IN THE SUPREME COURT) AT RABAUL 5
OF THE TERRITORY OF ) MONDAY 2nd. AUGUST, 1948.
PAPUA AND NEW GUINEA)

DAVID ALOYSIUS
THE KING v. GONZAGA BRADLEY

SUMMING UP

In this case, David Aloysius Gonzaga BRADLEY stands charged that on or about 25th May last, at RABAUL in the Territory of New Guinea, he unlawfully and indecently dealt with John HOLLAND, a boy under the age of fourteen years.

Section 210 of the Queensland Criminal Code (as adopted and amended for the Territory of New Guinea) makes unlawful and indecent dealing with a boy under 14 a crime, and one carrying a liability to a maximum punishment of Imprisonment with Hard Labour for seven years, with or without whipping : that section also provides that the term "deal with" includes any act which, if done without consent, would constitute an "assault" as later defined in the Code. "Assault" is defined in s. 245 of the Code: (read).

A fundamental principle of our law is that a person is presumed to be innocent until he is proved "guilty": therefore the onus is placed upon the Prosecution, always, to prove a charge beyond all reasonable doubt and an accused person has never to prove his innocence. This principle must be kept in mind in all criminal trials, and perhaps I may say it should be particularly kept in mind in cases where sexual offences are charged, for these may be easy to allege but not at all easy to defend oneself against.

It is alleged in this case that the offence occurred in the latter part of the afternoon of Tuesday, 25th. May last, in a cabin on the vessel "MALAKAUA", which was at the time tied up to TOBOI Wharf, RABAUL.

The prosecution therefore has to prove that at that time and place, the accused both unlawfully and indecently dealt with John Holland and that John Holland was under 14 years of age. The meaning of "Dealt with" has already been explained. The word "indecently" covers a wide range and it would hardly be practicable to give an exhaustive definition of it: it frequently relates to sexual matters and I may say that, if the conduct alleged against the accused in this case was considered by the Court to have been proved, it would be clearly "indecent". The age of the child has been established, by evidence not contradicted, as being 9 on 8th. March last.

I shall sum up the evidence for the Prosecution first. The Prosecution first called the child John Holland, and, after the Court had questioned him, the Court concluded that he did not sufficiently comprehend the nature of an oath or an affirmation but did understand that he would be liable to be punished if he gave untruthful evidence. The Court, therefore, pursuant to section 22 of the Oaths Ordinance, 1922 (Papua) (adopted), allowed him to give unsworn evidence, on his promise to speak the truth and his statement that he realised that false evidence by him was punishable. Other witnesses called by the Prosecution were two European Police Officers, Assistant Sub-Inspectors Towner and Graham; the boy's father (as to age); See To Ning a Chinese Storekeeper; Kimato a native employee of the Hollands; and four native members of the crew of the "MALAKAUA", Tortor, Lasin, Tamu and Tankas.

The child John Holland says, that after school ended that afternoon, at three, he was driven home by motor vehicle from RABAUL

to his home at Toboi, where he had some tea. Then he and Kimato (his father's employee) went to TOBOI Wharf where John began to play with a trolley. This is confirmed by the evidence of Kimato and the four native members of the MALAKAUA's crew already mentioned. Kimato and Tankas (who is quartermaster of the vessel) say the time was then about half past four or a little later. (Accused, as we shall see, places it earlier).

Evidence has been given for Prosecution, and it has not been challenged, that at this time there were only two Europeans on the "MALAKAUA":- the engineer, who was working down in the engine room, and the accused, who was in one of the "passenger cabins" on deck, which would only be about fifteen yards from the wharf where the native witnesses were sitting. Mr. Towner has described the cabin as containing a chest of drawers, a wardrobe, on either side, and two bunks (one above other) opposite the door, and as having a free floor space of only four feet by three and a half feet. It was therefore not a large cabin. He says the door was a sliding one, and only two feet wide. For brevity, I shall hereinafter refer to this cabin as "the cabin".

