

William Francis Hans - - - - - Appellant

v.

The Queen - - - - - Respondent

FROM

**THE SUPREME COURT OF BERMUDA**

**JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL, DELIVERED THE 14TH MARCH, 1955**

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*Present at the Hearing:*

LORD TUCKER  
LORD SOMERVELL OF HARROW  
MR. L. M. D. DE SILVA

[*Delivered by* LORD TUCKER]

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Shortly after midnight on 29th March, 1953, the Chief Petty Officer in Charge of a United States Naval Shore Patrol in Hamilton City, Bermuda, finding one Ashley, a sailor in the United States Navy whose leave had expired at midnight, apprehended him and placed him in custody in the Naval Patrol Wagon, the door of which was secured by placing in position a wire hook on the outside of the door. Shortly afterwards the appellant Hans, a Bermudan civilian, seeing Ashley in the wagon where he had been left by the Naval Patrol released him by opening the door. Ashley was caught and again placed in the wagon. The appellant then released him again.

The appellant was thereupon arrested by a Bermudan police officer and charged with having on two occasions aided Ashley, a person in lawful custody, to escape from such custody contrary to section 111 of the Criminal Code of Bermuda.

This incident took place on territory not included in any area leased by His late Majesty to the United States of America and referred to in the U.S. (Bases) Agreement Act, 1952, as a "leased area".

The two charges were heard in the Magistrates Court on 17th April, 1953, by L. M. Minty, Esq., J.P., who refused to commit the appellant for trial on the ground that the facts disclosed no offence against the law of Bermuda.

He gave his reasons in a careful and interesting judgment.

The Solicitor-General then applied to the Supreme Court for consent to prefer a Bill of Indictment in respect of these charges. Consent was given by the Chief Justice, and the appellant was duly arraigned on the said Indictment before the Supreme Court of Bermuda, and on 23rd April, 1953, he was tried and convicted on both counts before Day Kimball, Assistant Justice, and a jury. On 9th May, 1953, he was fined £10 on each count. He brought the present appeal pursuant to special leave to appeal in forma pauperis granted by Order in Council dated 22nd December, 1953.

The sole question for decision is whether at the time of his release by the appellant Ashley was in lawful custody within the meaning of sections 110 and 111 of the Bermuda Criminal Code.

It will be convenient at this stage to set out the relevant provisions of that Code together with those of the United States Bases (Agreement) Act, 1952.

## THE CRIMINAL CODE

## CHAPTER XIV.

Section 109.—(1) Any person who by force rescues or attempts to rescue from lawful custody any other person is guilty of a felony.

(2) If the person rescued or whose rescue is attempted is under sentence of death, or is charged with, or suspected of, or committed for, any offence punishable with death, the offender is liable to imprisonment for five years, with or without solitary confinement. In any other case the offender is liable to imprisonment for three years.

(3) If the person rescued, or whose rescue is attempted, is in the custody of a private person, the offender must have notice of the fact that he is in such custody.

Section 110.—Any person who, being in lawful custody, escapes from such custody—

(1) Is, if he has been convicted of, or is charged with, or suspected of, or committed for, a felony, guilty of a felony, and is liable to imprisonment for three years ;

(2) Is, in any other case, guilty of a misdemeanour and is liable to imprisonment for two years.

*Section 111 as amended by Prisons Act, 1950.*

111.—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 two years.

Section 112.—(1) Any person who, being an officer in either of His Majesty's gaols in these Islands, or a police officer, wilfully permits a person within his lawful custody to escape is guilty of a felony.

(2) If the person who escapes is under sentence of death, or is charged with, or suspected of, or committed for, any offence punishable with death, the offender is liable to imprisonment for five years.

(3) In any other case the offender is liable to imprisonment for three years.

Section 113.—Any person who, being an officer of either of His Majesty's gaols in these Islands, or a police officer, negligently permits a person within his lawful custody to escape, is guilty of a misdemeanour, and is liable to imprisonment for two years or to a fine of £100.

## UNITED STATES BASES (AGREEMENT) ACT, 1952

Section 8.—(2) The Government of the United States of America shall have the right to exercise the following jurisdiction in respect of offences committed in these Islands, that is to say—

(a) where the accused person is a member of the United States Forces—

(i) if a state of war exists, then exclusive jurisdiction in respect of all offences wherever committed ;

(ii) if a state of war does not exist, then exclusive jurisdiction in respect of security offences wherever committed and in respect of United States interest offences committed within a Leased Area, and concurrent jurisdiction in respect of all other offences wherever committed ;

Section 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, in 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, subject to the provisions of section eight of this Act, nothing in the foregoing provisions 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.

Section 12.—Where any sentence has been imposed upon any person by a court of the United States of America sitting in these Islands then, for the purposes of any legal proceedings taken within these Islands, the court shall be deemed to have been properly constituted . . . and any person who is detained in custody in pursuance of any such sentence, or pending the determination by such a court as aforesaid of the charge brought against him, shall for the purposes of any such proceedings as aforesaid be deemed to be in lawful custody.

For the purposes of any such proceedings as aforesaid a certificate under the hand of the United States Authorities to the effect that a person is being detained for either of the causes aforesaid shall be conclusive proof of the cause of his detention, and a certificate under the hand of the United States Authorities that the person or persons specified in the certificate constituted the court shall be conclusive proof of that fact.

Section 14.—(1) Any person whose surrender is requested under arrangements made in pursuance of Article VIII of the Agreement (which relates to the surrender of offenders) may be arrested and surrendered in accordance with such arrangements and shall be deemed to be in lawful custody.

