

1976, 25

25

IN THE PRIVY COUNCIL

No. 34 of 1975.

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O N A P P E A L

FROM THE FULL COURT OF THE SUPREME COURT  
OF WESTERN AUSTRALIA SITTING AS A COURT  
OF CRIMINAL APPEAL

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B E T W E E N :

SANTO OTERI and GAETANO OTERI

Appellants

- and -

THE QUEEN

Respondent

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RECORD OF PROCEEDINGS

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O N A P P E A L

FROM THE FULL COURT OF THE SUPREME COURT  
OF WESTERN AUSTRALIA SITTING AS A COURT  
OF CRIMINAL APPEAL

B E T W E E N :

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RECORD OF PROCEEDINGS

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ON APPEAL

FROM THE FULL COURT OF THE SUPREME COURT OF WESTERN AUSTRALIA  
SITTING AS A COURT OF CRIMINAL APPEAL

B E T W E E N :

SANTO OTERI and GAETANO OTERI

Appellants

- and -

THE QUEEN

Respondent

RECORD OF PROCEEDINGS

No. 1

INDICTMENT

IN THE DISTRICT COURT OF WESTERN AUSTRALIA

BETWEEN : SANTO OTERI and GAETANO OTERI

AND THE QUEEN

INDICTMENT

In the  
District  
Court of  
Western  
Australia

—  
No. 1

Indictment  
dated 1/10/74

The First day of October 1974

PERTH

10

KEVIN HORACE PARKER Esquire Crown Counsel for the  
State of Western Australia duly appointed to  
prosecute for our Lady the Queen in this behalf  
informs the Court that between the Twentieth day  
of January in the year of our Lord One thousand  
nine hundred and seventy four and the Twenty fourth  
day of January 1974 on the vessel "PROVIDENCE" on  
the high seas approximately Twenty-two (22) miles  
from the coast of Western Australia within the  
jurisdiction of the Admiralty of England, SANTO

In the  
District  
Court of  
Western  
Australia

No. 1

Indictment  
dated 1/10/74  
(continued)

OTERI and GAETANO OTERI stole a crayfish pot the  
property of one LESLIE WALTER BUTLER

AND FURTHER that between the Twenty second day of  
January 1974 and the Twenty sixth day of January  
1974 on the vessel "PROVIDENCE" on the high seas  
approximately Twenty two (22) miles from the coast  
of Western Australia within the jurisdiction of  
the Admiralty of England, SANTO OTERI and GAETANO  
OTERI stole a crayfish pot, two bait cages, two  
floats and a quantity of rope, the property of one  
WALTER CHARLES WEDGWOOD

10

(Signed) K.H. Parker

CROWN COUNSEL

In the  
District  
Court of  
Western  
Australia

No. 2

No. 2

Reference to  
Full Court  
Pursuant to  
Section 49  
of the  
District  
Court of  
Western  
Australia  
Act 1969 -  
1972  
Dated 4/11/74

REFERENCE TO THE FULL COURT

IN THE DISTRICT COURT )  
OF WESTERN AUSTRALIA )  
HOLDEN AT PERTH )

No. 186 of 1974

BETWEEN THE QUEEN Respondent  
AGAINST SANTO OTERI and GAETANO OTERI Appellants

20

Reference to Full Court Pursuant to  
Section 49 of the District Court  
of Western Australia Act 1969-1972

WHEREAS on the trial of the above named SANTO  
OTERI and GAETANO OTERI before me on the 17th day  
of October 1974 on an indictment charging each  
of them -

THAT between the 20th day of January 1974  
and the 24th day of January 1974 on the vessel  
"PROVIDENCE" on the high seas approximately  
Twenty-two (22) miles from the coast of  
Western Australia within the jurisdiction of  
the Admiralty of England, they stole a crayfish  
pot the property of one LESLIE WALTER BUTLER