While John was playing with the trolley, the accused called out to him from the cabin, and John climed up on to the vessel and went to the cabin. John, and four native witnesses, say he went into the cabin. John says the accused then gave him a shilling and asked him to get some matches. John came down on to the wharf, where, (Kimato says) John, in response to Kimato's inquiry, showed him a shilling and said what it was for. John then went off along the road and Kimato went back to Holland's house. John presently returned to the wharf with a packet of matches. He says he got them at a Chinese store and that they bore a brand picturing a reindeer and a snake. See To Ning - a Chinese who has a store about 125-150 yards from TOBOI Wharf - has given evidence that he sold a packet of matches to a European child that afternoon for 1/- and that the brand of the matches pictured a reindeer and a coiled snake: (he produced such a label and swore it was the same as that on the packet he sold to the child). His description of the child leaves no doubt that the child was John Holland.

John and the four native witnesses from the "MALAKAUA" agree that when he got back to the wharf, he handed the packet of matches from the wharf to the native Tankas (quarter master) who was on the vessel and that Tankas then went to the cabin and gave them to the accused, who opened the door to receive them. Tankas says, and so does Lasin, that, at this time, the accused was wearing a dressing gown (the one produced in Court - Exhibit "A");- but both said that, as the gown was closed to near the neck, they could not say whether he had any clothing on underneath. Tankas says accused was the only person in the cabin at that time.

When Tankas had given the accused the matches, accused, from the opendoored cabin, called to John on the wharf. John came up and into the cabin, the door of which was then, it is said, closed. On this, John and the native witnesses are unanimous. Tankas says that at this stage, accused told him to get another cup of tea, and handed him a cup: (Tankas had already given accused a cup of tea earlier that afternoon). Tankas went to the galley to prepare the tea.

John says that, after he entered the cabin, accused closed the sliding door and sat John on a bunk, but John also says that he got up almost right away and stood from then on. He says accused opened the "fly" of his (John's) trousers and took out his penis; i.e. accused took hold of John's penis and took it out. John says accused began to suck John's penis and asked was this "nice"; that he replied "No"; that accused sucked again, and again asked if it was nice; that John replied "No, it's not. I want to go home"; that accused said it was "not time yet", and John again said he wanted to go home. The accused then, John says, opened his dressing gown, under which the accused had no clothing, showed John his penis, and asked John to rub it, but John refused. Then (John says), there was a knock on the door: accused closed his dressing gown, slid back the door,

took in a cup of tea, put it on a "table" in the cabin and closed the door. John was at this time standing in the cabin and he did up his trousers, he says, and told accused he was going home. He says he does not recall the accused's replying to that, but the accused gave him two shillings and said: "Here you are, Here's two shillings for you". John says he put this in a trouser pocket and went home.

Now Tankas says, and three other natives say the same, that it was he who knocked on the cabin door and handed the cup of tea through the door to the accused on that occasion. It had taken him a little time to prepare the tea because, although the fire in the stove in the galley was alight, the water in the kettle on the stove was not boiling, and he waited for it to boil before making the tea. When he took the tea to the cabin, it was accused, he says, who opened the door: accused was wearing a dressing gown then but it was closed to the neck; he says accused only opened the door a little (and witness indicated approximately 1 foot) after which the door was slid closed. Before it closed, Tankas had a glimpse, he says, of John's feet between accused's legs, but could see no more of John's figure. Both Lasin and Tamu also say that they noticed that the door on this occasion was only opened partly and they indicated that it only opened about a foot. Lasin says he could not see defendant at that moment and Tamu says he could only see accused's face (which is not improbable if Tankas was standing before the door of the cabin as Tankas says he was).

When John came down on to the wharf, he did not speak to anyone, but ran off towards his home: only one native witness described John's mode of departure as a brisk walk, the others said John ran.

At this time Tortor had gone to prepare a meal, but Lasin, Tamu and Tankas were about. They say they saw accused leave the ship, after John had left. Tankas estimates that this would be about 5.30 but does not pretend to be sure of this. He and Tamu say that accused was then wearing a white shirt and khaki "shorts". Tankas also said accused carried a small suitcase. Meanwhile John had got home. He thinks it would be then about "five o'clock" and says it was still light. Kimato, who had by this time cooked some "cookies", says the sun had just set and that it was still light. John says he at once told Kimato "what had happened". Kimato says John told him that a European on the ship was "no good too much" and had made "play no good", and that John mentioned that the European had handled John's penis and that he (John) had made efforts to get away and had finally got away, but that John had not mentioned further conduct on the part of the European or the 2/-; John had also said that the European was the one who had sent him for matches. Kimato also said John asked him to tell John's father about it when he got home. Kimato says he has not known Mr. Holland to give John money and he did not see 2/- in John's possession at that time. Kimato said John told him this in "pidgin". It is hard to say whether or not John fully appreciated the significance of the word "play" in "pidgin"; in that language it often means "sexual play". Kimato says he has never discussed sexual matters with John or in John's presence.