(a) while detained for the purpose of such surrender; and

(b) without prejudice to any statutory provision relating to release on bail, while detained after such surrender until the disposal of his case.

Section 18.—(1) Without prejudice to the provisions of sub-section (1) of section nine of this Act, a United States constable shall have—

(a) within a Leased Area, all the powers and privileges of a police officer; and

(b) within a Leased Area, and elsewhere in these Islands on a fresh pursuit from any such area, power to arrest without warrant any person who he has reasonable cause to believe has committed an offence with respect to which the Government of the United States of America has jurisdiction by virtue of section eight of this Act.

Section 18.—(2) A United States constable effecting an arrest in any case where the person arrested is not released forthwith and is not to be dealt with by a court of the United States of America, shall without delay, and in any event within twenty-four hours, deliver him in custody, or cause him to be delivered in custody by another United States constable, to a police officer, and thereupon he shall, for the purposes of any provision of law, be treated as if he had just been arrested by a police officer.

Section 18.—(3) Where any person, having been duly arrested in accordance with the foregoing provisions of this section, is detained by a United States constable or by a police officer he shall be deemed to be in lawful custody until his case is disposed of or he is sooner released.

At the trial, in addition to the facts set out above, evidence was given by a captain in the United States Marines who was the Legal Officer at the Naval Operating Base that "absence over leave" is a violation of Article 86 of the Uniform Code of Military Justice for which there is power to arrest and that the arrest of Ashley by the shore patrol was a lawful arrest under the law of the United States.

At the conclusion of the case for the prosecution counsel for the appellant submitted that there was no case to answer as the facts disclosed that Ashley was not in custody for any offence cognizable by a Bermudan Court and that accordingly his release by the appellant was not an offence under Section 111 of the Criminal Code. The trial judge ruled against this submission, the trial proceeded and the appellant was convicted. As there is now no dispute as to the facts the present appeal is in effect an appeal against the trial judge's rejection of the submission that there was no case for the defence to answer.

It is not disputed that the arrest of Ashley was lawful under U.S. law, and that it was in respect of a matter concerning discipline within the meaning of Section 9 (1) of the United States Bases (Agreement) Act, 1952. He was accordingly in custody and the custody was authorised by

Bermudan law, but it is contended that he was not in "lawful custody" within the meaning of Sections 110 and 111 of the Criminal Code, which should be construed as restricted to custody in connection with criminal proceedings cognizable by the Courts of Bermuda, or at any rate to custody authorised by Bermudan law as a preliminary to or a consequence of some order or judgment or process issuing out of a Bermudan Court. The context of these sections read with Sections 112 and 113 is relied upon.

It was further contended that there was nothing in the United States Bases (Agreement) Act, 1952, to extend the meaning of Sections 110 and 111 of the Code. In this connection the following matters were put forward in support of the appellant's contention:—(1) If Ashley was in lawful custody within the meaning of Section 111, he was himself guilty of an offence under Section 110 for which he could have been tried by a Bermudan Court. (This was accepted on behalf of the Crown.) It was said that only the clearest language would suffice to attribute to the Legislature the intention to bring about such a result. (2) That the express words in Sections 12, 14 and 18 of the United States Bases (Agreement) Act providing that detention in the circumstances therein provided should be "deemed to be lawful custody" and the absence of any such words in relation to Section 9 (1) negated the construction for which the Crown contended. (3) That ambiguous language will not suffice to enlarge the scope of a statute creating criminal offences.

These submissions merit and have received careful consideration.

Although the language of the Criminal Code standing alone is clearly designed primarily to deal with cases arising under the Bermudan criminal law and the words "lawful custody" would not include, for example, the custody of an infant by his parent or guardian, their Lordships can see no reason for restricting their meaning in the manner for which the appellant contends. If Bermudan law at any time authorises arrest for any reason by the military or civilians or service personnel it is difficult to see why the person so arrested and kept in confinement should not be considered as in lawful custody within the meaning of sections 110 and 111 or why the status of the particular person authorised to make the arrest should be the criterion for deciding whether or not it is lawful within the meaning of these sections. With regard to the United States Bases (Agreement) Act, 1952, it is to be observed that section 9 (1) and the proviso thereto, which is the section relied upon by the Crown, covers breaches of U.S. military discipline which may also constitute offences triable by the Bermudan Courts. Such offences may include serious crimes which are also offences against discipline. If the U.S. authorities are given authority to arrest for such offences outside the leased area it would be natural to suppose that the legislature would intend that such arrests should be effective and that Bermudan citizens should not be able with impunity to release persons whose arrest the Legislature has authorised. It would accordingly in their Lordships opinion require express words to negative the consequences which would naturally follow according to the ordinary meaning of section 9 (1) of the United States Bases (Agreement) Act, 1952, read in conjunction with section 111 of the Criminal Code, and that the express words in sections 12, 14 and 18, which may have been inserted *ex abundanti cautela* in relation to cases which would include the detention of Bermudan civilians, are not sufficient to compel a different construction of section 9 (1). It is true that at first sight it would appear surprising that the result of section 9 (1) should be to render the escaping U.S. soldier or sailor liable to prosecution in the Bermudan Courts, but in practice the provisions of section 10 which require the consent of the Attorney General in writing to any such proceeding would probably make any such liability more theoretical than real.

In the result their Lordships have reached the conclusion that there is no real ambiguity in the meaning of the two most relevant sections of the two statutes read together and will accordingly humbly advise Her Majesty that the appeal should be dismissed.



In the Privy Council

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WILLIAM FRANCIS HANS

v.

THE QUEEN

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[DELIVERED BY LORD TUCKER]

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