30

AND FURTHER that between the 22nd day of January 1974 and the 26th day of January 1974 on the vessel "PROVIDENCE" on the high seas approximately Twenty two (22) miles from the coast of Western Australia within the jurisdiction of the Admiralty of England they stole a crayfish pot, two bait cages, two floats and a quantity of rope the property of one WALTER CHARLES WEDGEWOOD [sic],

In the  
District  
Court of  
Western  
Australia

—  
No. 2

the said SANTO OTERI and GAETANO OTERI -

Reference to  
Full Court  
Pursuant to  
Section 49  
of the  
District  
Court of  
Western  
Australia  
Act 1969 -  
1972  
Dated 4/11/74  
(continued)

10 (a) demurred to each count in the indictment on the ground that it did not disclose an offence cognisable to the Court for the reason that no relevant law of Western Australia nor of the United Kingdom had force or effect to make the conduct alleged against the accused, when committed on board the "Providence" at the place alleged, an offence; and

20 (b) pleaded that the Court had no jurisdiction to try an offence committed at the place alleged

AND WHEREAS it is asserted by the accused and admitted by the Crown that -

(a) In 1958 the accused Santo Oteri became an Australian citizen by naturalisation pursuant to The Nationality and Citizenship Act 1948 as amended (now the Australian Citizenship Act 1948-1973) and that he retains that citizenship

30 In 1966 the accused Gaetano Oteri became an Australian citizen by naturalization pursuant to the said Act, and that he retains that citizenship.

In 1961 the wife of the accused Santo Oteri became an Australian citizen by naturalization pursuant to the said Act, and that she retains that citizenship

Each of those persons normally resides at Fremantle in Western Australia

40 (b) The conduct of the accused the subject of the alleged offences occurred on board the vessel "Providence" then on the high seas some 22 miles from the mainland of Western Australia and some 25 miles from Rottnest, the

In the  
District  
Court of  
Western  
Australia

—  
No. 2

Reference to  
Full Court  
Pursuant to  
Section 49  
of the  
District  
Court of  
Western  
Australia  
Act 1969 -  
1972  
Dated 4/11/74  
(continued)

nearest island forming a part of Western Australia, and within the area bounded by the Continental Shelf of Australia, and the area delineated in Paragraph II of the Letters Patent Constituting the Office of Governor of the State of Western Australia and its Dependencies in the Commonwealth of Australia, dated the 29th day of October 1900

(c) The "Providence" is owned by the accused Santo Oteri and his wife. 10

The "Providence" is a powered fishing vessel of some 24.6 gross tons and is some 46 feet in length. She is the subject of a Boat License granted to the owners pursuant to Division 1 of Part VIII of the Western Australian Marine Act 1948-1973, and is also the subject of a Fishing Boat License issued to the owners pursuant to the Fisheries Act Regulations made under the Fisheries Act 1905-1973 20

The "Providence" is not otherwise registered whether in the United Kingdom or elsewhere

The "Providence" normally operates as a fishing vessel out of Fremantle, and was so operating at the time of the alleged offences.

(d) The persons Leslie Walter Butler and Walter Charles Wedgewood [sic] referred to in the indictment are each fishermen normally residing in Western Australia

NOW THEREFORE pursuant to section 49 of the District Court of Western Australia Act 1969 - 1972 I reserve for the consideration of the Full Court of the Supreme Court of Western Australia sitting as a Court of Criminal Appeal the following points of law namely: 30

In respect of each count in the Indictment:

(a) Does the indictment disclose any offence under the laws of Western Australia or otherwise triable in Western Australia?

(b) If the answer to question (a) is "Yes" has the District Court of Western Australia jurisdiction to try the accused for the offence? 40

5.

(c) If the answer to question (b) is "Yes",  
is the matter -

(i) within the ordinary jurisdiction of the  
Court

(ii) within the Admiralty jurisdiction of the  
Court

(iii) otherwise cognisable by the Court?

GIVEN under my hand this 4th day of  
November 1974.

