

Eric Reginald Charles Alexander Strologo - - - *Appellant*

v.

The King - - - - - *Respondent*

FROM

THE SUPREME COURT OF THE ISLAND OF MALTA

REASONS FOR REPORT OF THE LORDS OF THE JUDICIAL
COMMITTEE OF THE PRIVY COUNCIL,
DELIVERED THE 19TH JULY, 1944

Present at the Hearing :

THE LORD CHANCELLOR (Viscount Simon).

LORD WRIGHT

LORD PORTER

LORD SIMONDS

LORD GODDARD

[*Delivered by LORD GODDARD*]

On 31st July, 1943, the appellant was indicted before His Majesty's Criminal Court for the Island of Malta and its Dependences with having without a lawful order from the competent authorities arrested, detained or confined a person against the will of the same and of having provided a place for carrying out such arrest, detention or confinement, with the aggravating circumstances that the individual arrested detained or confined received bodily harm and with the further aggravating circumstances that the detention or confinement was continued by him with the knowledge that an order had been issued by the competent authority for the release or production of the person detained, contrary to Articles 85 and 86 (3) & (4) of the Criminal Laws. The Court convicted the appellant of the substantive offence and also found both of the alleged aggravating circumstances proved. They sentenced him to 13 months imprisonment with hard labour which was the minimum sentence prescribed by law, but the Governor in the exercise of his prerogative reduced the sentence to 3 months. That sentence, less a remission for good conduct, has been served. The appellant by special leave granted on 25th February, 1944, appealed against the conviction. At the conclusion of the argument their Lordships indicated that they would humbly advise His Majesty that the appeal should be allowed and the conviction quashed and now give their reasons for tendering such advice.

The facts were really not in dispute. The appellant is a Captain in the Royal Artillery and was acting as *liaison* officer with the R.A.F. at Tal Qali aerodrome. On 14th July last year, which was the third day of the invasion of Sicily, he parked a truck, a vehicle used in His Majesty's service, near a house which he had occasion to visit. On returning to the truck some time afterwards he saw the lad whose arrest formed the subject of the charge on the truck. According to the appellant the lad was in the truck and he saw him through the windscreen. The lad's evidence was that he was not in the truck, but was standing on the running board with his hands behind his back looking at the speedometer and that he had been so standing for about 5 minutes. Whether the Court believed the

appellant's evidence on this point or preferred the somewhat surprising account given by the lad is immaterial, for it is common ground that he was at least on some part of the truck. On seeing the appellant approach the lad ran away and the appellant chased and caught him. Unfortunately the appellant lost his temper, and hit the lad in the face and kicked him. He arrested him and took him back to the truck and put him into it. He then discovered some cigarettes were missing and that about 20 gallons of petrol had been taken out of the tank which was empty. The lad denied all knowledge of either the cigarettes or the petrol, but the appellant told him that he was taking him to Valletta police station. On the way towards Valletta they met a policeman and the appellant inquired of him where there was a police station, but then according to his evidence, realising that it was time he went on duty he drove to the aerodrome and handed over the lad to the Corporal on duty at the guard room and ordered him to detain him till the Military Police came for him. Again at the guard room he assaulted the boy. The subsequent history is really immaterial for the determination of this appeal, but it appears that the arrest caused considerable excitement in the neighbourhood which led to an Inspector of Police visiting the appellant and demanding that the boy should be released. A somewhat undignified altercation took place into which it is unnecessary to inquire in detail; it is enough to say that later in the evening the boy who had meanwhile been removed by order of the Provost Marshal to Hamrun police station was on somebody's order released. As a result of the treatment he received from the appellant the boy sustained slight injury, amounting according to the doctors evidence to a scratch near the corner of his eye and a small scar or bruise on the leg. Had the appellant been charged with assault he would have had no defence; he would no doubt have been properly convicted and awarded a suitable punishment for that offence. It is they hope hardly necessary for their Lordships to emphasise that a person in uniform, be he officer, N.C.O. or private, is no more than anyone else entitled to assault another subject of the King whether in peace or time of war. But that was not the offence for which the appellant was convicted. He was charged and convicted under Article 85 of the Criminal Laws which makes it an offence to arrest detain or confine any person without a lawful order from the competent authorities, saving the case where the law authorises private individuals to apprehend offenders. Now at this time the Malta Defence Regulations 1939 were in force throughout the Island. Those Regulations derive their statutory effect from Sec. 4 sub-Sec. (1) of the Emergency Powers (Defence) Act 1939 and the Emergency Powers (Colonial Defence) Order in Council 1939 made thereunder. Under Regulation 26 it is an offence to impair the efficiency or impede the working of any vehicle used or intended to be used for the purpose of any of H.M. forces. Regulation 35 provides that no person shall unlawfully enter or board any vehicle vessel or aircraft used or appropriated for any of the purposes of H.M. service and if any person is found in any vehicle vessel or aircraft on any occasion on which he has entered or boarded it in contravention of this paragraph then without prejudice to any proceedings which may be taken against him he may be removed by an authorised officer, which by Regulation 4 means a commissioned officer in any of H.M. forces, from the vehicle vessel or aircraft. Then by Regulation 72, among other persons, any member of H.M. forces acting in the course of his duty as such may arrest without warrant any person whom he has reasonable ground for suspecting to have committed a war offence. A war offence is an offence against any of the Regulations. Now it is clear that the appellant had reasonable grounds for suspecting that the boy had committed a war offence; he was seen on the truck and therefore was committing a breach of Regulation 35. The prohibition contained in the Regulation is absolute; no question of intent or state of mind is involved. It follows that the appellant as a member of H.M. forces acting in the course of his duty as such was entitled under Regulation 72 to arrest him without warrant. The Attorney General submitted that the Court was justified in thinking that he arrested the boy because he suspected him of stealing cigarettes which were his and not government property and that accordingly there could be no justification

for his action. But the facts show that he chased and arrested the boy before he knew that his cigarettes were missing, and also before he knew that petrol had been taken from the tank, so that it is unnecessary to consider whether he had reasonable grounds for suspecting that the boy had been a party at least to the theft of petrol which would have been another war offence under Regulation 26. As the Court apparently delivered no reasoned judgment their Lordships are without information as to the grounds upon which they came to the conclusion that the appellant had been guilty of an offence under Article 85, but from the course of the trial it appears as though they must have addressed their minds solely to the question whether in arresting the boy he acted without authority, that is as a private person who was not authorised by law to apprehend an offender. The whole case for the appellant was that Article 85 had no application because whether or not the appellant was to be regarded as a private person he had authority under the Defence Regulations to effect an arrest. Consequently there was no illegal assumption of a power which did not belong to him. The facts do not appear to admit of any other conclusion and their Lordships therefore cannot but think that the Court acted on a misapprehension of the law and failed to take into account the powers conferred on the appellant by the Defence Regulations. The principles upon which this Board acts in advising His Majesty to review proceedings in Courts of criminal jurisdiction were laid down in *in re Dillet* 12 A.C. 459 and have recently been restated so that there is no necessity to repeat them here. It is enough to say that if a conviction has resulted from regarding as criminal an act which is authorised by law that does amount to a breach of natural justice, because it means that there has been a conviction for what the law does not recognise as an offence. These are the reasons which moved their Lordships to tender the humble advice to His Majesty which they announced at the close of the argument.

In the Privy Council

ERIC REGINALD CHARLES ALEXANDER
STROLOGO

u.

THE KING

DELIVERED BY LORD GODDARD

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