

THE HIGH COURT OF THE WESTERN PACIFIC
(CRIMINAL JURISDICTION)

BEFORE: The Honourable Mr. Justice J. Bodilly
exercising jurisdiction under the
provisions of the Western Pacific
(Courts) Order in Council, 1961.

HOLDEN: At Auki in the British Solomon Islands
Protectorate on ~~Wednesday~~ the 13th
day of December, 1966 at 2.00 p.m.
o'clock in the afternoon.

REGINA

versus

BADDELY KOUTO

For the Crown: ASP Morgan

For the Accused: In Person

Interpreter: Dominic Sura'i (Sworn- Lau Dialect)

Charge explained to the accused: By Court

Accused when called upon to plead says:

FIRST COUNT: Not Guilty

SECOND COUNT: Noy Guilty

Court enters a plea of:

FIRST COUNT: Not Guilty

SECOND COUNT: Not Guilty

Prosecutor: Elects to open:

Pros: will prove that the Accused was employed by the Malaita Council. On 1.6.65 he was issued with receipt book 38251 - 300 and that no receipts have been accounted. Idukwai will say that on 12th April 65 he paid to accused £1 in respect of '65 rates. So will Bara. Manigaru will prove that two receipts from the above book were issued namely 38255 and 38257, purportedly issued to Idukwai and Bara. Those receipts are dated 29th April and come from the book issued in June. They were therefore back dated.
I will call my evidence.

Joseph Bentley

PWI: Augustino Idukwai
Of Ndai Island

Sworn on Bible.

I know the Accused. In 1965 I know that he was employed as clerk to the Malaita Council. I remember 10th April 1965. "New Baku" arrived that day at Ndai Island. The accused was on board. He came ashore and myself and others to pay council tax. He asked me for my tax. I said I had no money. I said that if he was willing I could ^{take} ~~get~~ my copra sacks to Malu'u. He said that was all right. I could sell my copra and pay my tax. Next morning I and others went to Malu'u in the New Baku. We got there at about 8 a.m. I sold my copra. The Accused came with us in the New Baku. I paid the money to the boat for my freight. Then I paid my tax to the Accused. I paid £1. I paid in the presence of Francis, Abraham Peter, Bara, Tambia. I saw the rest of us pay their tax also. We were all together beside the counter in Leong Hangs store. We had sold our copra there and then paid the tax to the Accused. When I paid my tax I was not given a receipt. I did not see anyone else get a receipt. ~~Waxixixixix~~ I did not say anything about not getting a receipt. The accused also said nothing to me about a receipt. Since that date the Accused has not been back to Ndai Island.

In September, 1965, I was again in Malu'u. While I was there a man called Alanga came to me with a summons. He is from the Malaita Council. The summons was about the tax. I then went again and paid my tax for 1965. I was this time given a receipt for the tax I had paid which was £3. The summons claimed that I had not paid my tax and the tax was £2 and one pound penalty for failure to pay. I complained. I gave ^{the} summons a long time ago to the District Officer when I complained. I kept the receipt I got. This is the receipt.
Ex A. (Receipt No 388II put in) (Marked Ex A) .
(W: shown receipt No 38255) I have never seen that receipt before.

XX by Accused:

When you arrived first at Ndai we talked about tax. I deny that we first asked you to report to Government about our bad crops and to ask government to let us off tax. I did not hear anyone ask that and I did not ask you myself. I admit that when you first got off the boat, I was in my house. The Accused came to my house with the Boatswain Colin Bentley. I was with my wife who was sick. I admit I ~~did~~ do not know if ~~the~~ you ~~accused~~ spoke to anyone before me.
No ReX.

By Court:

I have often paid tax. I have always been given a receipt on

on the same day of payment. On ^{the} other occasions the clerk was not the accused. This was the only time the accused came. I knew that I was supposed to pay £2. I was surprised when the accused did not give me a receipt. I only paid £1 because I was short of money. The copra we had sold was company copra and I asked the Accused if he would let me only pay £1. He agreed to take £1 and let me pay the other £1 next time he came. When we were at Ndai Island the Accused said "You pay your tax and I will give you a receipt". He said that to me. I can give no reason why I did not ask for a receipt for the half tax.

When I received the summons in September I complained that I had already paid £1 and was not given a receipt.

By Acc: with leave:

You told me ^{in Ndai} that you would give me receipts when I paid my tax ^{in Ndai} when we complained that we had no money. In Ndai I saw only one man pay his rate. That was Dominic Serofai. I did not see the accused give a receipt. I actually saw the money paid myself. Dominic paid only £1.

PW2. Bara Maefota'a,
of Ndai Island.

Sworn on Bible.

I know the Accused. In 1965 I know that he was the Malaita Council clerk. In April 1965 the New Baku came to Ndai Island. The accused came in her. He asked us for our tax. He asked me for my tax. I paid it in Malu'u. I went the following day to Malu'u. Other people also went. Simon, Idukwai (PWI) Frede, Taitaba also came. I cannot remember any more. We went to Malu'u with Copra to sell and to pay the tax from the price. We sold it to Leong Hang store. I received for my copra £10. I paid £1.10.0. for freight and I paid the accused £1 for tax. With the rest I paid up other debts. Other people were present when I paid the tax. PWI was there, Peter was also there. I saw both of them pay money to the accused. PWI paid £1. I also paid £1 and I did not get a receipt. I did not see either PWI or Peter get a receipt, nor anyone else. I paid my £1 to the accused in Leong Hang's store. When I paid my £1 the accused was looking at a book. It looked like a foolscap ledger.