JUDGE

In the  
District  
Court of  
Western  
Australia

          
No. 2

Reference to  
Full Court  
Pursuant to  
Section 49  
of the  
District  
Court of  
Western  
Australia  
Act 1969 -  
1972  
Dated 4/11/74  
(continued)

10

No. 3

ORDER ANSWERING QUESTION IN REFERENCE

IN THE SUPREME COURT)  
OF WESTERN AUSTRALIA)

Appeal 51/74

THE FULL COURT

THE QUEEN

Respondent

and

SANTO OTERI and GAETANO OTERI

Appellants

BEFORE THE FULL COURT

THE HONOURABLE THE ACTING CHIEF JUSTICE

THE HONOURABLE MR. JUSTICE BURT

THE HONOURABLE MR. JUSTICE WALLACE

the 6th day of December 1974

THE reference dated 4th day of November 1974 by  
his Honour Judge O'Connor pursuant to section 49  
of the District Court of Western Australia Act  
1969-1972 coming on for hearing on the 19th and  
20th days of November 1974 and UPON HEARING Mr.  
F. Miller Robinson of Counsel for the accused and

In the Full  
Court of the  
Supreme Court  
of Western  
Australia  
Sitting as a  
Court of  
Criminal  
Appeal

          
No. 3

Order  
Answering  
Question in  
Reference  
6/12/74

20



In the Full  
Court of the  
Supreme Court  
of Western  
Australia  
Sitting as a  
Court of  
Criminal  
Appeal

Mr. K.H. Parker of Counsel for the Crown and the Court having ordered that the Reference stand for judgment and the same standing for judgment this day THIS COURT DOETH ORDER THAT the points of law reserved for the opinion of the Court be answered as follows :-

No. 3  
Order  
Answering  
Question in  
Reference  
6/12/74  
(continued)

(a) Does the indictment disclose any offence under the laws of Western Australia or otherwise triable in Western Australia?

Answer - yes

10

(b) Has the District Court of Western Australia jurisdiction to try the accused for the offence ?

Answer - yes

(c) Is the matter:

(i) Within the ordinary jurisdiction of the Court?

Answer no

(ii) Within the Admiralty jurisdiction of the Court?

20

Answer - yes

(iii) Otherwise cognisable by the Court?

Answer - unnecessary to answer

By the Court

I.M. Evans  
Deputy Registrar

No. 4  
Reasons for  
Judgment  
6/12/74

No. 4

REASONS FOR JUDGMENT

IN THE SUPREME COURT OF WESTERN AUSTRALIA

Heard: 19.11.1974 Judgment: 6.12.74

THE FULL COURT

CORAM: VIRTUE A.C.J., BURT J., WALLACE J.  
APPEAL NO. 51 of 1974

30

THE QUEEN

Respondent

SANTO OTERI & GAETANO OTERI

Appellants

REASONS FOR JUDGMENT

VIRTUE A.C.J.

In my opinion the questions asked by the Court should be answered -

(a) Yes

(b) Yes

(c)(i) No

10 (c)(ii) Yes

(c)(iii) Unnecessary to answer

I agree with the judgments to be handed down by my brethren

In the Full Court of the Supreme Court of Western Australia Sitting as a Court of Criminal Appeal

\_\_\_\_\_  
No. 4

Reasons for Judgment  
6/12/74  
(continued)

THE FULL COURT

THE QUEEN

Respondent

and

SANTO OTERI and GAETANO OTERI

Appellants

Referral to Court of Criminal Appeal from District Court pursuant to Section 49 of the District Court Act.

20

Mr. F. Miller Robinson for accused

Mr. K.H. Parker for the Crown

BURT J.

