

20th May, 1954

Judge :

The Hon. Mr. Justice A. V. Camilleri, B.Litt., LL.D.

Her Majesty the Queen versus Victor William Harris

**Military Law — Court Martial — Army Act, ss. 41, 41A.,
144, 162**

Persons subject to military law have a dual liability. In fact, a person subject to the Army and Naval Acts, or R.A.F. Laws, undertakes many obligations in addition to the duties and liabilities incumbent upon an ordinary citizen, and is not rendered exempt from the "ordinary process of law". Moreover, the law of the land is supreme, and in all conflicts of jurisdiction that law is to prevail.

Hence, a soldier is subject to the same criminal liability as a civilian; and a person subject to military law, though sentenced or acquitted by Court Martial, may afterwards be tried by a Civil Court, if the offence is one triable under the ordinary law; while a person acquitted or convicted by a Civil Court is not liable to be tried by Court Martial in respect of the same offence.

And, if the law allows and admits (when the offence falls under its jurisdiction) that a soldier be tried by the Civil Courts (non Military) though previously the same person may have been sentenced or acquitted by a Court Martial for the same offence with all the circumstances of fact, it stands to reason that the same person can be tried by the Civil Court when one of or a few of the circumstances do happen to coincide.

The Court; — Upon seeing that accused, on the 18th May, 1954, put in the plea of "autrefois acquit", in that on the 2nd July, 1953, he was charged before a General Court Martial at Malta on identical charges concerning the same series of thefts of tyres as those on which he stands indicted today, and on the 11th of July, 1953, he was found not guilty and acquitted on all counts in the charge — sheet concerning the embezzlement of tyres from the Army Stores mentioned in the present bill of indictment;

Upon seeing that the Attorney General has demurred to

the plea set up by accused, on the ground that it is unfounded;

Upon seeing the document produced by accused by a "nota" of the 18th May, 1954;

Upon hearing on oath witness Irvine of the S.I.B.;

Upon seeing the record of proceedings, and in particular the recorded verbal of the 18th May, 1954, from where it appears that Counsel for Defence has agreed that the plea put in by him relates only to the crime mentioned in the second count of the bill of indictment;

Upon hearing counsel for both sides;

It is well at the very outset to lay down the following undisputed facts:

Defendant, at the time of the commission of the crime under review, was, and still now is, a member of the Armed Forces serving at present in Malta. The tyres for which he is being charged today, and which formed the "corpus delicti" in another case in which two civilians were concerned, are not the same tyres which formed the subject-matter of the charges for which defendant stood indicted before the Court Martial and for which in their respect he was found not guilty, and consequently acquitted (vide my notes re sworn statement of witness Irvine). The theft ("peculatus") of the tyres exhibited in this case is alleged to have taken place between the 1st July, 1952, and the 13th November of the same year, whilst the thefts of the tyre parts covered by the charge-sheet before the Court Martial were said to have taken place on different occasions, namely in or about the 22nd February, 1952, 8th September, 1952, 21st October, 1952, 11th December, 1952, 12th January, 1953, 16th January, 1953, 19th January, 1953, and lastly 22nd January, 1953;

This having been premised, it is well now to pass on to determine the legal point raised by defendant;

The dual liability to which persons subject to military law are liable is well known to all scholars in English Constitutional Law. In fact, a person subject to the Army and Naval Acts or R.A.F. Laws, undertakes many obligations in addition to the duties and liabilities incumbent upon an

ordinary citizen, and is not rendered exempt from the ordinary "process of law". It is, moreover, a well known principle that the law of the land is supreme, and that in all conflicts of jurisdiction that law is to prevail. Hence, from this it flows that a soldier (defendant is a person subject to the Army Act) is subject to the same criminal liability as a civilian, and that a person subject to military law, though sentenced or acquitted by Court Martial, may afterwards be tried by a Civil Court, if the offence is one triable under the ordinary law. A person acquitted or convicted by a Civil Court is not liable to be tried by Court Martial in respect of the same offence (Wade & Phillips, "Constitutional Law", New Impression 1952, page 389; Dicey, "Law of the Constitution", pages 301-302);

The Army Act confirms these principles (vide sections 41, 41A., 144 and 162). This last section, moreover, lays down that the sentence of the Court Martial must be taken into consideration by the Civil Court (not Military) in awarding punishment (vide also Phillips, "Constitutional Law", p. 414, and Chalmers and Asquith, "Outlines of Constitutional Law", p. 204):

Defendant made reference to the case "R. v. Kirkop" (C. C. of Appeal, 5th June, 1950), to urge the argument that, as the alleged crime in question took place by a serving soldier in relation to War Department property at a place falling under the Army Act, it was unnecessary for the local Police to interfere, and that the Commanding Officer was the proper officer to deal with the offence; but in that case, to say the least, we have, if there need be, a further confirmation of the principle that Civil Courts may deal with offences falling within their jurisdiction, in that, notwithstanding the "dictum" of the Honourable Court, interpreted in the "Introduction of the Manual of Military Law" as the normal procedure to be followed (page 126), that tribunal passed a reduced sentence on the appellant in question;

A further objection in support of defendant's plea was brought forward by the legal Counsel for Defence. It was contended that, as the circumstance of time in the crime of

embezzlement in the bill of indictment and in the thefts of tyres dealt with by the Court Martial more or less correspond and coincide, defendant could not be made the subject of a second trial. The argument, however, does not appear sound, for a dual reason, one of law and the other of fact. In fact, if the law allows and admits (when the offence falls under its jurisdiction) that a soldier be tried by the Civil Courts (non Military), though previously the same person may have been sentenced or acquitted by a Court Martial for the same offence with all its circumstances of fact, it stands to reason that the same person can be tried by those courts when one or a few of the circumstances do happen to coincide. Furthermore, from the point of view of the facts, be it said that we have it from witness Irvine that the "individual" four tyres forming the "corpus delicti" in the present case did not form part of the exhibits of the subject-matter of any of the charges in respect of tyres dealt with by the Court Martial:

The plea of the defendant, therefore, fails;

In view of the above reasons:

Defendant's plea cannot be favourably entertained, and, in consequence, is disallowed.
