

Judgment of the Lords of the Judicial Committee of the Privy Council on a Petition for leave to Appeal of the Falkland Islands Company v. the Queen, from the Falkland Islands ; delivered 24th June, 1863.

Present:

LORD KINGSDOWN.
LORD JUSTICE KNIGHT BRUCE.
SIR EDWARD RYAN.
LORD JUSTICE TURNER.

THEIR Lordships, at the hearing of this Petition, entertained a strong opinion that the point which had been decided by the Court below in convicting the Petitioners of the offence alleged against them, was one of sufficient difficulty and importance to make it desirable that it should be submitted to further consideration before a higher Tribunal. But they were desirous of looking into the authorities on the subject, and of considering how far the principles which have been laid down in former cases with respect to Appeals in criminal proceedings, leave them at liberty to reach the merits of the particular case, without infringing those rules which it is of the greatest importance to the public interests strictly to maintain.

It may be assumed that the Queen has authority, by virtue of Her prerogative, to review the decisions of all Colonial Courts, whether the proceedings be of a civil or criminal character, unless Her Majesty has parted with such authority. But the inconvenience of entertaining such Appeals in cases of a strictly criminal nature is so great, the obstruction which it would offer to the administration of justice in the Colonies is so obvious, that it is very rarely that applications to this Board similar to the present have been attended with success.

The whole subject was most fully investigated in
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the recent Petition of Joykissen Mookerjee, who had been convicted of forgery by one of the Courts in India. The Judicial Committee, by Dr. Lushington, expressed their opinion that there had been a miscarriage of justice in the case, and that supposing it to have been a civil and not a criminal case they would have had no hesitation whatever in recommending to Her Majesty to allow an Appeal for the purpose of considering the proceedings complained of, and doing justice to the party complaining, and yet they refused to interfere.

Dr. Lushington observed that by granting an Appeal in that case, was meant an examination of the whole of the proceedings, including the evidence, and that in no instance whatever of any grievance, however great, had any such Appeal been ever entertained, and that the consequences of entertaining it would be entirely destructive of the administration of all criminal jurisprudence, and that if injustice had been done, the proper mode of remedying it was by application to the Crown in another shape, and not by way of Appeal.

To these principles their Lordships entirely assent, and it is only on the ground of the great peculiarity of the circumstances of this case that their Lordships are disposed to advise Her Majesty to admit, under certain restrictions, an Appeal against the Orders complained of.

The main ground is this, that the proceedings although in form of a criminal, are in substance rather of a civil nature, deciding a question of property, a question of great general importance, involving the rights both of the Crown and its grantees throughout these Islands, and affecting most materially the value of all the lands in the hands of the holders, on the one hand, and the claim of the Crown to the property in the wild cattle, on the other.

It is obvious that this is a question of too great importance to make it fit that it should be finally concluded by a summary conviction in a Police Court.

If the effect of their Lordships' determination in this Petition were confined to the particular cases already decided, and to the retainer by the Crown or its refunding to the parties the amount of the penalties which it has received, and not already

remitted, or if the question decided by the conviction could be brought for trial in a civil action, and thus be carried regularly by appeal to Her Majesty, their Lordships are so impressed with the danger of appearing to relax the rules against entertaining appeals in criminal cases, that they would not advise Her Majesty to grant any relief upon the present Petition.

But it seems by no means clear that this question can be raised in a Civil Court as regards what has already taken place, or that similar difficulties may not prevent the question from being tried in a Civil Court in cases of the same kind which are likely to recur, and their Lordships think that it is of equal importance to the Crown and to the colonists that a point so grave, with respect to which they do not of course intimate, and indeed have not formed, any opinion either one way or the other, should be the subject of decision in this country.

Another circumstance by which their Lordships are much influenced is the analogy to the proceedings which would in similar circumstances have been competent to the Defendant, if the conviction had taken place in England. The conviction might have been brought before the Queen's Bench by writ of certiorari, and the justice of the decision subjected to review on the matters appearing on the record. But in this case, as far as appears, no means of review of any sort existed in the Colony, for though the Ordinance referred to gives an appeal to the Police Court from a conviction by a single magistrate, the conviction here has been pronounced by the Court itself.

For the reasons assigned their Lordships will advise Her Majesty to receive the Petitioner's Appeal for the purpose of raising and determining the important question of law which arises in it, but the Appeal must be confined to that point alone, and no objection of a merely technical character must be considered as open. Their Lordships understand that the real question to be determined appears upon the face of the record of the proceedings, the whole of which will be brought up.

The costs of the Petition must be reserved.

The usual security for the costs of the Respondent will be given to the amount of 300*l*.

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