In the Full Court of the Supreme Court of Western Australia Sitting as a Court of Criminal Appeal

\_\_\_\_\_  
No. 4

Reasons for Judgment  
6/12/74

Each accused stands charged upon an indictment in the District Court containing two counts. The first count alleges that "between the 20th day of January 1974 and the 24th day of January 1974 on the vessel "Providence" on the high seas approximately twenty-two (22) miles from the coast of Western Australia within the jurisdiction of the Admiralty of England" each "stole a

30

In the Full  
Court of the  
Supreme Court  
of Western  
Australia  
Sitting as a  
Court of  
Criminal  
Appeal

—  
No. 4

Reasons for  
Judgment  
6/12/74  
(continued)

crayfish pot the property of one Leslie Walter Butler". And the other count in like terms charges each with another offence of stealing.

When called upon the plead, each demurred to each count in the indictment "on the ground that it did not disclose an offence cognisable to the Court for the reason that no relevant law of Western Australia nor of the United Kingdom had force or effect to make the conduct alleged against the accused when committed on board the "Providence" at the place alleged an offence". In addition each pleaded that the court had no jurisdiction to try him for the offence. See Section 616 of the Criminal Code

10

The District Court judge thereupon and pursuant to s.49 of the District Court of Western Australia Act reserved the following points of law for the opinion of this Court:-

(a) Does the indictment disclose any offence under the laws of Western Australia or otherwise triable in Western Australia?

20

(b) If the answer to question (a) is "Yes" has the District Court of Western Australia jurisdiction to try the accused for the offence?

(c) If the answer to question (b) is "Yes", is the matter -

(i) within the ordinary jurisdiction of the Court.

(ii) within the Admiralty jurisdiction of the Court

30

(iii) otherwise cognisable by the Court?

For the purposes of this reference although for the particular purpose of the demurrer it was, strictly speaking, not necessary nor indeed appropriate, the following facts were agreed.

(a) In 1958 the accused Santo Oteri became an Australian Citizen by naturalization pursuant to The Nationality and Citizenship Act 1948 as amended, (now the Australian Citizenship Act 1948-1973) and that he retains that citizenship.

40

In 1966 the accused Gaetano Oteri became an Australian citizen by naturalization pursuant to the said Act, and that he retains that citizenship.

In 1961 the wife of the accused Santo Oteri became an Australian citizen by naturalisation pursuant to the said Act, and that she retains that citizenship

In the Full  
Court of the  
Supreme Court  
of Western  
Australia  
Sitting as a  
Court of  
Criminal  
Appeal

10 Each of those persons normally resides at Fremantle in Western Australia.

—  
No. 4

20 (b) The conduct of the accused the subject of the alleged offences occurred on board the vessel "Providence" then on the high seas some 22 miles from the mainland of Western Australia and some 25 miles from Rottnest, the nearest island forming a part of Western Australia, and within the area bounded by the Continental Shelf of Australia, and the area delineated in Paragraph II of the Letters Patent Constituting the Office of Governor of the State of Western Australia and its Dependencies in the Commonwealth of Australia, dated the 29th day of October 1900

Reasons for  
Judgment  
6/12/74  
(continued)

(c) The "Providence" is owned by the accused Santo Oteri and his wife.

The "Providence" is a powered fishing vessel of some 24.6 gross tons and is some 46 feet in length.

30 She is the subject of a Boat License granted to the owners pursuant to Division 1 of Part VIII of the Western Australian Marine Act 1948-1973 and is also the subject of a Fishing Boat License issued to the owners pursuant to the Fisheries Act Regulations made under the Fisheries Act 1905-1973. The "Providence" is not otherwise registered whether in the United Kingdom or elsewhere. The "Providence" normally operates as a fishing vessel out of Fremantle, and was so operating at the time of the alleged offences.

40 (d) The persons Leslie Walter Butler and Walter Charles Wedgewood [sic] referred to in the indictment are each fishermen normally residing in Western Australia.

It was conceded by the Crown that the indictment was alleging the commission of offences by each accused at a time when each was within the meaning of s.12 of the Criminal Code outside Western Australia and

In the Full  
Court of the  
Supreme Court  
of Western  
Australia  
Sitting as a  
Court of  
Criminal  
Appeal

—  
No. 4

Reasons for  
Judgment  
6/12/74  
(continued)

hence it was conceded that, save as to punishment upon conviction, no basis existed for the application to the facts of the Criminal Code or of any other Western Australian statute.

