

Casciari Brothers - - - - - *Appellants*

*v.*

The Attorney-General of Gibraltar - - - - - *Respondent*

FROM

THE SUPREME COURT OF GIBRALTAR.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DATED THE 28TH OCTOBER, 1920.

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*Present at the Hearing :*

VISCOUNT CAVE.

LORD DUNEDIN.

LORD MOULTON.

LORD PHILLIMORE.

[*Delivered by* VISCOUNT CAVE.]

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Everything which could be said in support of this appeal has been said by the learned counsel for the appellants, but the facts are too strong for him. The question is whether there was a binding agreement as to the price which should be paid to the appellants for a quantity of cinchona bark which had been requisitioned by the Government. The whole transaction is in writing, and appears upon the correspondence. The result of the correspondence is this, that the Crown authorities at Gibraltar, acting under the Compulsory Possession Ordinance, 1917, expressed their intention of requisitioning the bark. The Ordinance provided that goods requisitioned under it should be paid for at a price to be fixed by agreement, or, failing agreement, to be determined by a certain Committee. After the notice of requisition had been given the appellants, with a view to arriving at an agreement, proposed that they should be paid for the bark at the rate of

1s. 3d. per lb. *ex* warehouse. The Colonial Treasurer at Gibraltar refused that proposal, and offered a sum of 9d. per lb. for the bark delivered in London. The appellants replied that they did not feel inclined to deal on the basis of a price for goods delivered in London, and submitted that 1s. per lb. *ex* stores Gibraltar would be a fair price for the bark. and, immediately afterwards, they wrote that 1s. per lb. was their minimum price. Those letters really amounted to a refusal of the offer of 9d. per lb., which was therefore no longer open. If there were any doubt on that point it appears plain that the subsequent letter from the Government, offering a lump sum of £5,851 17s. 4d. for the bark, amounted to a withdrawal of the offer. The reply to that last offer was a refusal of the £5,851 17s. 4d., and a statement by the appellants that they were then willing to accept the original Government offer of 9d. per lb. That acceptance was too late, for the offer was dead and no longer open. It appears plain upon the correspondence that the parties were never at one, and accordingly, that there was never any binding agreement of the nature contended for by the appellants.

The result is that their Lordships agree with the judgment in this case, and think that the appeal must be dismissed with costs, and they will humbly advise His Majesty accordingly.

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In the Privy Council.

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CASCIARO BROTHERS

vs.

THE ATTORNEY-GENERAL OF GIBRALTAR.

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DELIVERED BY VISCOUNT CAVE.

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