Mr. Holland, John says, got home only a little while after John had spoken to Kimato, but John did not tell his father what had happened.

It appears that the accused went from the "MALAKAUA" to the Cosmopolitan Hotel in Rabaul. There, later on, he was interviewed by Police Officers Towner and Graham, who at 5.55pm had gone to Toboi, made some enquiries, and collected some natives, and then returned to the Hotel. Towner has given the following evidence about what then happened. He says: "We then went outside into the lounge of the

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Hotel and I said to Bradley:- 'Were you at TOBOI this afternoon?' He replied:- 'No I wasn't at TOBOI this afternoon'. I then said to him:- 'Are you sure you were not at TOBOI this afternoon?'. He said:- 'Of course I'm sure. I've been on my ship the KALAUA all day and I haven't been at TOBOI since last night'. I then asked him to come with us (Graham had been with me all this time) to the Police Station. Tankas came to the Police Station but I don't think that native would have overheard the conversation at the Hotel. At the Police Station, after a short conversation, I asked Bradley:- 'Were you at TOBOI this afternoon?' He said:- 'Yes'. I said:- 'Well, why did you tell me you weren't there?' He said:- 'I did not. I told you I was on the MALAKAUA for about half an hour and left there about four o'clock, no later.' I said:- 'Did you see a white boy at TOBOI Wharf this afternoon?' He said:- 'No, I did not see any white boy'. I said:- 'What clothes were you wearing this afternoon?' He said:- 'These', indicating the clothing he had on, which was a white shirt, khaki shorts, long white sox and black shoes. I said - 'Didn't you send a white boy to get you some matches this afternoon?' He said - 'No, I did not'. I said to him:- 'Were you wearing a dressing gown this afternoon?' He said - 'No, I haven't changed from these all day' (indicating the clothes he had on). I then said:- 'Didn't you give a white boy a shilling this afternoon to buy you some matches?' He said:- 'No, I always have plenty of matches. I buy them in half-dozen lots'. I then said to him - 'Were you drinking this afternoon?' He said 'No - I had a few brandies this morning and one at the Hotel just when you came in'. I then said to him - 'Therefore you were in full command of your faculties during the afternoon?' He said - 'Yes'. I again asked him had he seen a white boy at TOBOI Wharf that afternoon. He denied having seen a white boy at TOBOI that afternoon. I then called in five natives, separately, into the office in which the accused and Mr. Graham and myself were. In front of the defendant I asked the five natives, one after the other, whether they had seen a white boy go into defendant's cabin on the MALAKAUA that afternoon. Each of them said they had. I also asked each one of these natives, in front of defendant, if they knew the name of the white child and they all replied 'he is Mr. Holland's son' (im i pikinini bilong masita Holland). The five natives were Lasin, Tankas, Kimato, Tamu and Tortor. (Kimato is Mr. Holland's employee). I then asked the defendant if he still denied having spoken to the white boy at TOBOI Wharf that afternoon. He replied - 'You can't believe these niggers'. I then told the defendant that I now accused him of indecent practices with the child John Holland between 3 and 4.30 that afternoon. He made no reply to that. I then arrested him and cautioned him by saying:- 'You are not obliged to answer any further questions but anything you do say will be taken down in writing and may be used in evidence at your trial'. He said:- 'I want to see a solicitor'". This evidence of Towner's was fully confirmed by that of the other police officer, Graham, and of course, amounts to evidence of wholesale denials by the accused. Towner was asked by the accused, in cross-examination, "Did I not say that I did not remember seeing a white boy that afternoon?" Towner replied:- "No : you said you did not see the boy".

Later that evening, the Police collected a suitcase from the Hotel. It was opened at the Police Station next morning. Accused identified it and its contents as his. Among these were the dressing gown which John and two native witnesses have since identified as the one accused was wearing in the cabin on 25th May, and a packet of matches, with one box missing, bearing the reindeer and snake label.