The contention advanced on behalf of the Crown was that the allegation conveyed by the words of the indictment "within the jurisdiction of the Admiralty of England" necessarily involved an allegation of all facts necessary to sustain that conclusion and specifically an allegation that each offence had been committed in a British ship and additionally or alternatively that each offence had been committed by each accused he being a British subject. It may have been better pleading to have spelt this out in the indictment but as the indictment was so understood by each accused, nothing now turns on it. It could be cured, if cure were necessary, by amendment. So understood, the indictment in my opinion does disclose an offence against the Theft Act of 1968 (1968 c.60) read with Offences at Sea Act 1799 (39 Geo. III c.37) as amended by s. 10 and the Third Schedule of the Criminal Law Act 1967 (1967 c.58) or when read with s.686 of the Merchant Shipping Act of 1894 (57 and 58 Vict. c.60). See R. v. Liverpool Justices ex parte Molyneux (1972) 2 W.L.R. 1033.

10

20

From this in my opinion it follows that the first question should be answered by saying that the indictment does not disclose any "offence under the laws of Western Australia" but that it does disclose an offence "otherwise" that is to say an offence against the statute law of the United Kingdom, namely, the Theft Act of 1968.

30

The question then is whether in the sense of the first question that offence is "triable" in Western Australia, and more specifically whether in the terms of the second question, the District Court of Western Australia has jurisdiction to try the accused for that offence, and that question must be understood as asking, not whether the District Court has jurisdiction to enter upon the trial but whether it has jurisdiction to carry the trial to verdict, and it is to enable the question so understood to be answered that the facts set out earlier in these reasons have been agreed.

40

Each accused being an Australian citizen is in the eyes of the Australian law - the Citizenship Act 1948-1973 s. 7 - a British subject, and he is also and more relevantly for present purposes a British subject under the laws of the United Kingdom - the British Nationality Act 1948 (11 and 12 Geo. VI c.56) s.1(1) and (3)

In the Full Court of the Supreme Court of Western Australia Sitting as a Court of Criminal Appeal

10 The vessel "Providence" which on the agreed facts is a "ship within the meaning of the British Merchant Shipping Act 1894 see s.742, being owned by the accused Santo Oteri and by his wife who is also a British subject she too being an Australian citizen, is a British ship. Section 1 of the Merchant Shipping Act 1894. The vessel is not registered under the Act so she is not "recognised as a British ship" - s.2(2). For present purposes however she is to be "dealt with in the same manner in all respects as if she were a recognised British ship". See s.72, which  
20 section applies "to all places where Her Majesty has jurisdiction". See s.91.

No. 4

Reasons for Judgment  
6/12/74  
(continued)

In this way it is made to appear that the offences alleged, if committed, were committed by a British subject on a British ship on the high seas and hence is within the criminal jurisdiction of the Admiralty. See The Queen v. Bull (1974) A.L.J.R. 232. Had the offence been committed within Western Australia it would be within the jurisdiction of the District Court. Section 42 (1) of the District Court of Western Australia Act read with s.16 (1)(b) and (c) of the Supreme Court Act, and this being so, the District Court has jurisdiction by virtue of s.1 of the Imperial Act of 1849 (12 and 13 Vict. c.96) - the Admiralty Offences (Colonial) Act - this being a jurisdiction not affected by the Criminal Code see s.4 of the Criminal Code Act

40 Should either accused be convicted, he will "be liable to such punishment as might have been inflicted upon him if ..... the offence had been committed within the limits of the colony and of the local jurisdiction of the court". Courts (Colonial Jurisdiction) Act 1874 37 and 38 Vict. c.27). s . 3

For these reasons the remaining questions should be answered

(b) Yes:

In the Full  
Court of the  
Supreme Court  
of Western  
Australia  
Sitting as a  
Court of  
Criminal  
Appeal

- (c) (i) No
- (ii) Yes, in the sense that it is within the jurisdiction conferred upon the Court by the 1849 Imperial Act
- (iii) Not necessary to answer
- 

No. 4

Reasons for  
Judgment  
6/12/74  
(continued)

BETWEEN :

THE QUEEN

and

SANTO OTERI and GAETANO OTERI

Mr. K.H. Parker, instructed by the State  
Crown Solicitor, appeared for the Crown.

