

7th. May, 1949.

Judge:

The Hon. Mr. Justice Dr. W. Harding,
B.Litt., LL.D.

Rex versus Samuel Cyril Green

Verdict — Discharge of the Jury.

The Maltese Law, in enumerating the cases in which the jury may be discharged by the Court, does not include the case when the jury are unable to reach a legal verdict. Still, in such a case the Court may discharge the jury, if it thinks proper so to do.

The Court's discretion in deciding for the discharge of the jury is independent of any objection on the part of either the Prosecution or the Defence.

The Court, — Upon seeing the Bill of Indictment No. 8660;

Whereas the jury retired to consider their verdict at approximately 1.30 p.m.;

Whereas, after about an hour, i.e. at approximately 2.30 p.m., the foreman of the jury informed the Court that they had been unable to reach a legal verdict in terms of section 479 of the Criminal Code;

Whereas the Court requested the foreman of the jury to state whether the jury required any further elucidation or explanations; to which the foreman of the jury replied in the negative;

Whereas the Court, upon this information, and in accordance with practice, instructed the jury again to withdraw and deliberate further;

Whereas after close another hour's deliberation the foreman of the jury again reported the jurors' inability to come to a legal verdict;

Whereas, although Maltese Law, in enumerating certain cases in which the jury may be discharged, does not include a case like the present one, still it has been held on previous occasions that the Court may, in any such case, discharge the jury if, in its discretion, it thinks proper so to order. Thus in the case "*The Queen vs. Lorenzo Ellul*", 29th. July 1890, Judge Dr. Pasquale Mifsud ordered the discharge of the jury on the ground that they had not been able to agree on a legal verdict. Subsequently, Judge Dr. Luigi Ganado followed the same procedure in "*The Queen vs. Maria Muscat*" on the 14th June, 1893. Later, Judge Dr. Giovanni Pullicino, in the case "*Rex vs. Bernardo Vella and Francesco Cutajar*", 19th November, 1909, gave a similar order and quoted in support the ruling of the English Courts in the sense that, after the jury had retired to consider their verdict and had remained in deliberation a full and sufficient time without being able to agree upon a verdict, then the judge may discharge them, if there is no reasonable prospect

of thus agreeing on a verdict. The same Judge gave a similar order in the case "Rex vs. Antonio Caruana", 4th June, 1914;

Whereas the foreman of the jury has also informed the Court that, even with further deliberation, there is no reasonable prospect of the jury agreeing upon a verdict;

Whereas both the Prosecution and the Defence agree that there is no other alternative beyond that of discharging the jury, even though the Court's discretion is independent of any objection on the part of either;

For the foregoing reasons;

Discharges the jury, and orders that the accused be tried before another jury on the 18th. of June, 1949;

With regard to the bail previously granted to accused, which expired on the commencement of this trial, declares the said bail to be renewed on the following conditions:—

1. That the accused enters into a fresh recognisance on the same deposit of £150, already effected by him;

2. That he formally renews the engagement mentioned in no. 4 of the previous order of the 5th. April, 1949;

3. That he deposits with the prosecuting Police Officer (Inspector Beacini, who will then forward it to the Commissioner of Police), a sum sufficient to defray the hotel expenses of the said two minors, including board and lodging up to the new date of trial;

The accused must also observe the condition mentioned in no. 2 of the previous order.