On the same morning, there were two "Lineups" at the Police Station. The first contained seven Europeans but not the accused. John was called in and asked to point out the European who had molested him the previous afternoon: he pointed no one out and was sent away. A second "lineup" of Europeans was then formed which included the accused, and this time John, brought back, identified the accused.

After that (Towner says and John says) Towner went with John to the Holland home where John handed Towner 2/-. This money, Towner says, came from a pocket of John's trousers which were lying on a bench in the bathroom.

As for the Defence, the accused elected, at the trial, to make an unsworn statement from the dock. He told a very different story from the one Towner and Graham say he told them on the evening of 25th May at the Hotel and Police Station. Here, he said he told those officers, on 25th May, that he did not remember seeing the white boy that afternoon; but Towner has expressly denied this and the evidence of Towner and Graham was that accused not only denied seeing the boy but kept on denying it. I accept the evidence of those officers about this. In his statement here, accused admitted what he had formerly denied, namely, that he had called John to his cabin that afternoon, asked him to buy matches, given him a shilling, and received the matches. The evidence is overwhelming in this case, that John did get the matches, at accused's request, that afternoon. In his statement here, accused also admitted another thing he had formerly denied, namely, that he had worn his dressing gown that day: but, he has now said, he had "shorts" on underneath - in that particular thus contradicting John who said he had nothing on underneath. The accused puts the events of the afternoon at a slightly earlier time in the afternoon than John and native witnesses have done, but that difference between them should not, I think, be regarded as necessarily significant. What might be considered significant, is a difference between the accused and witnesses for the Prosecution as to their estimates of the length of a particular period of time. Despite his denials to the police on 25th May last, accused has admitted in his statement here that he did call John to his cabin a second time, that is, immediately after Tankas had handed accused the packet of matches through the cabin door: he says that John came up from the wharf and entered the cabin and that he, the accused, wishing to reward John for getting the matches so quickly, gave John 2/-, saying "Thanks very much". The accused went on to say, in his statement here: "While I was doing this - John wasn't in the cabin more than a few minutes - the native Tankas brought me a cup of tea. Then the native went away and little John went ashore. I left the ship immediately with my little case". This story differs from that told by John, who says accused gave him the 2/- after the native gave accused the cup of tea. In his statement at the trial, the accused said nothing express at all, either by way of admission or denial, about the alleged indecent dealing with John; but I take it that, having pleaded "Not Guilty" and having said that John was only in the cabin this time for a few minutes while accused gave him the 2/-, he meant the Court to understand that he denied John's allegations as to such conduct completely.

An important question is: How long was John in the cabin that second time? The accused says, only a few minutes; and the impression the accused obviously intended to convey was that John was there only long enough for the accused to give him the 2/- reward for getting the packet of matches quickly and to say "Thanks very much". The native Lasin, on the other hand, says that John was in the cabin, on that occasion for a "long time", and the native Tamu said that John came out of the cabin that time a "long time" after he went into it. But I must remember that native ideas of time and periods of time are notoriously vague and uncertain. Tankas, however, gave evidence that was more definite, for he said that the time from when John entered the cabin until Tankas went back to the cabin with a cup of tea for the accused, was the time that it took Tankas to go from the cabin to the galley, wait for a kettle of warm water to come to the boil, prepare some tea, and then return with it to the cabin. These proceedings on the part of Tankas must have taken some minutes at least. Tankas also says that after handing in the tea, he went down on to the wharf and that, later, the cabin door was opened and he saw John come out. If Tankas's evidence is true, John was in the cabin long enough, I think, for the incidents of which John has complained to have occurred in, if they did occur.

Two people only, John and the accused, know exactly what happened or did not happen in the cabin on that occasion, and I have given their differing accounts of the matter.

It now becomes necessary for me to consider the credibility of the evidence given by the witnesses for the prosecution and of the statement made by the accused at this trial.