10

Mr. W.R. Robinson appeared for the accused.

WALLACE J.

This is a reference pursuant to s.49 of the District Court Act in respect of which answers are sought as to whether the indictment preferred against the accused discloses an offence under the laws of Western Australia or otherwise triable in that state and further as to whether the District Court has jurisdiction to try the accused for the offence disclosed in the indictment. A third question asked seeks an answer as to the source of the Court's jurisdiction - if it exists.

20

The indictment reads that on 24th January 1974 the accused stole a crayfish pot the property of one Leslie Walter Butler whilst on the vessel "Providence" on the high seas 22 miles from the coast of Western Australia and within the jurisdiction of the Admiralty of England and further, that between 22nd January 1974 and 26th January, 1974, whilst again on the vessel "Providence" on the high seas approximately 22 miles from the coast of Western Australia and within the jurisdiction of the Admiralty of England stole a crayfish pot, two bait cages, two floats and a quantity of rope the property of one Walter Charles Wedgewood [sic].

30

It is admitted that the accused are Australian citizens pursuant to the Nationality and Citizenship Act 1948, that they normally reside at Fremantle in the State of Western Australia, that the conduct of the accused the subject of the alleged offences occurred on board the vessel "Providence" then on the high seas 22 miles from the mainland of Western Australia, that the "Providence" is a powered fishing vessel of 24.6 gross tons and 46 ft. in length the subject of a boat licence granted to the owners pursuant to Division 1 of Part 8 of the West Australian Marine Act 1948-1973, but is not otherwise registered whether in the United Kingdom or elsewhere.

At the commencement of the hearing it was made clear that the Crown contended that the alleged offence was in breach of the Theft Act 1968 of the United Kingdom, the Criminal Code of the State of Western Australia and the common law, the wording in the indictment being identical under both the Theft Act and the Criminal Code. For the accused it was contended that the Criminal Code does not apply because of the provisions of s. 12 of the Code and the Territorial Waters Act of 1878 limiting the effect of the Code to every person who is in Western Australia at the time of his doing any act constituting an offence, that to be charged with an offence under the Theft Act required proof that the "Providence" was a British ship and this was not the case, and further that the Theft Act of the United Kingdom did not apply since s.4 of the Criminal Code Act limits the application of the Code to, inter alia, a statute of the United Kingdom and the Theft Act does not apply to Scotland and Ireland notwithstanding the fact that it is a statute of the Parliament of the United Kingdom.

The Crown argument is based upon the proposition that s. 1 of the Theft Act of the United Kingdom 1968, operates on the high seas against British subjects upon a British ship. This is because of firstly, the Admiralty Law of England, secondly, the Imperial Admiralty Offences (Colonial) Act 1849 (12 & 13 Vict. c.96), thirdly the Imperial Merchant Shipping Act 1894 (57 & 58 Vict. c.60) and fourthly, the Imperial Offences at Sea Act 1799 (39 Geo.3.c.37) - each being, the Crown claims, sufficient unto itself but the provisions of the 1799 Act being decisive.