In September 1965 I was adrift in a canoe between Ndai Island and Ysabel. When I got back I heard that people had been summoned for not paying rates.

(W: shown receipt 38257) I have never seen that receipt.

No XX by Accused.

By Court:

This occasion was the first time on which I had paid rates. I knew that I should have paid £2. I only paid £1 because I

XX by Accused with leave:

The accused promised to give us receipts at Malu'u when he was in Ndai. Yha said in Ndai " If you pay tax now I shall give you a receipt but if you pay in Malu'u I will give you your receipts there.". I did not insist because you were the Council clerk.

PW3. Seth Alanga,
of Koio.

Sworn on Bible.

In 1965 I was a messenger for the Malaita Council. I was stationed at Aemela. In 1965 I served a number of summonses for non payment of rates. I went to Ndai Island. I served a summons on Idukwai. I see Idukwai in Court. I also served other summonses. After summons the people I had s served went to Malu'u and paid tax. Kwaimani was the tax clerk then at Malu'u. The Accused was not present when I served the summonses.

No XX by accused.

Духовенство

KxShowsxWxxExxA

PW4: Aluta Sanga,
Government Headman Fouendu Island.
Sworn on Bible.

I am Headman of Fouenda Island. I know the accused. In 1965 he was to my knowledge ~~he was~~ Court clerk for Lau Sub District which includes Ndai Island.

In September/85 result of information I wrote a letter to him. I wrote about tax. I received an answer. I have not now got the letter from the accused. I have thrown it away. ~~The contents of his letter was to the effect that the accused had already sent in his tax receipts.~~ The contents of my letter to the accused was to the effect that I wanted to know why tax summonses had been issued to the people of Ndai. I sent this as a result of information received. The contents of his reply to me was that he had already sent to me the tax receipts. After receiving the accused's letter

I went to look in the office where the mail is kept to see if there was any other letter from the accused lying there. There I found a letter addressed to me. It was from the accused. It contained certain receipts. There were about six receipts. (W shown two receipts) Those two receipts were among them.

Ex B (Receipt 38255 issued to Idukwai for £I dated 29.4.65- Ex B - for identification) That receipt bears the Accused's initials. I recognise accused handwriting.

Ex C (Receipt 38257 to Bara for £I dated 29.4.65- Ex C for identification.)

I recognise the accused writing on that also.

I kept those receipts in my house for about one week.

Then I gave them Dioko at Fouenda. I gave them to Dioko because he was the man whom the people from Ndai Island usually visited. I did this so that those receipts would ~~xxx~~ reach the people for whom they were issued.

XX by Accused:

I received the receipts in ~~xxx~~ about the month of September. I received the receipts in September. I wrote my first letter in the beginning of September. I know that in June you hired an outboard motor. I did not know whether ~~xxxxxx~~ you ~~xxxxxx~~ ~~xxxxxx~~ ~~xxxxxx~~ hired the motor for yourself or for the Council.

~~By xxxxxxx~~

No Re X

By Court:

I have Before this received receipts in this way to be sent to people.. I was not surprised. Sometimes if the receipt book is finished the tax clerks will take the tax and note the names of the payers and send the receipts from a new book.

PW5 Dioko

of Lau Lagoon.

Sworn on the Bible.

Tauba Village.

I run a bakery in Tauba. On or about 14th October '65 PW4 gave me a number of receipts for tax for delivery to people Ndai Island. About a month later I gave five of those receipts to Sergeant Maningaru. Among those receipts were Ex B and C. I recognise them.

XX by Accused:

I kept the receipts for about three weeks. While I had the receipts noone from Ndai Island came to my bakery. I correct that- one person came and I delivered one receipt. It was Bernado who came and I gave him his receipt.

By Court.

The reason why I did not give the rest of the receipts to Bernado was because he was not going directly back ~~to~~ to Ndai Island.

No Re X:

JB.

PW6: Marengaru

No 58. Sergeant Police . Stationed Yandina.

Sqwrn on Bible.

In November/December 1965 I was in charge of Malu'u Police station. About the 1st December 1965 PW5 came to the station and gave me five rate receipts.

(Five receipts put to W:) Those are the five.
They are numbered 38253, 38254, 38255, 38257, 38258.

Ex D	I produce those receipts Ex:	38253 Ex D
B (proved)		38255 Ex B
C (proved)		38257 Ex C
E		38258 Ex E
F		38254 Ex F

They are all dated 29th April 1965. I know the accused's signature. They are in my opinion signed by him. They are all for £1 each. They are all for people in Ndai Island. Receipt 38255 is in the name of Idukwai and the receipt 38257 is in the name of Bara.

No XX by Accused.

By Court.

I put the exhibits in the police safe and they have been kept there until I have produced them for this hearing.
I am in charge of the store and its contents.

JB.

Adjourn Court till 8.30 a.m. 14.12 1966.

Bail extended.

JB.

Court reassembles 8.30 14.12. 66

Accused and prosecutor present as before.

FB

PW7: Peter Taloni

Clerk Malaita Council

Sworn on Bible.