First, I shall consider the credibility of John Holland. He was a child of nine years of age and he gave unsworn evidence, yet evidence which, in the circumstances and because of s. 22 of the Oaths Ordinance, is as "valid as if an oath had been administered in the ordinary manner". There has been a difference of judicial opinion about whether a boy of seven years or more but under fourteen years of age may be regarded as an accomplice in sexual offences, - some judges adverting to the fact that a male person under the age of 14 years is presumed to be incapable of having "carnal knowledge" (which involves penetration), others to the fact that a person of 7 years to under 14 years of age is not criminally responsible for an act or omission unless it is proved that at the time of doing the act or making the omission he had capacity to know that he ought not to do the act or make the omission (cf. s. 29 Queensland Criminal Code (adopted). I think the better opinion is, that, where it is not a question of his being a principal in the first degree in offences such as rape or offences involving "carnal knowledge", a boy of seven and under fourteen may be an accoplice if the presumption of his lack of criminal responsibility were rebutted by clear proof of his having a "mischievous discretion", that is, a capacity to know that he ought not to have committed the offence; (see Archbold, 30th Ed., p. 12, and the Victorian case of R. v. Packer, 1932 V.L.R., 1225, cited by Archbold at page 13.). In the present case, however, there has been no proof of such a capacity in John Holland; also his evidence in the matter (which is the only direct evidence there is) goes to show that he objected to what he says the accused did, several times told accused he wanted to leave, and finally did get away. In my opinion, he was not an accomplice in what he says occurred, if it did occur.

But it must still be remembered that John Holland is only 9 -still a child- and that this is a sexual charge, on which the only direct evidence against the accused is that of this child. Now in England, as far back as 1913, and in the case of R. v. Cratchley (9 Cr. App. R. 252) the Court of Criminal Appeal held that, in such cases, "it is desirable, apart from any rule of law, and whether the witnesses are accomplices or not, that a warning should be given to the jury as to acting on the evidence of young boys" : "the jury should be directed to receive the evidence of witnesses of tender age with caution". In England, there are now statutory provisions that the unsworn evidence of a very young child, in certain sexual offences, must be corroborated in some material particular by other evidence implicating the accused. Kenny ("Outlines of Criminal Law", 15th Ed., p. 458) has commented:-"The precaution is wise; for a tribunal of adults is apt to place undue reliance upon these little people; forgetting that, though less fraudulent than adults, they are more imaginative". For these reasons, with which I agree, the evidence of the child John must be accepted with caution; and it is desirable, I think, that it should not be accepted unless it is "corroborated" in the strict sense of that word. By that, I mean "corroborated" in a material particular by other independent evidence implicating the accused in the crime now charged against him. To adapt a passage in R. v. Baskerville (1916, 2 K.B., 658), I think John's evidence should be corroborated" by some independent testimony which affects the accused by tending to connect him with the crime" now charged; "that is, evidence, direct or circumstantial, which implicates the accused, which confirms in some material particular not only the evidence given by" John "that the crime has been committed, but also" John's"evidence that the accused committed it".

Before considering whether John's evidence has been corroborated in that strict sense, I shall refer to other witnesses for the prosecution and their credibility.

Kimato's evidence that he actually saw, and then that he did not actually see the accused on the 25th May was, of course, contradictory and he admitted his mistake: he said he had been confused when he said he had actually sighted accused that afternoon. But his evidence about what John told him immediately he got home seemed credible enough. It was, that John told him that a European on the ship who had sent him for matches did something to John, on his return, that was "no good too much", that he had handled John's penis, and had made a "play no good". John had not expressly mentioned the sucking to Kimato (though possibly this was intended to be generally described in the pidgin words "play no good") and had not mentioned the 2/-. Still, this may, I think, be regarded as evidence of a "fresh complaint" by John and one consistent with John's evidence here, which preceded Kimato's testimony. Kimato's evidence of what John then told him is not, of course, "corroboration", in the strict sense, of John's evidence, for Kimato's evidence on this point was merely a repetition of what John told him and John may not "corroborate" himself : it was not evidence from an "independent quarter" : (R. v. Evans 18 Cr. App. R. 123 - followed in R. v. Coulthread 24 Cr. App. R. 44). It is well established that evidence of such a "complaint" merely tends to show that the complainant's testimony and conduct has been consistent, and does not go to show that complainant's "complaint" or evidence are necessarily true.

As to the four "BUKA" natives, Tortor, Lasin, Tamu and Tankas, ALL members of the crew of the "MALAKAUA":- these witnesses gave their evidence in a fair and straightforward way and their evidence was in no way shaken in cross-examination. Tankas was nearest to the accused that afternoon and gave his evidence in an impressive manner. The accused asked some of these witnesses why they were so "interested" in John's doings that afternoon. One said he was watchman that day and naturally noticed what went on on the ship. Another replied that John customarily came to the wharf to play and they felt they should look after him. He would be a poor observer indeed who had failed to notice that when a white child wanders into the midst of a group of natives, he draws their attention like a magnet, to the general detriment of the work in hand.