In the Full Court of the Supreme Court of Western Australia Sitting as a Court of Criminal Appeal

—  
No. 4

Reasons for Judgment  
6/12/74  
(continued)



In the Full  
Court of the  
Supreme Court  
of Western  
Australia  
Sitting as a  
Court of  
Criminal  
Appeal

—  
No. 4

Reasons for  
Judgment  
6/12/74  
(continued)

The District Court of Western Australia was established by statute on 17th November 1969 and the jurisdiction thereof is set out in Part 3. The criminal jurisdiction of the Court is that of the Supreme Court in respect of any indictable offence where such offences provide for punishment of a maximum of 14 years. See s.42 subs.(1) and (2). The Supreme Court Act of 1935 vests that Court with the like jurisdiction, powers and authority within Western Australia and its dependencies, as the Courts of Queens Bench, Common Pleas, and Exchequer, or either of them, and the Judges thereof, had and exercised in England at the commencement of the Supreme Court Ordinance 1861. Section 17(1) declaring the Supreme Court the Colonial Court of Admiralty within the meaning and for the purposes of the Colonial Courts of Admiralty Act, 1890, has been repealed, but not subs. (2) governing the procedure and practice of the Court in Admiralty causes and matters.

10

20

Whilst the "Providence" was not registered under any Act and therefore not under the Merchant Shipping Act 1894, it was conceded to be owned by Australian citizens who by virtue of s.7 of the Australian Citizenship Act 1948-1973 and s.1(1)(iii) of the British Nationality Act are British subjects. The vessel was therefore a British ship - see s.1 Merchant Shipping Act 1894. By s. 72 of the Merchant Shipping Act, "the punishment of offences committed on board such ship (a British ship) or by any person belonging to her, such ship shall be dealt with in the same manner in all respects as if she were a recognised British ship". By s.91 of the Act the provisions thereof apply to the "whole of Her Majesty's Dominions, and to all places where Her Majesty has jurisdiction".

30

For the reasons expressed by my brother Burt I am of the opinion that the indictment discloses an offence against, inter alia, the Theft Act of 1968, and once that offence is established then the District Court has jurisdiction to deal therewith by virtue of s.1 of the Imperial Admiralty Offences (Colonies) Act, 1849, (12 & 13 Vict.c.96) read with s.686(1) of the Imperial Merchant Shipping Act 1894: "Where any person, being a British subject, is charged with having committed any offence on board any British ship on the high seas ..... and that person

40

50

is found within the jurisdiction of any Court in Her Majesty's Dominions, which would have had cognisance of the offence if it had been committed on board a British ship within the limits of its ordinary jurisdiction, that Court shall have jurisdiction to try the offence as if it had been so committed".

In the Full Court of the Supreme Court of Western Australia Sitting as a Court of Criminal Appeal

10 By the provisions of the Imperial Courts (Colonial Jurisdiction) Act 1874, (37 & 38 Vict. c.27) s.3, the accused would be liable if convicted, "to such punishment as might have been inflicted upon him ..... the offence had been committed within the limits of the Colony and of the local jurisdiction of the Court".

No. 4

Reasons for Judgment  
6/12/74  
(continued)

For these reasons I would answer the questions asked -

(a) Yes; (b) Yes; (c)(i) No, (ii) Yes, (iii) Unnecessary to answer.

No. 5

No. 5

20 ORDER ALLOWING CONDITIONAL LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL

Order allowing conditional leave to appeal to Her Majesty in Council  
18/2/75

Application No.26 of 1974

30 IN THE MATTER of an application for leave to appeal to HER MAJESTY in Council from the judgment of the Full Court of the Supreme Court of Western Australia sitting as the Court of Criminal Appeal on the 6th day of December 1974 on points of law reserved for the opinion of the Court by the District Court of Western Australia

BETWEEN: SANTO OTERI and  
GAETANO OTERI Appellants  
and  
THE QUEEN Respondent

40 BEFORE THE FULL COURT  
THE HONOURABLE THE CHIEF JUSTICE  
THE HONOURABLE MR. JUSTICE LAVAN  
THE HONOURABLE MR. JUSTICE WALLACE  
the 18th day of February 1975.

