

*Judgement of the Lords of the Judicial Committee
of the Privy Council on the Petition for special
Leave to Appeal of Guglielmo Rapinet v. The
Assistant Superintendent of Police, from the
Court of Judicial Police of the Island of Malta ;
delivered June 16th, 1885.*

Present:

LORD WATSON.
SIR BARNES PEACOCK.
SIR ROBERT COLLIER.
SIR RICHARD COUCH.
SIR ARTHUR HOBHOUSE.

THERE are a series of decisions by this Board which establish that the Crown, by virtue of its prerogative, can admit an appeal in criminal as well as in civil cases, unless the right is taken away by statute; but these cases also establish that the power of reviewing the judgements of criminal courts ought not to be exercised save in certain very rare and exceptional cases. To use the language of the late Mr. Justice Coleridge in the *Queen v. Bertrand* (Moore's P.C.C., New Series, vol. iv., p. 474), "the exercise of this prerogative is to be regulated by a consideration of circumstances and consequences, and interference by Her Majesty in Council in criminal cases is likely in so many instances to lead to mischief and inconvenience that in them the Crown will be very slow to entertain an appeal by its officers on behalf of itself or by individuals."

It is necessary therefore to consider the allegations upon which the Petitioner asks their Lordships to give him leave to appeal against certain decisions and a final judgement of the Court of Criminal Police for the Island of Malta, and for

that purpose to order transmission of the proceedings before that Court. The Petition narrates these proceedings, and the final judgement, by which the Petitioner was found guilty of the offence with which he was charged, and was condemned to two months imprisonment, and a fine of 10*l.*; and the grounds upon which this Board is asked to allow an appeal are thus summarised:—"That your Suppliant is greatly aggrieved by the said judgement and sentence, which your Suppliant submits is erroneous in law and in fact, and is illegal and *ultra vires*; that important questions of law affecting the construction of the Criminal Code, the jurisdiction of the Courts, and the due and regular procedure thereof are involved in the said decision."

These are grave statements, and if on investigation they had appeared *prima facie* to be well founded, it is possible that this Board might have exercised its jurisdiction to the extent of allowing an appeal; but an examination of the statements in the Petition, with the light thrown upon them by the able argument of Counsel, discloses the fact that only one question arises "affecting the construction of the Criminal Code and the jurisdiction of the Courts." The charge made by the Public Prosecutor against Dr. Rapinet was that of having committed upon a particular date a filthy and vicious act of incontinence upon the person of a soldier, who is therein named. It was objected *in limine* by the accused that the facts upon which the prosecutor relied, and which he undertook to prove, did not amount to the offence charged, which is the offence described in sub-section 2 of section 203 of the Criminal Laws of the Island of Malta; and that these facts amounted to, and could only sustain a charge under the 1st sub-section of section 203. The result of that contention being upheld would be that the only charge warranted by the facts was one which

could not be competently tried before the Court of Judicial Police; and that the Magistrate ought not to have proceeded to try and sentence the accused, but ought to have drawn up what is termed an instruction, and to have forwarded that to the proper authority, leaving him to judge whether ulterior proceedings should be taken against the accused before the proper Criminal Court of the country.

The objection was taken *in limine*, and it was repeated after the evidence was led. Counsel for the Petitioner has referred to the deposition of the leading witness, the soldier named in the charge, made when he was previously examined before a Commission; but it is averred in the Petition that it, in substance, contains the same statements which he made before the Court of Police. Their Lordships are of opinion that the deposition of that witness, which is set out in the Petition, tends to support a charge under the 2nd and not under the 1st subsection of Article 203, and that, *primâ facie*, the Magistrate of the Police Court was right in sustaining his own jurisdiction to entertain and dispose of the case by final sentence. They are willing to assume that the evidence before the Magistrate was practically the same as the statements which have been submitted to them, and in that view their Lordships are of opinion that his decision upon the objection stated against his jurisdiction was well founded. Beyond that point nothing is alleged by the Petitioner against the judgement of the Police Magistrate which can form a relevant ground for bringing that judgement under review before this Board. There is no allegation of irregularity, of any departure from the established forms of procedure; no express allegation of corruption on the part of the Judge, and no allegation of facts from which any inference of

corruption could possibly be derived. All that the statements in the Petition amount to is simply this:—that having before him a great mass of contradictory evidence, the Judge who saw the witnesses, and heard their depositions, erroneously gave credence to one set of witnesses and disbelieved the testimony of the others. That, of itself, is not sufficient to induce any tribunal to upset the decision of a Judge or a Jury in an ordinary case; and, according to the authorities, which their Lordships see no reason to disturb, it affords no ground whatever for this Board permitting an appeal in a criminal case.

The result is that, in the opinion of their Lordships this Petition must be dismissed, and they will humbly advise Her Majesty to that effect.