Privy Council Appeal No. 10 *of* 1952

William George Quin and others - - - - - - *Appellants*

v.

The Queen - - - - - - - - - - *Respondent*

FROM

THE ROYAL COURT OF THE ISLAND OF GUERNSEY

REASONS FOR REPORT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 6TH OCTOBER, 1955

Present at the Hearing:

VISCOUNT SIMONDS
LORD OAKSEY
LORD MORTON OF HENRYTON

[*Delivered by* LORD OAKSEY]

This is an appeal from ten judgments, dated 1st June, 1942, of the Royal Court of the Island of Guernsey, whereby the first seven appellants were convicted of breaking and entering various stores by night and stealing various articles of food and drink, and the eighth appellant was convicted of receiving certain of the stolen articles, and all the appellants were sentenced to terms of imprisonment varying from three months to sixteen months.

Guernsey was occupied by German forces on the 30th June, 1940. The offences of which the appellants were convicted, and the proceedings out of which this appeal arises, all took place during the German occupation of the Island. The German authorities allowed the civil government and courts to continue to function during the occupation. None but formal changes were made in the procedure of the courts. No changes material to this appeal were made in the substantive law.

At the times material to this appeal all the appellants were members of the Guernsey Police Force. The fourth and eighth appellants were sergeants and the others were constables.

In March, 1942, the appellants, together with other police officers and local inhabitants, were arrested by the German Field Police and charged with stealing from stores belonging to the occupying forces. The appellants (and others) were tried on these charges before a German Military Tribunal in Guernsey on the 22nd, 23rd and 24th April, 1942. The appellants admitted the charges on which they were then being tried, and were sentenced to various terms of imprisonment. In the course of the investigations by the German Field Police evidence was discovered that the appellants had also been concerned in thefts from stores and shops belonging to the States of Guernsey and to local merchants. The local authorities were informed, in order that they might deal with these thefts under the ordinary law.

The charges having been investigated, the appellants were duly brought before the Guernsey Magistrate's Court and committed for trial before the Royal Court. They appeared before the Royal Court and with the exception of the eighth appellant, Harper, pleaded guilty to the charges on the 23rd May and 1st June, 1942. The trials took place on the 1st June, 1942, before the Bailiff and eight Jurats.

Their Lordships think it expedient to set out in detail the facts in each of the ten cases under appeal.

The first case was that in which the fifth and seventh appellants were charged with breaking into a store occupied by the States Dairy and stealing six pounds of butter. Both the appellants had pleaded guilty on the 23rd May. Acting Deputy Inspector Lamy said that he had taken statements from both of them at Fort George on the 10th May. He had cautioned both of them and had shown to the fifth appellant part of the statement which he (the fifth appellant) had made to the German police. He had not used any pressure or inducement. The fifth appellant said in his statement that there was always a surplus of butter in the shop concerned; he believed this butter was being exchanged for meat from a German butcher, and certain persons could get butter from this shop when they pleased; he had taken the butter knowing that nobody would go short; he and the seventh appellant, being on night duty, had removed the shutters, gone into the shop, and each taken about 3 lbs. The seventh appellant's statement was to the same effect. A formal verdict of guilty having been passed, both the appellants made statements. The fifth appellant said that the police, unlike other States employees, shopkeepers, etc., had not had their hours of work reduced in the occupation. Their pay and annual holidays had been reduced. Their meals on duty had to be taken out of their rations, and their requests for more food had been turned down. They had felt they had not been properly considered. This had had a demoralising effect on the force. They had come to know that those able to pay could get regular supplies of food. Cases of irregular supplies had been reported, but there were loopholes and nothing had been done. This too had a demoralising effect. Opportunities for stealing had been placed in their way. They were like hungry dogs guarding the butcher's shop. The seventh appellant corroborated what the fifth appellant had said. Their application for extra bread had been turned down, and it had been impossible to manage on the rations. The Inspector had taken no interest in his men. The seventh appellant said that complete lack of interest by the authorities and most trying conditions had been responsible for his position.

The second case was that in which the third appellant was charged with breaking into a store occupied by the Essential Commodities Committee and stealing a tin of tomatoes and a tin of French beans. The appellant had pleaded guilty on the 23rd May. Acting Deputy Inspector Lamy said that on the 10th May he had seen this appellant at Fort George, run through with him the statements previously made, and cautioned him. He had not offered any inducement or threat. This appellant had then made a statement, saying that he had gone into the store with Smith and taken a tin of beans and a tin of tomatoes. He had not known until later that it was an Essential Commodities store. A formal verdict of guilty was passed.

