

*Reasons for the Report of the Lords of the
Judicial Committee of the Privy Council on
the Appeal of Spilsbury v. The Queen, from
the Supreme Court of Gibraltar; delivered
3rd day of May 1899.*

Present at hearing :

THE LORD CHANCELLOR.

LORD WATSON.

LORD HOBHOUSE.

LORD MACNAGHTEN.

LORD DAVEY.

[*Delivered by the Lord Chancellor.*]

This was a case in which the Appellant Albert Gybbon Spilsbury appealed against an order of the Chief Justice of Gibraltar whereby the Appellant was ordered to be tried at Gibraltar without a jury for an offence alleged to have been committed within the jurisdiction and under the provisions of the Morocco Order in Council and the Rules thereunder relating to the trial of indictable offences and not with a jury.

The offence charged against the Appellant was that in January 1898 within the territorial water of the Empire of Morocco he had together with others been guilty of riot and assault upon soldiers of the Sultan of Morocco and participating in an armed attack made on a ship belonging to the Sultan and upon soldiers and officers therein.

The Appellant was arrested in London and in the month of August 1898 the Queen's Bench Division of the High Court ordered that the Appellant should be tried before the Supreme

Court at Gibraltar and by a Warrant under the hand of One of Her Majesty's Principal Secretaries of State he was ordered to be removed for trial before the Supreme Court of Gibraltar.

In pursuance of such Order and Warrant the Appellant was in fact conveyed in custody to Gibraltar in the month of August and surrendered to the Court there.

The doubt which the Chief Justice of Gibraltar appears to have entertained—whether he had authority to order the trial before a jury or whether he was bound to pursue the course of procedure pointed out by the Morocco Order in Council in respect of offences committed in Morocco was the question which gave rise to this Appeal.

Their Lordships are of opinion that unless some Order has prohibited in such a case the ordinary course of procedure the transfer of the Appellant to Gibraltar to be tried for a criminal offence would, as incident to such Order, involve his being tried according to the ordinary course of procedure in that place and the Chief Justice appears to have entertained doubt, whether the sections of the Morocco Order in Council did not enforce upon him the necessity of trying the Defendant according to the procedure contemplated by that Order, that is to say, with assessors and not by a jury.

Their Lordships are not able to share in those doubts. The machinery provided for the trial in Morocco appears to be applicable to that country and appropriately worded. But by the Eleventh Sub-section of Order 3 it is provided that the Supreme Court (that is the Court of Gibraltar) is to have in all criminal matters in which the Defendant is a British subject (which was the case here) an original jurisdiction concurrent with the jurisdiction of the Court for Morocco, to be exercised, it is true, "subject and according

“ to the provisions of this Order and of any
“ Rules of Procedure made under this Order”
(and none such have been made) “ but in all
“ other respects with all the powers and authority
“ which the Supreme Court has independently of
“ this Order.”

Their Lordships are of opinion that Section 38 of the Gibraltar Order in Council expressly applied to the Appellant's case.

It was a criminal case depending before the Supreme Court of Gibraltar which had (as has been pointed out before) concurrent original jurisdiction with the Court in Morocco. Once it is ascertained that the Supreme Court of Gibraltar was rightly seised of the jurisdiction to try, their Lordships think that the mode prescribed by the Gibraltar Order in Council must be pursued. That Order makes no distinction between cases originally arising in Gibraltar, and those which by due course of law may be brought thither and it is obvious that the various provisions to be found in the Morocco Order in Council in respect of the mode of trial with assessors would be inappropriate to a trial in Gibraltar where a regular course of trial by jury forms part of the administration of the place.

Their Lordships have therefore thought it right humbly to advise Her Majesty that the mode of trial demanded by the Appellant is that to which by law the Appellant was entitled.