I have been clerk to the Malaita Council since 1959. I am the chief clerk.

I know the accused. He was a court clerk in Lau Sub district from 1963 till towards the end of 1965. He was employed by the Malaita Council. Part of his duties was the collection of rates. The system for the collection of rates is as follows. The collector is issued with a rate receipt book. They contain numbered receipts in triplicate. A record of issue of books is kept. I put in the counter foil register. I am the person who is in charge of this register.

Ex G

(Ex G put in).

On page 47 of Ex G there is an entry showing the issue of book 3825I to 38300 to the accused. The accused did not sign for that book. The current system is that the receiver of the book does not sign for it. The clerk who issued the receipt book writes the name of the recipient against the book number. Noone signs as receiving the book. But if the book is used and the duplicate and triplicate copies of ~~the~~ receipts issued from it are returned to the office then we know that the book is in use by the clerk who signs the receipts. This book Ex G was received in my office on the 1st June 65. This was one of a number of books which I received from the printing Department. I entered all the numbers in Ex G. There is no entry in the Ex G to show when the book 3825I/300 was issued to the accused. There is no column for the date of issue of these books and therefore we never show the issue date. I cannot say when that book was given to the accused. I did not give it myself. I instructed another clerk to issue the book. I know that it was the clerk Sosimo who issued the books because I know his handwriting in Ex G. I do not know when he issued the books. My instruction was a general one to that clerk to issue receipt ^{books} when collectors wanted them.

There was another book 3830I/38350 issued to the accused. There is no indication as to when that second book was issued either. I cannot say if they were both issued at the same time. Ex G also shows the dates when the completed receipt books are returned to the office. Ex G does not indicate that book 3825I/300 ~~was~~ has ever been returned. The book 3830I/50 has been returned partly completed. That was returned on 15.10.65. It was returned to Sosimo in my office. He entered the date in Ex G. I know that because I recognise the handwriting of the entry. ~~The~~ I put in Book 3830I/50. (Ex H) The first receipt from this book was issued on 5.6.65. That is the date shown on the triplicate copy remaining in the book Ex H. The accused has signed that receipt as collector

Ex H

When a person pays rate to the collector the collector makes out a receipt in triplicate. He hands the original to the payer. Later he removes the duplicate copy and hands it into Headquarters ~~the~~ together with the amount of the rate collected. ~~The duplicate copy~~ The triplicate copy remains in the receipt book. The collector is also issued with a cash book. This is a duplicate book. ~~When~~ The cash book shows the number of the receipt issued, the amount of money collected and the name of the person who paid the rate. The collector is authorised also to make payments out of the rates which he collects so the cash ^{book} shows all outgoings as well as incomings. If the collector makes any outpayment he completes in duplicate a payment voucher for each such payment. When the Collector hands in his the rates to Headoffice, he hands in the originals of any payments vouchers, the ~~original~~ duplicate of each rate receipt and the top copy of his cash book together with the balance of the rates remaining in hand. He is then given a bulk receipt for what he has paid in. The duplicate of the bulk receipt is kept in my records. On each occasion a payment in is made by a collector the documents which he hands in are all filed together. All payments in by collectors are entered in the Headoffice cash book. Either myself or my assistant make the entries in the headoffice cash book. It is either myself or my assistant Sosimo who make out the receipts(bulk). I produce the headoffice cash book for 1965.

(Produced Ex I) From the Ex I together with the papers filed by the collector it is possible to trace every single payment by an individual ratepayer.

Between 25.5.65 and 27.10.65 the accused made three payments into Headoffice. I produce the three sets of documents which he handed in. I put in the first bundle of documents.

This was handed in on the 25.5.65. (Marked Ex J)

I put in the documents handed in on the 16.8.65 (Marked Ex K)

I put in the documents handed in by the accused on the 25.10.65 (Marked Ex L).

In Ex J I recognise the writing of the accused on the original sheet from the cash book. The amount paid in was £161.10.0. Bulk receipt No II869 dated 25.5.65 was issued to the accused. It was signed by Sosimo.

That sheet from the cash book does not show any entry of a receipt taken from ~~Ex~~ receipt book No. 38251/300.

In Ex K the top copy of the cash book is written in accused handwriting. He paid in £63.3.0. Receipt No. II970 was issued to him for that ~~that~~ amount on 16.8.65 by Sosimo.

There is no entry ~~the~~ referring to any receipt from receipt book 38251/300.

In Ex L the cash book top copy is in accused writing. He paid in £50.5.0. Receipt No I2066 was issued to him for that amount. This was also issued by Sosimo dated 25.10.65.

That was the last payment made by the accused to the Council. On this last payment there was a shortage of £28.16.0. This was charged to the accused's advance account.

~~W~~ If for any proper reason a collector makes a mistake and brings in short money we charge it ~~to~~ against him and he can pay it back from his own pocket at a future date. Sosimo wrote the entry against the accused for £28.16.0. I know the writing. I was not present when he did that. I do not know what explanation, if any, was given by the accused for this shortage.

(Court examines books and receipts) (Court notes against the entry £28.16.0. " This cash was destroyed by me") I think that that note is in the accused's writing but I cannot explain it because I did not deal with that set of papers- it was Sosimo.

