

21 ta' April, 1953.

Inhallfin :

Is-S.T.O. Dr. L. A. Camilleri, LL.D., *President*;
L-Onor. Dr. A.J. Montanaro Gauci, LL.D.
L-Onor. T. Gouder, LL.D.

Il-Maestà tar-Regina *versus* Abdul Cader

**Gurisdizzjoni — Dritt Internazzjonali Pubbliku —
Bastimenti Merkantili — Merchant Shipping Act, 1894,
Sec. 688 (1) (2) — The Admiralty Offences
(Colonial) Act, 1849.**

Hija regola indiskussa ta' Dritt Internazzjonali Pubbliku illi kul Stat għandu dritt jaċċerta gurisdizzjoni fuq il-bastimenti merkantili, tant fl-ibħra territorjali, kemm bejn sema u ilma.

Id-delitti li jiġu kommessi fuqhom jaqgħu taħt il-gurisdizzjoni ta' dak l-Istat, u jiġu gudiċati mill-Qrati tiegħu.

Anki skond il-liġi ingliża, l-att ta' sudditu britanniku, eskluż l-att ta' piraterija, kommess fuq bastiment stranjer l-hemm mill-ibħra territorjali, gatt ma jaqo' taħt il-gurisdizzjoni ta' l-Ammiraljat; apparti, naturalment, minn statut.

Reat kommess fuq bastiment stranjer bejn sema u ilma minn sudditu

britanniku, li jkun jappartjeni li dak il-bastiment, ma jaqgħaz taht il-ġurisdizzjoni ta' l-Ammiraljat; u kwindi mhux ġudikabili mill-Qorti Toghna. Anzi, il-fatt li l-akkużat ikun jappartjeni lill-capur jirrendi mhix neċessarja l-inlaġini jekk huwicz sudditu britanniku jew le.

Pid-dawl ta' dawn il-prinċippi, fil-każ preżenti l-Qorti ddikjarat li ma kienx ġurisdizzjoni biex tiġġudika l-akkużat, li kien akkużat ta' tentativ ta' omiċidju volontarju kommess fuq vapur stranjer barra mil-limiti territorjali ta' dawn il-Gżejjer, u li kien jappartjeni lil dak il-capur bhala wieħed mill-ekwipaġġ.

Il-Qorti, — Rat l-att ta' l-akkuża, li bih l-imsemmi Abdul Cader huwa akkużat ta' tentativ ta' omiċidju volontarju fuq il-persuna ta' Sheik Ibrahim Sheik Ishmael;

Rat in-nota ta' l-imsemmi akkużat, li biha eċċepixxa l-inkompetenza ta' dina l-Qorti minhabba nuqqas ta' ġurisdizzjoni, billi r-reat, kif allegat, sar minn fruszier fuq vapur stranjer u barra mil-limiti territorjali ta' dawn il-Gżejjer;

Rat in-nota ta' l-Attorney General, li oppona ruħu għal dik l-eċċezzjoni;

Semgħet id-difensur ta' l-akkużat u l-Avukat tal-Kuruna;
Omissis;

Illi d-delit addebitat lill-imsemmi Abdul Cader ġie kommess, kif jidber mill-att ta' l-akkuża, bejn sema u ilma ("on the high seas") fuq il-vapur S.S. Coltex Rhodesia, li fuqu hu kien jaħdem bhala "winchman"; liema bastiment iġib il-bandiera tal-Panama, u dan huwa l-port tar-registru tiegħu;

Illi hija regola indiskussa tad-Dritt Internazzjonali Pubbliku illi kull Stat għandu d-dritt jeżerċita ġurisdizzjoni fuq il-bastimenti merkantili, tant fl-ibhra territorjali kemm bejn sema u ilma. Dawn il-bastimenti merkantili, meta jkunu bejn sema u ilma — "on the high seas" — "in alto mare" — huma kunsidrati par i mit-territorju ta' l-Istat li tiegħu jgħibu l-bandiera u l-karti, u għalhekk id-delit i fuqhom kommessi jaqgħu taht il-ġurisdizzjoni ta' dak l-Istat, u jiġu ġudikati mill-Qorti tiegħu;