The third case was that in which the third and fifth appellants, with Smith, were charged with breaking into a store occupied by the Essential Commodities Committee and stealing a quantity of cooking oil and four boxes of tins of tomatoes. Both appellants and Smith had pleaded guilty on the 23rd May. Acting Inspector Langmead produced a statement made by Smith. Acting Deputy Inspector Lamy said that on the 10th May at Fort George he had seen the fifth appellant and cautioned him, using no inducement or threat. The fifth appellant had then made a statement, saying that he had been on night duty with the third appellant and Smith; Smith had had a key and opened the door of the store; they had gone in and each taken two boxes of tins of tomatoes and some cooking oil; they had not known it was a local store or they would not have taken anything to deprive anyone of his rations; they had taken the stuff to their houses. Acting Deputy Inspector Lamy said the third appellant had also made a statement, saying that he had not found until later that it was an Essential Commodities store; he, with the fifth appellant and Smith, had gone in and taken two cases of tomatoes and some cooking

oil; Smith had had a key and opened the door. When asked by the Bailiff if they had anything to say, both appellants (and Smith) repeated that they had not known it was an Essential Commodities store. A formal verdict of guilty was passed.

The fourth case was that in which the fourth appellant and Smith were charged with breaking into a store occupied by the Essential Commodities Committee and stealing six tins of French beans. The fourth appellant had pleaded guilty on the 23rd May. In opening the case the Acting Solicitor-General read a statement made by the appellant in the Magistrate's Court. In this statement the appellant said that Smith had told him it was a German store; he had looked at the list of stores in the police station and seen no mention of a local store in Trinity Square (where this store was); he would not have entered it if he had known it was a local store. Acting Inspector Langmead said he had seen the fourth appellant at Fort George on the 10th May. The appellant had said: "I have read the statement I am alleged to have made and I wish to plead not guilty. I have nothing further to add." On the 15th May, at the Police Court, he (the Acting Inspector) had read to the appellant a paragraph from a letter which he had received. The next day, at the prison, the appellant had voluntarily made a statement, saying that the case was true. He would not have gone to the store if he had known that it was a civilian store, and he had had only three tins of beans. Smith had opened the door. In answer to the Bailiff, the appellant said that when confronted with his alleged statement he had first pleaded not guilty. He had later been shown a letter saying that if the accused men did not plead guilty and admit the offence, they would be tried elsewhere. That was why he had changed his plea to guilty. A formal verdict of guilty was passed.

The letter mentioned in the foregoing paragraph was apparently a letter written on the 8th May by an official of the Tribunal of Feldkommandantur 515 to the Solicitor-General of Guernsey, saying that if the accused denied their confessions made to the Feldgendarmerie, the Chief of Tribunal would take up the proceedings.

The fifth case was that in which the first and second appellants were charged with breaking into a store occupied by the Essential Commodities Committee and stealing four tins of tomatoes. The second appellant had pleaded guilty on the 23rd May. The first appellant, having pleaded not guilty on the 23rd May, withdrew that plea on the 1st June and pleaded guilty. Acting Deputy Inspector Lamy said that on the 16th May at the prison the first appellant, having been cautioned, had made a statement voluntarily, no pressure being used on him. In this statement he said that he had opened the door of the store with a key which fitted the lock, and he and the second appellant had gone in and taken two tins of tomatoes each. Sergeant Banneville said he had seen the second appellant at Fort George on the 10th May. He had told the appellant that he was alleged to have made a statement to the German police, and had cautioned him. The appellant had then made a statement voluntarily, no pressure being used on him. The statement was to the same effect as that of the first appellant, but the second appellant added that at the time he had not known that it was an Essential Commodities store. A formal verdict of guilty was passed.

The sixth case was that in which the first appellant and Smith were charged with breaking into a store occupied by R. W. Randall, Ltd. and stealing 86 bottles of port. The appellant had pleaded guilty on the 23rd May. Acting Inspector Langmead said that on the 10th May he had seen the first appellant at Fort George, told him he was making inquiries about a statement the appellant had made to the German police, and cautioned him. The appellant had then made a statement saying that he and Smith had gone into the Victoria Hotel; Smith had asked the landlord (one Duquemin) if he wanted some wine, saying there was some in Randall's store; Duquemin had given him a hammer; the appellant and Smith had then gone to the store, Smith had broken open the lock and

they had each taken one bottle of wine back to Duquemin, who had then said he would give 5s. per bottle ; they had then made three journeys to the store, filling a suitcase on each journey, and Duquemin had given them £11 each ; he (the appellant) had thought it was an O.T. store ; he had repaid £7. A formal verdict of guilty was passed.

