

In the Privy Council.

No 10 of 1952.

ON APPEAL FROM THE ROYAL COURT OF THE ISLAND OF GUERNSEY

BETWEEN

1. WILLIAM GEORGE QUIN
2. CHARLES ALBERT FRIEND
3. FREDERICK WINZER SHORT
4. ALFRED WILLIAM HOWLETT
5. FRANK HUBERT TUCK
6. FRANK WILLIAM WHARE
7. KINGSTON GEORGE BAILEY
8. JACK HARPER

(Accused) Appellants

— AND —

HER MAJESTY THE QUEEN

(Prosecutor) Respondent.

CASE FOR THE APPELLANTS

20 1. This is an Appeal, by special leave, from the Appellants' convictions by the Royal Court of the Island of Guernsey on the 1st day of June 1942 upon charges, in the case of the first-named seven of the Appellants, of breaking and entering and stealing from various premises, and, in the case of the eighth-named Appellant, of receiving.

2. The Appellants' trial before the Royal Court took place during the German Occupation of Guernsey and followed upon the Appellants' trial and conviction by a German Military Court. The Appellants claim that the offences for which they were tried before both Courts were substantially of the same nature and arose out of that part of the Appellants' sabotage

activities which consisted of raiding and carrying off German food and other supplies. The Appellants further claim that their trial before the Royal Court was held under pressure of the German Authorities, and that in the circumstances no fair trial could be held nor could the Appellants put forward their real defence which was that the acts complained of formed part of a series of acts in support of the British Crown and in resistance to the German occupiers of the island.

3. All of the Appellants were serving as Police Officers in Guernsey at the time of the German Occupation and continued so to serve until they were arrested by the German Military Police in March, 1942. After their arrest, the Appellants were interrogated by the German Military Police (Feldgendarmerie). Certain statements were taken from them, recorded in the German language and the Appellants' signatures secured thereto. Thereupon the Appellants were put on trial before a German Military Court and were on 24th April, 1942 sentenced to periods ranging from 2 to 4½ years imprisonment on charges that they had stolen food and other commodities, the property of the German invaders. 10

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L.11. 4. It would appear (from Document No. 14A) that on 29th April, 1942, after the Appellants' conviction by the Germans, the German Military Court sent their alleged confessions to the Island Law Officers asking that the British civil authorities should institute further prosecutions in regard to the thefts which the Appellants were alleged by the Germans to have committed in regard to non-German property. In reply to this the Deputy Solicitor General wrote (in Document 14A) on the 5th May, 1942 to the German Military Tribunal:— 20

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L.19. "You say these statements constitute confessions but I would remind you that if they are denied it will not be possible to use them in view of the fact that your officers before whom they were made would not be available to give evidence before our Court."

Page 20
L.12. In answer to this, Dr. Biel, the German Judge Advocate (Feldgerichtsrat) (replied in Document 14B) on 8th May, 1942 on behalf of the Military Tribunal:— 30

"In the event of the accused denying the admissions made by them to the Feldgendarmerie, please advise me immediately, as in this case the Chief of Tribunal (Gerichsherr) will take up the proceedings even as regards the thefts committed at the expense of the English traders."

Following upon this exchange of correspondence, on the 10th, 15th and 16th May, 1942 officers of the Island Police visited the Appellants in the prison where they were confined by the Germans for the purpose of obtaining statements from them confirming what they were alleged to have said in the statements obtained by the German Military Police. Before the statements were taken certain of the Appellants were shown by the Island Police a copy of Dr. Biel's letter referred to above.

5. On the basis of the statements thus obtained, criminal proceedings against the Appellants were immediately commenced, and, by the 19th May, 1942, all the Appellants had been committed for trial. Seven of the eight Appellants were indicted for thefts of food and drink from non-German property on one or more of nine occasions, it being alleged that, in all, some five non-German stores had been entered. The last named Appellant, Harper, was charged with receiving only.