"Per quello che concerne la giurisdizione sulle navi, si deve ritenere come regola certa che ciascuno Stato abbia il diritto di esercitarla su tutte quelle che fanno parte della sua

marina mercantile, sia che esse si trovino nelle sue acque territoriali, sia che esse navighino in alto mare" (Fiore, Diritto Internazionale Pubblico, Vol. 1, pag. 346, no. 513);

"Merchant vessels on the high seas are, for purposes of jurisdiction, acknowledged to be a part of the territory of the State whose papers they carry. Crimes, by whomsoever committed, and causes of action arising on board, to which passengers or members of the crew are parties, are triable by its Courts. Such jurisdiction in criminal cases is not affected by the fact that the accused is a foreigner to the nationality of the ship, the case being precisely the same as if the offence had been committed within the territorial limits of the State under whose flag she sails" (Davis, Elements of International Law, page 70);

L-awtur ċitat isemmi, a propożitu, il-każ ta' John Anderson, sudditu Britanniku impjegat bhala bahri ("ordinary seaman") fuq bastimen b'bandiera Amerikana, li qatel l-*"chief mate"* ta' l-istess vapur meta dan il-vapur kien "on the high seas", u li gie arrestat meta l-vapur wasal Calcutta, fejn gie proċessat u misjub hati fuq akkuża ta' "manslaughter". In segwitu għall-azzjoni meħuda mill-Istati Uniti, il-Gvern Britanniku esprima r-rinkrexximent tiegħu rigward il-passi meħudin mill-Awtoritajiet ta' Calcutta, u wera li sostanzjalment jaqbel mar-regola fuq accennata;

Ikkunsidrat;

Illi hu indubitat li, anki skond il-ligi Ingliza, l-att ta' sudditu Britanniku, eskluż att ta' piraterija, komess fuq bastiment stranjer li hemm mill-baħar territorjali, qatt ma jaqa' taħt il-gurisdizzjoni ta' l-Ammiraljat, apparti, naturalment, minn statut. "An act done on or by means of a foreign ship outside the territorial waters of the King's Dominions is never within Admiralty jurisdiction, if done by a foreigner, except in the case of piracy 'jure gentium'; nor is it within such jurisdiction if done by a British subject, apart from statute" (Halsbury's Laws of England, second edition, 9, 63, 59);

Illi, skond il-Merchant Shipping Act, 1894, — sec. 686
(1) (2) — jaqgħu taħt il-gurisdizzjoni ta' l-Ammiraljat ir-

reati kommessi minn sudditu Br. anniku bejn sema u ilma, jew f'port-stranjer, jew abbord kull bastiment stranjer, meta dak is-sudditu ma jkunx jappartjeni lill-vapur, u wkoll ir-reati kommessi minn minn mhux sudditu Britanniku fuq bastiment Britanniku. "Where any person, being a British subject, is charged with having committed any offence on board any British ship on the high seas, or in any foreign port or harbour, or on board any foreign ship to which he does not belong, or, not being a British subject, is charged with having committed any offence on board any British ship on the high seas, and that person is found within the jurisdiction of any Court in Her Majesty's Dominions which would have had cognisance of the offence if it had been committed on board a British ship within the limits of its ordinary jurisdiction, the Court shall have jurisdiction to try the offence as if it had been so committed". Jinghad minn issa li l-poter moghti b'din id-dispożizzjoni għar-rigward ta' reati kommessi fuq bastiment stranjer, "on the high seas", purkè il-kolp-voli ma jkunx jappartjeni lill-bastiment, mhux konferit lill-Qorti ta' Kolonja;

Illi hu ċert, kwindi, li ma jaqgħax taħt il-gurisdizzjoni ta' l-Ammiraljat reat kommess fuq bastiment stranjer "bejn sema u ilma", minn sudditu Britanniku appartenenti ("belonging") lil dak il-vapur;

Ikkunsidrat;

Illi l-fuq nominat Abdul Cader kien jahdem bħala "winchman" fuq il-vapur stranjer "Coltex Rhodesia", meta fuq dan il-vapur, fil-waqf li kien "on the high seas", għe kommess id-delitt lill-istess Abdul Cader addebitat f-att ta' l-akkuża. Għalhekk ma jistax ikun hemm dubju li hu kien jappartjeni ("belonged") lill-istess vapur, kif forsi dak id-dubju seta' jtaċċa kieku kien sempliċement passigġier, billi l-passigġieri għew ritenuti, iżda in kommessjoni ma' dispożizzjonijiet oħra ta' l-Att, "persons belonging to a ship";