From the ledger I can say that the accused~~only~~ made those three payments in (Ex J.K and L)

Ex B ^{was} issued to Idukwai (PWI) on 29.5.65. The accused has signed it. It is for £1. Ex C is issued to Bara on the 29.5.65 in respect of £1 and the receipt is signed by the accused. Ex D, E and F all come from ~~Exx~~ receipt book 38251/300 referred in Ex G. So also do Ex B and C.

The accused resigned from the Council in October 1965. He resigned after the last payment in was made but I cannot recollect the exact date. He was succeeded by George Saeni. George Saeni was given a new receipt book. Since he has been collecting for Lau district he has not accounted for any receipts from book 38251/300.

XX by Accused.

I cannot say how it comes that receipts from Ex H are dated 5.6.65. Perhaps you had the book by that date. A collector does not need written permission before he pays out from the cash in his hand. Completion of a payment voucher is all that is required. If a rate collector requires to hire a canoe to go to an island and collect rates all he has to do is to hire the canoe and pay the money and complete a payment voucher. In June 1965 I cannot say if I received any payment voucher in respect of the hire of an outboard engine. I cannot say if there was included in your payment for August a receipt for rates paid by a man called Salifae. When you resigned in October I admit there was no handing over for there was no one to take your place at that time. I do not agree that Seani was then available. He was not employed till November. I cannot remember if Saeni was in Auki in ~~the~~ October.

ReX.

(W: shown Ex K) The name Salifae does not appear in this Exhibit.

(W shown Ex D) This exhibit is in the name of Salifae and is dated 29.4.65. That is one of the receipts from book 38251/300.

Court:

If the accused had hired an outboard for the Council duty there ought to have been a payment voucher therefore in either Ex J, K, or L.

(W shown the three Ex.) There is a payment voucher for hire of motor on a number of days for £3 paid to George Molae. The voucher was made out dated 15.7.65 and is signed for covering approval on 17.8.65.

(Acc: shown voucher says " That is the voucher I was referring to.)

PW8. Sosimo Sifotelea

Assistant Clerk Malaita Council.

Sworn on Bible.

I have been employed by the Council for six years. Between 1961 and 1965 part of my duties was to issue receipt books for rates to collectors.

I know the accused. In 1965 he was employed by the Malaita Council. He was in Lau Sub district as Court clerk. Part of his duty was to collect rates. Ex G contains a record of all receipt books received by the Council for issue to collectors. On page 47 is an entry of issue of book 38251/300 to the accused. It was issued by me. I made the entry. I issued it on the 1st June 65. I think I issued it on that day but there is nothing in the book to say so. I also issued Book 38301/50 (Ex H). I issued the two books together. He was present and I handed ^{me} to him myself.

On 25.5.65 the accused deposited cash with me.

(W shown Ex J) Those are the papers relating to that deposit. The accused handed me all of the documents comprising that Ex. And I issued to him the ~~xxx~~ bulk receipt II869 for the sum of £161.10.0. There were no receipts from book 38251/300 among the rate receipts handed in. On the 16.8.65 accused handed in a further payment of rates. (W: shown Ex K) Those are the documents he gave me. I issued to him bulk receipt II970 for £63.3.0. There were among the receipts for rates none from book 38251/300.

On 25.10.65 accused handed me £50.5.0. and all the documents comprising Ex L (W: shown Ex L) I gave him a bulk receipt for that amount. There were among the rate receipts none from book 38251/300. The accused only made three deposits of rates altogether.

(W shown Ex ~~B.C.D.E.F.~~ B.C.D.E.F.) Those are all receipts taken from book 38251/300. They are all signed by accused.

When the accused made the final deposit in October 65 there was a cash deficiency. ~~xxx~~ (W looks at Ex I) (Main cash book) The deficiency is shown as £28.16.0. on page 84 of Ex I. When I counted his cash I found this shortage. I asked him about it. He said that he had spent it for his own use. I charged this to his advance account. I cannot say if he has repaid that money yet. I ceased dealing with the cash book early this year. Until I handed over the accused had not refunded this shortage. (W shown Ex K) I see the words " This cash was destroyed by me", On the cash book top copy. The accused wrote those words. They were already on the sheet when he gave it to me. I told him that he must refund it. He did not tell me how he had destroyed it but said he had spent it for himself. I did not report this shortage to the Police or the District Officer. When I issued the ~~Receipt~~ bulk receipt in Ex K, the figure ~~xxx~~ included the shortage.

By Court: When I handed over to my successor I did not tell him about the shortage. I did not make the entry in Ex I myself. My successor entered the shortage in October when he took over from me. The shortage was shown in the ledger for advances to collectors. That ledger is an official ledger issued by the ~~primary~~ printing office. If a collector brings in short money we charge it against him in the book and he can pay it back later on out of his salary. My successor discovered the item in ~~this book~~ that book.

(Prosecutor states: That book is not being produced as Ex.)

XX by Accused.

I admit that noone was present when ~~xxxxxxx~~ ^I say ^{you} told ~~me~~ ^{you} that I you had spent the money. I admit I did not report the shortage to anyone but I told you that it would be posted as an advance against you and that you would have to repay from your next salary.

By Court: The accused's salary was £6 per month.