10 6. It is respectfully submitted that in view of the threat in Dr. Biel's letter referred to above, the Appellants had no option but to plead guilty in the British proceedings if they were to avoid the risk of being tried again by the German Military Court and sentenced to further and longer terms of imprisonment by the Germans. In fact, all the Appellants, except Harper, (who was charged with receiving only) did take this course. The following passages (among others) in the evidence show, it is submitted, that these pleas of guilty were the direct consequence of Dr. Biel's letter.

20 Howlett said, "During the week we were shown this letter saying that if we did not plead guilty and admit the offence, that we would be tried elsewhere. That is why I changed my plea from 'not guilty' to 'guilty' . . . and again later, "All I have to say is that we are denied the right to pleading not guilty. I have nothing else to say." Page 48 L.5. Page 48 L.16.

Quin, who had originally pleaded not guilty also changed his plea to guilty, saying later,

" . . . I would like to say that the statements I made first to the Military Authorities were untrue and also to the Deputy Inspector . . ." Page 74 L.4. Later he said, "I would not have done so except for the fact that I was shown something else . . ." and again later he added "I was forced to plead guilty, I had to admit it." Page 74 L.8. Page 74 L.16.

30 Short said, " . . . Like I have already said, in consequence of a letter shown to me, I pleaded guilty. In my own mind I have never entered this store with the purpose of stealing." Page 75 L.3.

Whare, in dealing with the statement which he had made confessing to the one offence with which he was charged, said, " . . . That's only a statement I made in consequence of a letter I was shown, Sir." Page 80 L.25.

7. The Royal Court was, in the circumstances of the times, precluded from making any inquiry itself into the existence or nature of the threat contained in Dr. Biel's letter and the extent to which this letter had influenced the pleas of guilty or the statements made by the Appellants. Similarly, neither the prosecution nor the Appellants could refer openly to the contents or origin of the letter and could only hint (in the fashion referred to above)

to its existence. The Court made it clear that it could not consider whether such a letter in fact existed, the Bailiff saying in his judgment in regard to Howlett :

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L.28.

“ As to whether he was guilty or not guilty I do not know but afterwards he pleaded guilty on account of a letter he was shown, the contents of which we know nothing about . . . He pretends that because he has read a letter—of which we know nothing about—he alters his plea quite apart from the fact that he is either guilty or not guilty.”

8. It is respectfully contended that in view of the matters set out above the Royal Court would, but for the circumstances of the German military occupation, have entered a plea of not guilty in respect of the seven Appellants who pleaded guilty and would, had such a plea been entered, ruled as inadmissible any statement obtained by the German Military Police or as a result of the threat contained in Dr. Biel's letter. 10

Page 85/7. 9. In the case of the last named Appellant, Harper, who did enter a plea of not guilty, there were two counts alleging respectively that he had received five bottles of spirits (said to have been stolen from the Alliance Club) and that he had received four bottles of spirits (said to have been stolen from Bucktrout's store). The trial proceeded as follows :

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L.31.

Page 87
L.27 - 31.

(a) A police officer (Acting Inspector Langmead) produced two statements alleged to have been made by Harper. In the first he was alleged to have said, “ I wish to state that I am concerned in receiving a number of bottles of spirits which I knew were stolen from Le Lièvre's store ” (where spirits belonging to the Alliance Club were stored). In cross-examination of the Acting Inspector, Harper suggested that he had in fact said that he did not know they had been stolen from Le Lièvre's store. 20

Page 87
L.6 - 17.

(b) In the second statement he said that a number of bottles of spirits had been brought to his flat by P.C. Burton and the Appellants Whare and Friend. These police officers, according to Harper's statement, had found a store “ open on the front ” and had bought Harper a drink from this store but there was no mention of Bucktrout's store in the statement, nor was any evidence given to show these bottles had been stolen from or even originated from Bucktrout's store or from any other non-German store. 30

Page 88
L.4.

Page 89
L.12.

(c) After the Acting Inspector had concluded his evidence, the Court decided not to hear any further evidence for the prosecution. Harper then said he denied the charge and explained why ; the Bailiff addressed the jurats and said “ The fact that he has signed these confessions makes his guilt absolutely certain . . . ” ; and the jurats then found Harper guilty on both counts.