Illi, għalhekk, il-każ ta' l-akkużat lanqas ma hu sugġett għall-gurisdizzjoni ta' l-Ammiraljat skond iċ-ċittata dispożizzjoni tal-Merchant Shipping Act, 1849, u għalhekk qatt ma jista' jkun sugġett għall-gurisdizzjoni ta' din il-Qorti. Difatti,

skond "The Admiralty Offences (Colonial) Act, 1849 (12 & 13, Vict. c. 96)", il-Qrati Kriminali ta' dawn il-Gżejjer għandhom ġurisdizzjoni biex jiġġudikaw fuq kull reat ta' kwalsijasi natura jew xorta, komness fuq il-baħar jew port, xmara, insenatura, jew post fejn l-Ammiraljat għandu ġurisdizzjoni. "If a person within any colony shall be charged with the commission of any treason, piracy, felony, robbery, murder, conspiracy, or other offence of what nature or kind soever, committed upon the sea, or in any haven, river, creek or place where the Admiral or Admirals have power, authority, or jurisdiction, or if any person charged with the commission of any such offence upon the sea, or in any such haven, river, creek or place, shall be brought for trial to any colony, then, and in every such case, all magistrates, justices of the peace, public prosecutors, juries, judges, courts, public officers, and other persons in such colony, shall have and exercise the same jurisdiction and authorities for enquiring of, trying, hearing, determining and adjudging such offences, and they are hereby respectively authorised, empowered and required, to institute and carry on such proceedings for the bringing of such person so charged as aforesaid, as by the law of such colony would and ought to have been had and exercised or instituted, and carried on by them respectively, if such offence had been committed, and such person had been charged with having committed the same, upon waters situate within the limits of any such colony, and within the limits of the local jurisdiction of the courts of criminal justice of such colony" (1);

Illi, inoltri, il-ġurisdizzjoni konċessa lill-Qrati Kolonjali — u kwindi lil din il-Qorti — bl-Att fuq riferit (The Admiralty Offences (Colonial) Act, 1849), li tiġġudika reati komnessi "where the Admiralty has jurisdiction" — u f'dan il-każ, kif ġie fuq spjegat, l-Ammiraljat ma għandux — tapplika biss għar-reati komnessi abbord ta' bastiment britanniku "on the high seas". Hekk ġie ritenut fil-każ "R. vs. Dodd", citat fl-English and Empire Digest, Vol. 14, page 138-139, note "g", fejn jinġhad: — "The Courts in England have power by 30 & 31 Vict., c. 124 (id-dispożizzjoni tal-Merchant Shipping Act għa' citata) to try British subjects for offences committed on

board of foreign ships on the high seas, provided the offender does not belong to the ship; but the Supreme Court of the colony has no such power. The jurisdiction given to Colonial Courts by 12 & 13 Vict., c. 96, to try cases of offences committed 'where the Admiral has jurisdiction', applies only to offences committed on Board British ships on the high seas-- R. v. Dodd, 1874'';

Illi għalhekk din il-Qorti ma għandhiex ġurisdizzjoni relattivament għail-akkuża miġjuba kontra l-imsejmi Abdul Cader, u dan indipendentement mis-sudditanza tiegħu; f'liema kwistjoni il-Qorti mhix sejra tidhol, għaliex ma hemmx in-necessità, billi d-delitt allegat kommess minnu, kif jingħad fl-att ta' l-akkuża, ġie kommess fuq bastiment stranjer "on the high seas", u f'dan il-każ, kif ġie dimostrat. din il-Qorti qatt ma jista' jkollha ġurisdizzjoni — u dan appartni li lanqas il-Qorti Ingliżi ma jista' jkollhom dik il-ġurisdizzjoni, billi l-akkużat kien jappartjeni ("belonged") lill-vapur;

Għall-motivi premessi;

Tiddikjara li ma għandhiex ġurisdizzjoni in rigward ta' l-azzjoni (kriminali) prosegwita kontra l-akkużat, billi dik l-azzjoni, skond il-prinċipji enunċjati u l-ligijiet citati, ma tistax jitmexxa f'dawn il-Gżejjer. Għalhekk ma hemmx lok għall-proċeduri ulterjuri, u ordna li l-akkużat jiġi poġġut in libertà.