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UNIVERSITY OF LONDON
W.C.1.

-3 JUL 1956

INSTITUTE OF ADVANCED
LEGAL STUDIES

No. 25 of 1954

IN THE PRIVY COUNCIL

13011

O N A P P E A L

FROM THE SUPREME COURT OF BERMUDA

B E T W E E N

WILLIAM FRANCIS HANS: Appellant

- and -

THE QUEEN Respondent

C A S E F O R T H E R E S P O N D E N T

RECORD

10 1. This is an Appeal in forma pauperis by Special Leave granted by Order in Council dated the 22nd day of December, 1953, from the conviction of the Appellant on the 9th day of May, 1953, in the Supreme Court of Bermuda on an indictment charging the Appellant with two offences of aiding one Frank R. Ashley, a person in lawful custody, to escape from such custody contrary to section 111 of the Criminal Code of Bermuda.

20 2. The facts of the case are briefly that some-time after midnight on the said 29th March, 1953, the Chief Petty Officer in charge of United States Naval Shore Patrol came across the said Ashley, who was a sailor in the United States Navy, in Hamilton City, Bermuda, and asked to inspect his documents. Finding that Ashley's Shore leave had expired at midnight and that he was therefore Absent Over Leave, an offence under the United States Uniform Code of Military Justice, the Chief Petty Officer apprehended Ashley and placed him in custody in the Naval Patrol Wagon and secured the door by placing into position a wire hook on
30 the outside of the door. Shortly afterwards the Appellant, a Bermudan civilian, seeing Ashley in the wagon where he had been left by the Naval Patrol, released him by opening the door of the wagon. Ashley was caught and again placed in the wagon. The Appellant then released him again. The Appellant was thereupon arrested by a Bermuda Police Officer and charged with the above offences, namely of aiding Ashley on two occasions to escape from lawful custody contrary to section 111 of the Criminal Code of Bermuda.

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p.13 1. 26.
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p.16, 1. 4.

RECORD

3. The charges were heard in the Magistrate's Court Bermuda on the 17th April, 1953. At the end of the case for the Prosecution the Magistrate (D.M. Minty, Esqre. J.P.) refused to commit the Appellant for trial and dismissed the information on the ground that the facts disclosed no offence against Bermudan Law.

p. 1-8.

4. On the 20th April, 1953, leave was obtained on behalf of the Attorney-General from the Chief Justice to prefer a Bill of Indictment containing two counts charging the Appellant with the said offences and on the 22nd day of April, 1953, the Appellant was arraigned on the said Indictment before the Supreme Court of Bermuda. The Appellant pleaded Not Guilty and was tried on the 23rd April, 1953, (Day Kimball, Assistant Justice, sitting with a jury). The Appellant gave evidence admitting that he had released Ashley on the first occasion but alleging that he had not realised that Ashley was under arrest or in custody, and denying that he had released Ashley on the second occasion. The learned Judge directed the jury that if they had any doubt whether the Appellant knew that Ashley was in custody when he released him, the Appellant should be acquitted on the first count. The Jury convicted the Appellant on both counts and on the 9th May, 1953, the Appellant was sentenced to pay a fine of £10 on each count and given three months to pay.

p. 10-11.

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p.20 l.24.

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l.32 - 8.

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5. The Appellant petitioned Her Majesty in Council for Special Leave to Appeal in forma pauperis against his said conviction and the said Petition was heard on the 7th day of December, 1953.

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p.14 l.36.

6. It was conceded by Counsel for the Appellant at the trial and also by Counsel for the Appellant at the hearing of the said Petition that the custody of the said Ashley at the time of both his releases from the Patrol Wagon by the Appellant was lawful under the United States Uniform Code of Military Justice, but it was contended on behalf of the Appellant at the trial (and was the sole point on which Special Leave to Appeal was sought) that such custody was not lawful custody within the meaning of section 111 of the Criminal Code of Bermuda.

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7. Section 111 of the Criminal Code of Bermuda provides:-

"Any person who aids any other person in escaping or attempting to escape from lawful custody is guilty of a misdemeanour and is liable to imprisonment for a term not exceeding two years."

Lawful custody is not defined in the Criminal Code.

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8. The position of the United States Forces in Bermuda is governed by the United States Bases (Agreement) Act, 1952, which provides (inter alia):-

"9. (1) United States Service Courts and the Authorities of the United States of America may exercise within these islands in relation to members of the United States Forces on matters concerning discipline and internal administration all such powers as are conferred upon them by or under the law of the United States of America provided that nothing in the foregoing provision of this Sub-Section shall be construed so as to affect the jurisdiction of any Court of these islands to try a member of the United States Forces for any act or omission which constitutes an offence against the law of these islands." 10

9. It is submitted that by virtue of the above subsection the United States Authorities acting in accordance with their powers under the United States Military Law and by persons authorised to exercise such powers could take into custody any member of the United States Forces for a breach of discipline and the custody of such a person would be recognised as lawful under the law of Bermuda and is therefore lawful custody under Section 111 of the Criminal Code of Bermuda. 20

10. The Respondent therefore submits that the Appeal should be dismissed for the following (among other)

R E A S O N S

- (1) That the Appellant aided the said Ashley to escape from custody on both or either of the occasions on which he was charged with so doing.
- (2) That on both or either of the said occasions the said Ashley was in custody which was lawful under the United States Military Law. 30
- (3) That on both or either of the said occasions the said Ashley was in custody which was lawful under the law of Bermuda and was lawful custody under section 111 of the Criminal Code of Bermuda.
- (4) That the Appellant was guilty of both the offences as charged or of either of them.
- (5) For the reasons given by the learned Trial Judge.

D.A. GRANT

IN THE PRIVY COUNCIL

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FROM THE SUPREME COURT OF BERMUDA

B E T W E E N
WILLIAM FRANCIS HANS Appellant
- and -
THE QUEEN ... Respondent

C A S E FOR THE RESPONDENT

CHARLES RUSSELL & CO.,
37, Norfolk Street,
Strand, W.C.2.
Solicitors for the Respondent.