Acc: (Cont)

I do not know if anyone else knew about this advance against you but the advance ledger was kept on the office table and anyone could look at it. There were entries in that book against other persons. Some of those persons were also rate collectors. The entries against the other rate collectors were also for shortage of ~~repayment~~ payment of rates collected. I deny that you wrote me any letter about the shortage. You brought in the money and the shortage was found on counting it. I personally never received any letter from ~~the~~ ^{you} Accused. If you had written to the office I would have seen it. I see all correspondence to the office

Re X:

The shortage was in respect of duplicate receipts which accused produced. The shortage did not relate to receipt book 3825I/300 which has not been accounted for at all. The total shortage on an unaccounted ~~for~~ rate redeipt book would be £100 assuming the book had been used. If the book 3825I/300 had been used that would make the deficiency even greater than £28.10.0.

By Court:

(Ex B and C shown to W): If a collector brings in a part used book, we check the money and enter it up and the collector goes away and finishes the book which he turns in on his next visit. I know that B and C are not included in the £28.10 advance because the numbers of those receipts do not appear on the cash sheet^s handed in by the accused.

If a collector collects a rate and he has run out of receipts he will sometimes send the receipt to the payer later on. I think that if he does that he ought to date the receipt with the date of payment of the rate.

JP

PW9: George Saeni
Court Clerk Lau District.

Sworn on Bible.

I have been employed by Malaita Council for about one and half years. I started in 1965 but I cannot remember what month. It was about September.

I know the accused. He was the court clerk at Ferasoboa, in Lau Sub District. I replaced him. When I took over there was no handing over. I got the books from Peter Taloni(PW7). He gave me the rate receipt books, the license receipt books, and the Lau rate register for 1965/66. I received new receipt books from PW7 and I received the current cash book which had been started by my predecessor, the accused. I received a rate receipt book No: 4001/50. It was a new book. I was not shown what to do by anyone. When I reached my office in Ferasuboa I found a receipt book No 38251/300. I have since completed book 40001/50 and turned it in with the rates collected. If I had found a partly used receipt book in the office I would have used it up first. I found no such book. The cash book which I was given I put in. (Marked Ex M). The sheets in Ex M which are marked cancelled I cancelled myself because I had made a mistake. I correct that Peter Taloni did that. I had made a mistake and Taloni crossed out those sheets and wrote them in again correct. On page marked(X) the words " this cash was destroyed by me" was written there when I got the book. I do not know ~~know~~ who wrote it.

Ex M

XX by Accused:

You did not give me any documents when I took over. I do not know why the accused did not hand over to me. ~~Hexxxx~~ You were not there. Taloni gave me the books. He gave me the books to work with. I know that you were in Auki at that time. I do not know what ~~he~~ you were doing in Auki. I admit that when I took over I knew that there was an investigation in progress. If there had been no investigation in progress I would have expected a turnover ~~xxxxxx~~ from you.

No Re X.

By Court I have been working as a collector since Oct. 1965. I have turned in money about ten times. I have never turned in short money. I do not know about the existence of an " advance ledger" to cover short payments.

Accused with leave:

When you handed in your books in October 65 I do not ~~know~~ remember where I was.

J.B.

PWIO: Ausuta

No 30 Corporal Police , Auki.

Sworn on Bible.

I know the accused. On 28.10.65 I interviewed the accused at Auki police station. I cautioned him. He signed the caution. He made a voluntary statement. I wrote it down in pidgin. I read it back. He then signed it, as correct. I then signed it also. I translated it to English later . I put in original (Ex N) and the translation (Ex N^I)

(Accused does not object to statement)

(Statement read in pidgin and English)

XX by accused:

I do not know how long you were in Auki in October 65. Except when I took your statement I have not seen you round the Auki Police station in October.

No ReX.

Pros: That closes my case.

Defence

Accused elects to give evidence on oath.

Accused: Sworn on Bible.

About 10.4.65 I went to the west of the Lau Lagoon to rate collect for the Council. At about 12 noon I came to a place called Newlan where I was met by Colin Bentley, the boatswain of the New Baku. He said he was going Ndai I said I wanted to go there. I took passage in the New Baku accordingly. On my way to Newlan I had been collecting rates en route. On the way we stopped at a place on the way to Ndai also and there I also collected rates. I issued receipts for all of those receipts. We got to Ndai about 3 p.m. I went ashore and I was met by a number of people. They asked me what I was coming for . I said I was coming for their rates. They complained that their crops had been spoiled by pigeons. I did not at that time see Idukwai (PWI). But I heard about his sick wife and I arranged with the boatswain of the New Baku for her to be taken to hospital. I explained to the people that although I had come to get rates I only had one receipt left. A man called Salofai then paid me £1 rate and I issued my last receipt.