10. It is respectfully submitted that Harper, who had pleaded not guilty, did not have his defence considered by the court. A translation of an alleged statement by Harper in German to the German Military Police admitting 40

complicity in the Bucktrout thefts appears as exhibit FF. It would seem from exhibit EE that there was a similar statement in German in regard to Le Lièvre's store. It is conceded that the Court may have wished in these circumstances to save Harper from the danger of re-trial by the German Court, as threatened by Dr. Biel, and have so contrived their proceedings to this end.

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11. In no case could any of the Appellants state the real nature of their defence, which was that they were attempting to deprive the Germans of food and drink as part of an organised campaign of resistance, nor, without risking further trial by the Germans, could they deny any of the matters which had been included in the statements taken by the German police. Nevertheless, the following (among other) passages in the proceedings show, it is respectfully submitted, that the Appellants did their utmost to indicate to the Royal Court that their motives were to take provisions only from the Germans or from other persons who were improperly supplying the Germans with food intended for the Islanders.

(a) Bailey and Tuck, who were charged with stealing six pounds of butter from the States' Dairy, alleged in their statements that the butter was part of a surplus which was improperly retained in the Dairy in order that it might be exchanged with German soldiers for meat and it was for this reason that the theft was never reported by the Dairy to the police.

Page 30
L.30.Page 31
L.6.

(b) Of the eight other incidents on which the charges were based, four only related to the taking of food and all of these were concerned with alleged thefts from the former "Grocery" in Trinity Square, St. Peter Port in November, 1941. In these alleged thefts five of the Appellants, Quin, Friend, Short, Tuck and Howlett were said to be involved. On being committed for trial all these Appellants stated that at the time when it was alleged they took the food they did not know that this was a local store. In particular Howlett said :

30 " . . . On 7th March 1942 I was arrested by the Germans, kept in prison a fortnight and taken to Grange Lodge where I was put through a stiff interrogation, amongst the allegations made against me was one that I had entered an Essential Commodity Store on Trinity Square. Up to that time the police had not been notified that the Essential Commodities Committee had a store on Trinity Square. I denied to the Germans that I had been in any local Store. I had no inclination to enter any local store and take anything, I was always so careful to see that the local stores were intact and I would not have entered if I had known it was a local store . . . "

Page 23
Line 9.

40 (c) The four remaining incidents all related to the alleged stealing of wine and spirits which it would normally be difficult for civilians to obtain.

Page 8/1.

Page 9/23.

12. The Appellants respectfully submit that their convictions should be set aside and quashed for the following among other

REASONS

- (1) BECAUSE the first-named seven of the Appellants pleaded guilty only because of the express and implied threats contained in the letter from the German Judge Advocate, Dr. Biel ;
- (2) BECAUSE not only were the charges based on statements obtained by threats by the German Military Police but were supported by statements obtained by the Island Police under the threats contained in the letter referred to in the previous reason, and, therefore, other than the pleas of guilty of the first-named seven of the Appellants, there was nothing relevant to establish the guilt of the Appellants. 10
- (3) BECAUSE the Royal Court should in view of the statements made in open Court by Howlett, Quin and Short to the effect that they had been compelled to plead guilty, have entered a plea of not guilty in respect of these Appellants.
- (4) BECAUSE the eighth Appellant Harper, who entered pleas of not guilty to both counts charged against him, was denied any opportunity to present his Defence, as the Court made it quite clear they were satisfied as to his guilt on both counts immediately after the first prosecution witness had finished his evidence and even though there was no evidence at all to indicate his guilt on the second count ; 20
- (5) BECAUSE in the circumstances of the German occupation the Royal Court was unable to consider whether the offences alleged against the Appellants were not acts in reality designed to deny aid and succour to the enemies of the Crown.
- (6) BECAUSE there was no proper trial of any of the Appellants.

GEOFFREY BING.
MARK SMITH.

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Guernsey

W. S. Quinn & Co

and
The Queen

Case for the Appellants

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