The seventh case was that in which the first and second appellants and Burton were charged with breaking into a store occupied by a Mr. Le Lièvre and stealing 20 bottles of spirits. The second appellant had pleaded guilty on the 23rd May. The first appellant had pleaded not guilty on the 23rd May, but withdrew that plea on the 1st June and pleaded guilty. Acting Inspector Langmead said that he had seen the first appellant at the prison on the 16th May, and had cautioned him. The appellant had then made a statement voluntarily, saying that Burton had unlocked the padlock of the store, and he, the second appellant and Burton. had gone in and taken about 20 bottles of spirits ; they had taken the bottles to the eighth appellant's flat and drunk some of the spirits ; he (the first appellant) had taken two bottles home. Sergeant Banneville said that on the 10th May he had seen the second appellant at Fort George, read to him a statement he was alleged to have made to the German police, and cautioned him. The second appellant had then made a voluntary statement, saying that he, with the first appellant and Burton, being on night patrol, had gone to the store and Burton had forced the door open ; they had gone in, put several bottles of spirits in a sack and taken them to the eighth appellant's flat ; later he (the second appellant) had taken three bottles home. A formal verdict of guilty was passed on the first and second appellants. Burton pleaded not guilty. After evidence had been heard he was acquitted.

The eighth case was that in which the first, second and third appellants and Burton were charged with breaking into a store belonging to Bucktrout & Co. Ltd. and stealing 8 bottles of wine and spirits. The three appellants had pleaded guilty on the 23rd May. Acting Inspector Langmead said he had seen the first appellant at the prison on the 16th May and cautioned him. The appellant had then made a statement saying that he, with the second and third appellants and Burton, had entered the store and taken two bottles of rum. The statement had been made voluntarily with no threat of any kind. When asked if he had any questions to put to the Inspector, the first appellant said that that statement had been given freely. Sergeant Banneville said he had seen the second appellant on the 10th May at Fort George and had given him the statement he was alleged to have made to the German police. After reading that statement and being cautioned, the appellant had made a statement saying that he, with the first and third appellants and Burton, had entered the store and taken a bottle of wine. Acting Deputy Inspector Lamy said he had seen the third appellant at the prison on the 16th May and cautioned him. The appellant had then made a statement saying that the first and second appellants and Burton had come to the police station at about 2 a.m. and told him that they had found the side door of the store open ; and the four of them had gone to the store, and he had taken two bottles of whisky. When asked if he had any question to put to the Inspector, the third appellant said that he had made that statement and pleaded guilty after reading a letter ; and that he (the third appellant) knew he had never entered the store for any illegal purpose. When the Bailiff asked the appellants if they had anything to say before sentence was passed, the third appellant reiterated this ; the first appellant said he had made his statement only because he had been shown something else, and he had never been in the store ; the second appellant said he had not been in the store on this occasion, and had made his statement to check with the other statement he had made. A formal verdict of guilty was passed on the first, second and third appellants. Burton pleaded not guilty. After evidence had been heard he was acquitted.

The ninth case was that in which the second and sixth appellants and Burton were charged with breaking into a store belonging to Bucktrout & Co. Ltd. and stealing 12 bottles of wine and spirits. The two appellants

had pleaded guilty on the 23rd May. Acting Inspector Langmead said that he had seen the sixth appellant at the prison on the 16th May and cautioned him. The appellant had then made a voluntary statement, saying that he, with the second appellant and Burton, had entered the store and taken a bottle of brandy and two bottles of rum. They had gone to the eighth appellant's flat, had a drink, and left all the bottles there. Sergeant Banneville said that he had seen the second appellant at Fort George on the 10th May, and had given him a statement which he was alleged to have made to the German police. The appellant had said it was not all true, and had then made another statement. In this he had said that he had entered the store with the sixth appellant and Burton; they had taken about four bottles each and had left them at the eighth appellant's flat; he (the second appellant) had taken one bottle of whisky for himself. A formal verdict of guilty was passed against the second and sixth appellants. Burton pleaded not guilty. After evidence had been heard he was acquitted.