After that they all said that they were willing to pay the rates but that they had no money. I said I believed them but I could not do anything about that. Eventually they collected their copra sacks, loaded them on to New Baku and we all went to Malu'u. I did not arrange that. It was the boatswain who arranged that with the people. We left Ndai at about 3 a.m. the following day. We got to Malu'u at about 3.30 p.m. They took their copra to Leong Hang and there they sold it. They finished selling the copra about 6 p.m. At about 7 p.m. they each received the price. Then they all paid the freight to the Boatswain and then I said "you can now pay up your rates." I have no receipts but I will take your names and send receipts. Then they said that they could only pay £1 and not £2 and I accepted this. Then four of them paid £1 each and one man paid £2. When the people sold their copra I was present and I wrote down on a list all of the people who sold copra. I did that so that I would know who could pay the rates and who could not. Those who paid me I noted off on that list which I had made. I kept the list until this case arose and then I have mislaid it in collecting all the documents. After this I went to Manoba in the New Baku and we dropped all the people for Ndai off there and I went on with the New Baku. The following morning I went home to my house. About three days later I started on another rate collecting tour. I had another book of receipts at home which I used for this next trip. I forgot for the time the receipts owing to the people of Ndai. In May I came to Auki to pay in some money, and I found that I had six pounds too much. I then remembered that I had not sent out the receipts to the Ndai people. That was towards the end of May 65. I went home again and continued to collect rates. As soon as I got home about 4th June I issued receipts to the people of Ndai from the new book which I had received. I got ~~the~~ two books on the 1st June. I issued those receipts from the book 3825I/300. I issued those on the 4th June and I went on tour again on the 5th. I back dated those receipts to 29.4.65 because if I had dated the receipts in June the people would have been liable to a penalty for failing to pay in the first half of the year. And that would be wrong for they had paid. When I went on trek on the 5th in packing up my receipt papers etc I took the second book issued instead of the one which I had used for the receipts for the Ndai People. ~~Ex Ex~~ (I took Ex H). I therefore used this book Ex H. When I got back home from this trek I could not find book Ex 3825I/300. I did not want to report this loss. I wanted to try to find the book. In the meantime I continued using the second book. I had not completed the second book (Ex H) before I resigned in October from the Council. I handed in my books on the 15.10.65 and actually resigned my post at the end of October. I handed in all my books to Mr Pepys Cockrell. I did tell Cockrell that I had lost a book and he told me to go and find it. I have not found it yet. That is why I have never been able to record the numbers of the receipts which I had issued from it. So I still had six pounds surplus against me. In the course of June I hired the outboard for the Council and I paid for this with some of that money and the rest went on the petrol. I only made out a payment voucher for the money which I paid in Hire. I made a voucher for the petrol which I had bought. I did not do that because I was not sure whether I should be approved in spending this for petrol. I meant to wait till I got back and ask for authority and if the Council approved it I would then make out a voucher.

In the end I never did ask for approval for this. When I got to Headquarters I forgot about it. So I admit that I still owe the £6 to the Council because I have lost the book. I did not think I could pay in the £6 without the receipt numbers.

I went on working till October 1965. On the 10th October I received a letter from the District Officer, North and the A.S.P. Morgan ordering me to collect my documents and come in to Auki. On the same day I went to ~~xxxxxxxxxxxx~~ Auki by a cutter boat. I arrived in Auki on the 14th. The next morning I went to see the D.O. Mr Cockrell. He told me to take my cash and documents to Amela the HQ of the Council. I did that and handed in my cash book and rate register and other documents of Ex L. I had told Cockrell that the one rate receipt book was missing and he told me to go and find it. I had not ~~not~~ given notice to the Council at that time. I admit I was sacked. I did not tell the Council about the lost receipt book because I was worried about the investigation concerning the £28.16.0. shortage which had been discovered.

XX by Pros:

I deny that I was shown the receipts Ex B C D E F when I was interviewed by the police about this case. I admit that I did not bring the list of names of the people who paid me in Ndai to the police but I did show it to Wallabarea at Amela. I ~~not~~ showed him this after I had told Mr Cockrell that I had lost the book. Wallabarea was ~~not~~ helping Sosima at that time. I did not put any of this to Wallabarea at the Preliminary Enquiry because I did not know that prosecution witnesses could help an accused. My pay is £6 per month and in 1965 it was £7.10.0.

If the Council would not authorise the payment ~~not~~ for the petrol I would have paid it myself. I could repay it out of my salary. I admit that the money for the petrol was important to me. I cannot say why I forgot to ask the Council to refund it.

I had never been to Ndai Island before to collect rates. I admit that there is no record of any people on Ndai island liable to pay rates. They are not entered in the ^{rate} register, for Lau Sub District. At the time when I lost the receipt book 38251/300 I also lost the Malaita Council Financial Instructions. I had left them on the verandah of my house.

I agree that I had a surplus of £6 in May when I remembered I had not sent the receipts to Ndai. I say that those £6 went as to £3 for the hire of the outboard and £3 for the petrol. I admit that the hire for the motor was covered by a payment voucher in Ex K. But I never got the money because that sum was never deducted from what was ~~paid~~ shown as collected. (Court notes that the out payment is not deducted from the inpayments.) This has nothing to do with the £28.16 shillings which is charged against me, for that money I lost one night at sea when I fell ~~down~~ overboard with the money on me. The reason why I did not enter on the credit side of the cash book the sum of £3 against the payment voucher in Ex K is because that three pounds should have been ~~paid~~ set against the six pounds collected by me in Ndai which I had not yet paid in. I admit that to this extent that account becomes incorrect.

Wallabarea

When I made my final payment in in October, I admit I never said that I had lost the receipt book 3825I/300 and that I still had £6 to pay in. I told them about the ~~xx~~ £3 which I had spent on the boat and I also said that I had paid for the petrol. I told Peter Taloni that I did not put that to Taloni (PW7) when he was in the Box because I overlooked this point.