The two Police Officers, Towner and Graham, gave their evidence straightforwardly and fairly and it was not shaken in the least in cross-examination by the accused.

As for the accused - I have already retailed the many denials, false denials, most of them, as he has now admitted, - that he made and persistently made to the two Police Officers on the 25th May last. The accused now says his actions on that afternoon of 25th May were quite innocent. What, then, led him to make such persistent and such utterly false denials to the Police Officers? Mere denials, of course, are not corroboration; but there are times, as Kenny observes, when false denials may be "of such a nature and made in such circumstances as to lead to an inference in support of" what is denied. A jury should bear in mind, however, that people, even innocent people, suddenly questioned by the police, often get flustered and lose their judgment to such a degree that they instinctively give false answers - sometimes quite unnecessarily false answers. The accused has told us that at this time he had been greatly worried because of the stranding of his ship, the subsequent Marine Inquiry and his ensuing resignation. At this Court, the accused abandoned those earlier denials and, in his unsworn statement, said that he had seen John on the TOBOI Wharf that day; that he had called him to the cabin and given him a shilling and

asked him to buy matches; that John had gone off to do so; that Tankas presently gave accused the matches John had bought; that he (the accused) was wearing a dressing gown and then called John to his cabin again, - a second time; that John came into the cabin for a few minutes only, during which he gave John a reward of 2/- for having got the 1/- packet of matches so quickly; and that John then left. And so, speaking generally, the accused, in his unsworn statement here, has adopted the whole of the evidence given on these matters by John and other witnesses for the Prosecution except as to two matters, and these are:- What happened in the cabin on the occasion of John's second visit and how long was John there?

Only two people were in the cabin at that period and only two people can possibly know what happened there then; it therefore follows that any evidence from anyone else, in corroboration of what either John or the accused has said, could only be circumstantial evidence, and not direct evidence.

Now John says that what happened was that the accused closed the cabin door, and then indecently dealt with him despite John's protests; that the accused next exposed his own penis and invited John to rub it (which invitation John refused); that the accused's actions were then interrupted by Tankas's knocking at the door and bringing a cup of tea; that the accused took the tea through the door and closed it, while he (John) buttoned up his trousers and again said he wanted to go home; and that it was then that accused gave him the 2/- and let him go.

Accused, on the other hand, in his statement at this trial, merely mentioned that he gave John 2/- at this time, as a reward for getting the matches quickly, and that John was only in the cabin a few minutes and left when Tankas brought the tea. Accused said nothing, either way, about the alleged indecent conduct on his part : he neither admitted nor denied it - he just did not mention it in his unsworn statement at this Court. But I have assumed that by that omission and because of his plea, he meant to deny that alleged conduct. I must remember that accused was undefended, so I shall further assume that his case is, that such evidence as the Court may find credible in this case leaves accused's actions that day capable of a perfectly innocent explanation and one not inconsistent with that evidence. Of course, if the accused's explanation of what happened in the cabin when John visited it for the second time or if the evidence as a whole, leaves the Court, as a jury, with a hypothesis that (even if, as jury, the Court thought it farfetched) is consistent with the accused's innocence and is consistent with the evidence, the accused must be acquitted.

The question, then, narrows down to this:- Has John's evidence about accused's indecently dealing with him in the cabin on that second visit been corroborated by independent evidence, in a material particular, and in a way that implicates the accused in that alleged crime and has the evidence as a whole left open no innocent explanation of accused's alleged conduct that is possible and consistent with the evidence given in this case? If the answer to that question is "yes", the prisoner would be found "guilty". On the other hand, if John's evidence is not so corroborated, and if for that or any other reason there is, consistently with the evidence, a possible, innocent explanation of the accused's actions at that time, the accused must be acquitted.

