have " a list of nearly 50 names, which was sent to me by the " Government Assessor to the Native Court, of people who " have purchased liquor from you recently. I have their " names, the name of the liquor purchased and the price " paid." (A few names with liquor and amount paid, read out).

As regards the seizure of the liquor, Mr Ballard submits that Dr Monfort had no legal authority to justify his action. The seizure was illegal; and the liquor should be restored to the appellant.

In conclusion, Mr Ballard informed the Court that the appellant had already been fined £3 on a charge, based on the same facts as the present charge, for selling liquor without a licence.

Mr Blackwell says that neither Dr Monfort's hearsay evidence nor the list of alleged sales were relied upon by the Lower Court in deciding the guilt of the appellant, but were taken into account only on the question of sentence; and for this purpose they were, he submitted, admissible.

As regards the seizure of the liquor, he submits that, although Dr Monfort may have been technically wrong, his action could be upheld and was justified as coming within the spirit of the Protocol.

The Court, while ruling against the admission of the hearsay evidence and the list referred to for any purpose at the trial, considered that the Court of First

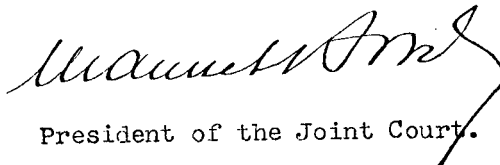
/ Instance

Instance, apart from these two wrongful admissions, could, on the evidence before it, impose the sentence which it did. This sentence would therefore not be interfered with on that ground, but it would be reduced by the amount of £3, the amount that the appellant was fined for selling liquor without a licence; that charge having been based on the same facts as the matter now before the Court.

The seizure of the liquor cannot be justified; it was an illegal seizure. The Court therefore orders the restitution of the liquor.

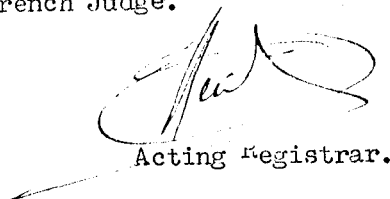
The order for costs made by the Court below is confirmed.

Dated this eighth day of September, 1939.

  
President of the Joint Court.

  
French Judge.

  
British Judge.

  
Acting Registrar.