Salafai only paid me one rate. I gave him a receipt for that at the time on Ndai Island. It is dated II.4.65. The receipts from that book dated I5.4.65 are not correct. I made a mistake in the dates. I issued them before the receipt to Salefai on the ~~xx~~ II.4.65. I deny that I am lying about this.

By Court:

Ex N I put in the book containing the triplicate receipts from which I made out the receipt for Salafaie. (No 25I-300- put in Marked Ex N.)

I deny that the witness PW4 said that he received the receipts for the people in Ndai not until September. That was misinterpreted. ~~xxxxxx I received them xxxxxxxx long time ago~~ I told him in my letter that I had sent him the receipts " a long time ago". Perhaps the ~~PW~~ letter with the receipts reached PW4 after he went away in June to Honiara. He was away for a week or so- I now say he was away two weeks. I sent the receipts in the middle of June, I made them out early in June. I would expect the letter to take one day to reach its destination. I did not send them by the same post I sent them about the middle of June and in my letter to PW4 I said I had sent them long ago.

Accused states: I wish to call one Defence witness.

Court adjourns to 8.30 am I5.I2.66.

Bail extended.

Court Reassembles 8.30 a.m. I5.I2.65

Accused and Prosecutor present as before.

Court ^{to} proposes to recall PW8 Sosimo. Accused and Pros: do not object.

PW8 recalled by Court.

(W Shown Ex K) I ^{did not} received those documents and the money in respect of them from the accused. It was Wallabea who received this payment. He worked with me on the accounts. I am unable to explain how ~~xxxx~~ it came about that the out payments were not entered against the in payments and thereby deducted from the Accused liability as collector. When I said yesterday that the Accused gave me the cash sheet in Ex K, I was mixed up. He did not give those papers to me at all. I have never seen that sheet until this court case.

Although I did not deal with the papers Ex K myself I and

Wallabea were working together and and Wallabea signed the papers and I took the money and it was then that the conversation about the accused ~~having~~ spent the money took place. The reason why I did not report to the D.O. or the police when the accused told me that he had spent the money himself was that we had several clerks who brought in short rate collection and also said that they had spent the money themselves. Sh we told them that they must pay it back and we entered it in the advance ledger and we did not report these tings to the D.O. or to the Police. T repeat the accused did say that he had spent it himself and not that he had fallen overboard and lost it.

~~X~~ ~~by~~ Accused with leave:

I never heard that you had fallen over board. It was not common knowledge in the office thaty~~he~~ had fallen overboard. I deny that I received any letter about this from you. I deny that I ever heard that you had reported the loss of this money to the police.

X by Morgan with leave.

I admit that the police did come and question me about the Accused's shortage of £28.16.0. I cannot remamber when that was. He came from Auki. I do not know how the Police knew about that shortage. If a man fell overboard and lost money the Council would normally report to the police. And if a man said he had spent the money the Council would report this to the police also. I do not know if anyone reported in this case. I did not tell the police that the accused said he had fallen overboard. I heard the story about the accused falling overboard after the police had interviewed me. I don't how I heard it. Someone must have told me. When the accused told me that he had used the money for himself, Wallabea was in the room. I think Wallabea heard. Accused admitted that he had used the money for himself at the time when he handed in Ex K. I did not hear him speak to Wallabea about the £3 for the outboard engine. The payment voucher in respect of that sum should be brought to account in Ex I but I cannot find it now.

(Accused searches).

JB.

Accused invited to call his defence witness.

DW I Colin Bentley
of Newlon, Malaita.

Sworn on Bible.

I am the owner of " New Baku".
I took the accused to Ndai Island last year. It was about the middle of April. The Accused went there to collect taxes. I went to collect copra.

I told the people to bag up their copra and put it in the bag. They did that. I stayed in the boat. I cannot say what the accused did concerning the collection of rates. I did not hear any talk at Ndai between the accused and the people regarding rates. The next day we sailed from Ndai to Malu'uu. The accused and the people with their copra all took passage. At Malu'u I collected my freight as soon as they had sold the copra. I went to Leong Hangs store while the people sold their copra to make sure I got my freight.. I cannot remember if the accused was there as well. I did not notice any people paying rates to him and I did not hear any talk about rates. I was not interested in the matter of rates at all. I did not have any talk about a rate book. I have never seen Ex N. or any other rate receipt book. I have not forgotten- I did not have a talk about that.

No XX by Pros.

~~Addressess~~ Accused states- That is my only witness.

Addressees:
Accused.

My case is that I admit I collected the rates and did not issue receipts at the time because my book was finished. I later issued the receipts from another book which I then lost so that I could not pay in the money because I had no duplicate receipt vouchers to hand in with the money. I say I never intended to cheat the Council and I spent the money on the boat and the petrol to the Councils use and have not yet had it back. I admit that those six pounds have not been accounted for by me, but I have not embezzled them.

Prosecutor:

Accused admits he had received the ~~money~~ money and that he had it till 25.10.65. He could have brought this money to account in the meantime. His reason for not doing so are very far fetched. It is curious that he should have lost this particular receipt book which related to Ndai Island which were not recorded anywhere as rate payers. It is fantastic that the loss was not reported to anyone except Pepys Cockrell who is no longer in the country. I suggest that had he reported it Cockrell would have reported to the police. As regards Ex N it is clear that he did have receipts left in that book at Ndai Island. I submit that when he did receive the money he kept it knowing that the names were not in the register. He never accounted for the money and is still in his possession. Whether or not he used the money for the outboard and petrol is immaterial.