What, then, are my conclusions, as a jury, on the evidence in this case? I have seen and heard John and the witnesses for the Prosecution give their evidence, and I have seen and heard the accused give his unsworn statement. John gave his evidence frankly and fairly,

I thought, and his story, at every point where it could be confirmed or denied by other witnesses for the prosecution, has been confirmed by credible witnesses in every respect - even in small details, such as, the Label on the matches, the dressing gown worn by the accused, the bringing of the cup of tea to the accused, the "lay-out" of the cabin, the money he was given and what he did with it. (For that matter, the accused himself now confirms most of those things). John's "complaint" to Kimato was consistent with his evidence here. John did not fall into the trap set for him at the first line-up of Europeans at the Police Station on 26th May - the one the accused was not in : he did pick out the accused at the second line-up, the one the accused was in. So far, all this is "corroboration" of John's testimony in the wider meaning of that term. But what I now have to determine (as judge) is whether there is any evidence which is capable of being "corroboration" in the stricter sense of the term, of John's evidence, that is to say, whether there is "corroboration" by independent evidence of John's evidence that the accused committed the crime charged against him during John's second visit to the cabin. As judge, I consider there is evidence capable of being "corroboration" of John's evidence, in the strict sense, if, as jury, I believe that evidence.

What then are my findings, as jury, on the evidence? The accused's sending of John for matches is capable of an innocent explanation and accused tendered one, namely that he had been told that the native crew was untrustworthy so decided to send John on the message. The fact that, when John arrived at the cabin for the second time, the accused sent the nearby Tankas away to get a cup of tea, although the accused had already had a cup of tea, is of itself also capable of an innocent explanation. The closing of the door by accused at that point (testified to by John and other witnesses) may have been by force of habit. The fact that accused was then wearing a dressing gown, is, of itself, capable of an innocent explanation: it is true that on the 25th May, accused emphatically denied wearing the gown that afternoon, but he now says that he did have a dressing gown on, having just been for a "wash". John says that the accused had nothing on underneath : accused says he had shorts on underneath: the natives who saw accused wearing the gown were not able to say whether he had anything on underneath or not, as it was closed to the neck when they saw it. But the accused states that John was in the cabin this time for a very short period, - in effect, just long enough for him to give John the 2/- reward for getting the matches quickly, and that it was at the end of that short period that Tankas brought the tea and John left. John, however, says he was in the cabin long enough for the accused to do all the things John has alleged; that the accused's actions were interrupted by the native's bringing of the tea, that the door was then again closed, and that it was then that he yet again pleaded to be allowed to go and the accused gave him the 2/-. Tankas's evidence supports John's as to the time that John was in the cabin:- so does that of Lasin and Tamu, in my opinion : and it was a longer period than the accused would have us believe. Moreover, the evidence of these three natives supports John's, and not the accused's, when they say that the door of the cabin was again closed, after Tankas gave accused the tea, and that John emerged some time later. These three natives also say that, when Tankas knocked on the cabin door to give accused the cup of tea, the door opened only a little way - about a foot: Tankas who was right at the door and who could see - said accused opened it : so did John. Of itself, the half-opened door is capable of an innocent explanation - it may have stuck. It seems unusual to give a boy 2/- for buying a 1/- packet of matches quickly, but I would not say that this, of itself, is not capable of innocent explanation. But, as to the period of time that accused had John in the cabin on that second occasion, I believe the evidence of John, Tankas, Lasin and Tamu, and I disbelieve the statement of the accused. I do not believe accused's story, that he gave John 2/- before Tankas brought the tea and that John departed at the time Tankas

brought the tea. I believe John's story that he was given the 2/- after Tankas handed the tea through the door, and I consider it is corroborated by the evidence of Tankas, Lasin and Tamu that the door was again closed after accused received the cup of tea, and that John did not emerge till later. In short, I find that accused had that small child behind the closed door of his cabin for a much longer time than he now asks us to believe. I believe accused has lied about this. Why has he lied about this? What was he doing with the small boy so long in his cabin with the door shut? Just innocently giving John a 2/- reward, as accused suggests, - a matter that need only have occupied a few seconds? Or doing something far from innocent, as John has testified? John at no point has been proved untruthful : but accused has. I believe the story John has told us of what happened in the cabin during the period of his second visit, because I consider he is a truthful witness and that his evidence as to that has been corroborated in a material particular by the evidence of Tankas, Lasin and Tamu, and in a way that circumstantially (yet in my opinion effectively) implicates the accused in the crime John has testified he committed, to wit, the crime charged in the present indictment. I therefore find that John's story is the true one and that it has been corroborated.

Having arrived at those findings, I also find the accused "Guilty" of the charge.

SENTENCE:-

The Court sentenced Accused to

3 years' imprisonment with hard labour.