The last case was that in which the eighth appellant was charged, first with having in December, 1941, received five bottles of spirits knowing them to have been stolen by the first and second appellants and Burton, and secondly with having in November, 1941, received four bottles of wine and spirits knowing them to have been stolen by the second and sixth appellants and Burton. The appellant pleaded not guilty. Acting Inspector Langmead said he had seen the appellant at the prison on the 16th May. He had told the appellant of the statements he was alleged to have made to the German police and the statements made by other men in custody, and had said the appellant would probably be charged with receiving bottles of spirits. The appellant had then made a statement saying he was concerned in receiving a number of bottles of spirits which he had known to have been stolen from Le Lièvre's store; the first and second appellants and Burton had brought the bottles to his flat about 4 a.m. one day; he had thought when he received the bottles that they had been stolen from an O.T. store. The Inspector said that he had seen the appellant again at the Police Court a few days later. After being cautioned the appellant had made a further statement. In it he said that one night the second and sixth appellants and Burton had brought a few bottles of spirits to his flat, saying they had found a store open and had brought him a drink. The appellant addressed the Court. He admitted that the liquor had been brought to his flat on the two occasions, but denied that he had known it had been stolen. The Bailiff having summed up the evidence and said that the signed confessions made the appellant's guilt absolutely certain, the Court unanimously convicted him.

The main grounds of appeal are, first that by reason of the German occupation the appellants were unable to put forward at the trials their real defence, namely that the offences alleged to have been committed by them were really acts of sabotage: that the true nature of these acts was sufficiently indicated to the Court, and that the Court should therefore have entered pleas of "not guilty" notwithstanding that the first seven appellants pleaded guilty: and, secondly that the appellants' admissions or confessions were induced by the production of a letter from the German authorities which stated that if they denied the admissions made by them to the German authorities the German chief of Tribunal would take up proceedings against them in respect of the thefts committed at the expense of "the English traders".

Their Lordships are of opinion that the first ground of appeal is not one of which in view of the course taken at the trial an appellate Court can take cognisance. The remedy, if any, of the appellants is to pray that in this behalf the prerogative of mercy may be exercised in their favour. In regard to it their Lordships must not be understood to assent to the proposition that if such a plea had been advanced and proved before the Royal Court that Court ought to have entertained it. That is a matter upon which they express no opinion.

As to the second contention of the appellants their Lordships are however of opinion that in the case of those appellants who contended that their confessions had been induced by the production of the letter from the German authorities and who did not subsequently admit before the Royal Court that they had committed the thefts the convictions must be quashed.

It was in their Lordships' opinion the duty of the prosecution to produce to the Court the letter on which the appellants relied and if that had been done it would have been the duty of the Court to consider whether the appellants' pleas should be withdrawn and the evidence of those who denied the truth of their confessions should be accepted.

In the case of the appellant Howlett, who relied upon this letter, (the 4th case above referred to) their Lordships are of opinion that there has been no miscarriage of justice since it was clear from Howlett's statement of 18th May, 1942, which was proved before the Royal Court that he had in fact broken and entered and stolen from the Essential Commodities Store and that his only defence was that he thought it was a German Store.

But in the case against the appellants, Friend, Short and Quin, relating to Bucktrout's Store (the 8th case above referred to) Short and Quin both denied in evidence before the Royal Court that they had ever entered that Store and said that they had only confessed to doing so because they were shown the letter from the German authorities and Friend said that he only admitted the charge " to make his statement check with the other statement he had made ".

In the case against Burton, and the appellants Friend and Whare (the 9th case above referred to) the appellant Whare also relied upon the letter from the German authorities but when called as a witness against Burton admitted on oath that he had committed the thefts in question, and in the case against Harper (the last case above referred to) he, though he pleaded not guilty to a charge of receiving the goods stolen by Burton, Whare and Friend, had already admitted in evidence that he received the goods in question and knew they came from Le Lievre's Store.

Their Lordships are therefore of opinion that only in the case of the appellants Friend, Short and Quin and only in the case of one of the charges against these appellants is there any ground for saying that there may have been a miscarriage of justice. Their Lordships have therefore humbly advised Her Majesty that the convictions of those appellants in the case against them in respect of breaking and entering and stealing from Bucktrout's Store should be quashed. But these appellants were properly convicted on other charges and their Lordships see no reason for advising Her Majesty that their sentences should have been less severe than they were. They have already humbly advised Her Majesty that the other appeals should be dismissed. There will be no order as to costs.

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In the Privy Council

WILLIAM GEORGE QUIN AND OTHERS

v.

THE QUEEN

DELIVERED BY LORD OAKSEY

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