Judgement

The accused is charged with two counts of embezzlement, namely that on the 12th April, 1965, he embezzled £1 ~~xxxxxx~~ paid to him in rates by Idukwai and £1 paid to him in rates by Bara.

At all material times the accused was employed as a court clerk and rate collector by the Malaita Council and was stationed in the Lau Sub District. His duties consisted inter alia of travelling within the Sub District and collecting rates payable to the Council. For this purpose he was issued with receipt books in triplicate containing serially numbered receipts. Whenever he collected a rate it was his duty to issue a receipt to the payer. He accounted on return from a collecting journey for the rates by making out a cash sheet from a duplicate cash ledger. That sheet showed the name of each payer, the number of the receipt issued to him, the date of the payment and the amount of the payment. This sheet together with the duplicate receipt from the receipt book he handed in to the headoffice together with the total sum of money collected in rates. Against this he was entitled to spend money from the rates which he collected for such matters as fares for transport on his journey and the like. Whenever he made such a payment out he completed a "payment Voucher" in respect of the sum paid out and this was deducted from the amount collected and it was the difference which was paid to the council. These payment vouchers were handed in together with the duplicate receipts.

On the 11th April the accused took passage in the cutter boat New Baku to Ndai Island and there he called upon the people to pay their rates. They all complained that they had no money, but one man, namely Salafae, did pay his rate consisting of £1, being half rate, for the year. The accused issued him with a receipt. The accused then says that that receipt was the last which he had in his book. The other rate payers from Ndai, having no money, collected their copra and took it in the New Baku to Malu'u and there they sold it and out of the proceeds they each paid the Accused £1 (half rate). The accused had no receipts ~~with~~ to issue to them, so he took their names and said that he would send the ~~xxxxxx~~ receipts later on. He then returned to his home. The following day he went out again on another journey to collect rates and made use of another book. He did not send the receipts to the people of Ndai Island. At the end of May the accused made up his accounts to turn in to the Council and of course discovered that he had not yet sent the receipts to the Ndai people which he had forgotten to do. He went into headquarters, paid in the rates collected omitting the rates for which he had not yet issued receipts because of course he had not got the duplicate receipts to turn in. He received from Headquarters two new receipt books on the 1st June and returned to his duties. From the first of the those two books, namely a book containing numbers 38251/300 he then made out the receipts for the people of Ndai and he says that he sent them to the Headman at Fouenda Island, namely Aluta Sanga asking him to send them on to the people of

Ndai Island. There is here a ~~disputatixxxxx~~ difference in the evidence. The Headman (PW4) says that he did not received those receiptss until September 65 whereas the accused says that he sent them early in June. However that may be, the Headman early in ~~December~~, after certain summonses had been issued against the rate payers of Ndai for failure to pay the rates, wrote to the accused asking about the matter. The accused replied to the effect that ~~xxxxxxxreceipts~~ the people had paid their rates and that he had sent the receipts to the Headman for onward transmission " a long time ago". On receipt of this letter (neither letter is exhibited) by the Headman he searched in his office and there he found an envelope containing six receipts for onward transmission to the people of Ndai. He forwarded these to a baker on a neighbouring Island for him to pass to the people when they came to call for flour. There is no evidence as to when the receipts were actually received in the Headmans office but the evidence leaves me with the impression that they had probably been lying there for some time. I give the accused therefore the benefit of the doubt in respect of this.

In August 65 the accused again went to headoffice to pay in the rates he had collected. This time included among the documents which he handed in were two payment vouchers, one for £3 paid to a man called George Molea for the hire of an outboard motor and the other for £1.4.0 being fees paid to the "resident of a Native court and one member. In making out his cash sheet the accused did not enter either of these outpayments to his credit, neither did he enter the receipts which he had sent in June to the people of Ndai island, amounting to the value of £6.0.0. His explanation for not paying in the £6 was that he had lost that receipt book and did not therefore know the numbers of the receipts which he had issued. His explanation for not entering the two payments vouchers in his favour was that as he had lost the first of the receipt books and could not enter the £6 from Ndai island he could not enter the money which he had spent on that tour either because the money which he had spent in respect of those two vouchers ought to be set against the ~~xxxxx~~ sum of £6. Why he should have thought this it is difficult to understand, but I believe that that was the way his mind had worked. In all events what he did does not seem to me to be incompatible with an innocent intention. It seems strange that if he was intent upon defrauding the council of £6 he should not have ensured that at least he was credited with the money which was due from the council to him. In the event the difference amounted to only £1.16.0. The office to whom the documents and cash was paid in, either through negligence or for some other reason, did not correct the error and enter the payment vouchers to the credit of the accused. The accused admits that he owes the money but denies that he had any intention of defrauding the council. It appears that he found himself in a difficulty because he had lost the receipt book from which he had issued the receipts to the people of Ndai and therefore was at a loss as to how to pay in the money.

In these circumstances I am not by any means satisfied that the accused acted fraudulently in this matters and therefore I acquit him on both counts.

Delivered.

Touken Basing
Chief Justice
15.12.1966.

Order: All exhibits to be returned to the Council.

Tracy B. King
C.J.