In the Full Court of the Supreme Court of Western Australia Sitting as a Court of Criminal Appeal

No. 4

Order allowing conditional leave to appeal to Her Majesty in Council 18/2/75 (continued)

The Full Court being of the opinion that the matter raised on this appeal, which because of its great general and public importance ought properly to be submitted to Her Majesty in Council for decision, ORDERED THAT:-

(a) subject to the due performance by the Appellants on the conditions hereinafter mentioned and subject to the final order of the Court upon the due performance thereof, the Appellants have leave to appeal to Her Majesty in Council from the judgment of the Full Court herein, given on the 6th day of December 1974 as to the points of law reserved by the District Court of Western Australia for the opinion of the Full Court, upon condition that the Appellants within a period of three months from the date hereof, deposit on fixed deposit at Perth for a term of not less than three months with any banking company carrying on business in Western Australia, the sum of \$250.00 in the name of "Master, Supreme Court of Western Australia" and deliver the receipt therefor to the Master of this Honourable Court, as security for the due prosecution of such appeal and the payment of all such costs as may become payable to the Respondent in the event of the Appellants not obtaining an order giving them final leave to appeal or of the appeal being dismissed for non-prosecution or of Her Majesty in Council ordering the Appellants to pay the costs of the Respondent.

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(b) The Appellants shall apply for final leave to appeal within four months of the date hereof

(c) The Appellants shall upon the grant of the final leave to appeal withdraw their application for special leave to appeal to the High Court of Western Australia.

(d) The Appellant shall within two months of the grant of final leave to appeal procure the preparation and dispatch to England of the Record.

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(e) All parties have liberty to apply.

By the Court  
Evans. Deputy Registrar

This order was filed by Graeme F. Scott & Co., of 158 High Street, Fremantle whose address for service is McCusker, Lawrence & Harmer of 297 Murray Street, Perth.

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ORDER ALLOWING FINAL LEAVE TO APPEAL TO  
HER MAJESTY IN COUNCIL

In the Full  
Court of the  
Supreme Court  
of Western  
Australia  
Sitting as a  
Court of  
Criminal  
Appeal

10 IN THE MATTER of an application for leave  
to appeal to HER MAJESTY in Council from  
the judgment of the Full Court of the  
Supreme Court of Western Australia sitting  
as the Court of Criminal Appeal on the 6th  
day of December 1974 on points of law reserved  
for the opinion of the Court by the District  
Court of Western Australia

          
No. 6

Order  
allowing  
final leave  
to appeal to  
Her Majesty  
in Council  
16/6/75

BETWEEN:

SANTO OTERI and GAETANO OTERI

Appellants

and

THE QUEEN

Respondent

BEFORE THE FULL COURT  
THE HONOURABLE THE CHIEF JUSTICE  
THE HONOURABLE MR. JUSTICE BURT  
THE HONOURABLE MR. JUSTICE WALLACE  
20 the 16th day of June 1975

Upon the motion of the Appellants by notice dated  
the 29th day of May 1975 and UPON HEARING Mr.F.M.  
Robinson of Counsel for the Appellants and Mr. R.J.  
Davies of Counsel for the Respondent THIS COURT DOTH  
ORDER that the Appellants have final leave to appeal  
to Her Majesty in Council from the judgment of the  
Full Court herein, given the 6th day of December  
1974 as to the points of law reserved by the District  
Court of Western Australia for the opinion of the Full  
Court

30 By the Court

I.M. Evans

Deputy Registrar

This Order was filed by Graeme F. Scott & Co., of  
158 High Street, Fremantle whose address for  
service is McCusker Lawrence & Harmer of 297  
Murray Street, Perth.



IN THE PRIVY COUNCIL

No. 34 of 1975.

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O N A P P E A L

FROM THE FULL COURT OF THE SUPREME COURT  
OF WESTERN AUSTRALIA SITTING AS A COURT  
OF CRIMINAL APPEAL

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B E T W E E N :

SANTO OTERI and GAETANO OTERI

Appellants

- and -

THE QUEEN

Respondent

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RECORD OF PROCEEDINGS

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de Berenger & Coyne,  
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Solicitors for the Appellants.

M.L. Moss & Son,  
Western Australia House,  
115 Strand,  
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Solicitors for the  
Respondent.