

IN THE SUPREME COURT)
OF THE TERRITORY OF)
PAPUA AND NEW GUINEA)

Kelly, J.

8th June 1957.

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THE QUEEN v. MING FOOK WOO,
ALSO KNOWN AS ERIC WOO.

Oral Summing-Up

"Gold" is defined in Section 3 of the Gold Buyers Ordinance 1931-1938 - "Gold" means gold, gold alloy, gold bullion, gold amalgam, retorted gold, copper plates retaining or containing gold, and all earth, quartz, concentrates, and products containing gold in sufficient quantity to pay for treatment, but does not include money or wrought gold."

On the expert evidence of John Wilton I find that the contents of the tobacco tin, Exhibit "A", is gold amalgam, therefore "Gold" as defined.

Accused is charged under (a) with buying gold without being licensed so to do under Section 4 of the Gold Buyers Ordinance 1931-1938.

That Section reads:- "4. Except as provided in the next succeeding section, any person other than the holder of a licence who buys gold shall be guilty of an offence. Penalty:- Imprisonment for three years."

Section 5 reads:- "5. Notwithstanding anything contained in this Ordinance, any person may without a licence buy gold from any bank for his own purpose in the ordinary course of his business."

The accused has denied buying the gold from the European.

There is some variation in the Police evidence as to what the accused actually said regarding the money. And I give the accused the benefit of the doubt on that particular evidence.

The European was not searched and all money taken from him before he arrived at accused's store.

The European was not called in evidence; and no witness actually saw any money passing between the European and the accused.

On the foregoing, I find the accused Not Guilty of the above charge.

In the alternative the accused is charged with having gold in his possession under Section 132A of the Mining Ordinance 1928-1947.

That Section reads:- "132A. Any person who has in his possession, power, or control, without lawful excuse (the proof whereof shall lie upon him), any gold as defined in the Gold Buyers Ordinance 1931-1938 shall be guilty of an offence. Penalty: Imprisonment for three years."

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The accused was bound to enter the witness box to prove "lawful excuse".

On his evidence in the witness box his story appears to be this - On the Saturday afternoon a European, unknown to me, came to my store and told me he had some gold to sell. That same night at about 9 o'clock he again came to my store and asked me for a bottle of beer. I was about to have my bath but I admitted him and gave him a bottle of beer. He then produced a tobacco tin containing what I thought to be silver but he told me it was gold and he wanted to sell it to me. I told him I was not interested. But he continued and I became curious to know just how far he would go in trying to sell the gold to me. He and I discussed the matter for more than three-quarters of an hour, and finally he asked me to wrap up the tin of gold for him. Which I did. At that moment the police arrived and demanded entrance.

The story in itself is somewhat unusual. Apart from that, on the demeanour of the accused in the witness box I do not believe his story.

There is still the question - "Did the accused have possession of the gold?"

The accused did carry the gold from a table to a box of groceries. On the view taken by the Court - standing inside the room and facing the front door - the accused carried the gold from a table on his half-left rear to a box of groceries on his half-right front, a distance of approximately 15 feet. The box of groceries was on the right-hand side of the front door behind the front portion of an archway, forming a wall between two rooms; the front portion of that archway approximately 2 feet 6 inches from the near side of the front door and abutting from the front wall approximately 2 feet.

Some time during the conversation between the accused and the European regarding the gold a half-caste came to the accused's store for some kerosene. When the accused made to admit the half-caste, the European told the accused to hide the gold. The accused replied, "I don't care. If you want to hide it you hide it yourself". The European didn't hide the gold.

When the Police demanded entrance why did the accused not adopt the same attitude - in effect - "The Police are here. This is your gold. You take it. You stand up and face any trouble".

I am convinced beyond reasonable doubt that the accused did not wrap up the gold at the request of the European but he took possession of the gold for his own purpose and without lawful excuse.

Accordingly I find him Guilty of the alternative charge.