FOURTH SUPPLEMENT TO THE
GIBRALTAR GAZETTE L.R. 11/78.

No. 1,809 of 10th MAY, 1979.

LAW REPORTS

Note: These Reports are cited thus —
(1978) Gib. L.R.

Crime—unauthorised entry on Crown land—whether offence is committed by entry on land if no notice forbidding entry has been placed thereon—Criminal Offences Ordinance, s.224

HIBBERT v. FLEMING

Supreme Court
Spry. C.J.

19 December 1978

The respondent was charged with unlawful entry upon land in the occupation of the Ministry of Defence, without permission of the Governor, contrary to s.224 of the Criminal Offences Ordinance (Cap. 37, 1974 Reprint). It was submitted on his behalf that there was no case to answer, because no notice forbidding entry had been placed on the land. The magistrate held that the presence of a notice was essential to the commission of an offence and dismissed the information. The prosecutor appealed by case stated.

HELD: (i) The Governor has complete discretion under s.224 (3) whether or not to place notices on prohibited Crown lands.

(ii) The sign "HMS Rooke" with insignia is not a notice within the meaning of s.224(3).

(iii) The presence of a notice is not a necessary ingredient of the offence charged.

Appeal by case stated

This was an appeal by case stated against a finding of the stipendiary magistrate that there was no case for the respondent to answer.

C. Finch for the appellant

Respondent not present or represented

20 December 1978. The following judgment was read—

This is an appeal by way of case stated against a decision of the learned Stipendiary Magistrate dismissing an information brought against the respondent.

The respondent was charged with entering upon land in the occupation of the Ministry of Defence without the permission of the Governor, contrary to s.224(1)(a) and (4) of the Criminal Offences Ordinance.

At the hearing, no oral evidence was adduced but admissions were made on both sides. The respondent admitted entering upon H.M.S. Rooke Naval Shore Establishment and that this was land which the Governor had by notice in the Gazette declared to be closed to the public. The appellant admitted that no notice forbidding entry was placed at the entrance to the Establishment, but stated that there was a sign bearing the letters and word "HMS Rooke" and the ship's insignia.

The argument for the respondent was that there was no case to answer by reason of the fact that no notice forbidding entry had been put up as required by s.224 (3).

Against this, it was contended by the appellant—

1. that s.224(3) does not impose upon the Governor a mandatory duty to place upon prohibited Crown lands a notice prohibiting entry or otherwise regardless of whether the Governor considers such a notice to be desirable or not;

2. that if such a duty is imposed on the Governor, the sign that was erected was a sufficient compliance;

3. that the presence of a notice prohibiting entry or otherwise is not a necessary ingredient of the offence created by s.224(1) and (4).

The stipendiary found, first, that there was no evidence on which he could find whether the respondent had entered the Establishment intentionally or mistakenly, purposely or innocently or otherwise and, secondly, that proof of the presence of a notice was a necessary ingredient of the offence charged, and he dismissed the information.

At the hearing of the appeal, Mr. Finch appeared for the appellant. There was no appearance by or on behalf of the respondent. Mr Finch informed the court that the respondent, who is no longer within the jurisdiction, had been informed of the appeal and that Mr Budhrani, who appeared for the respondent in the lower court, had been served but had stated that he had no instructions. In the circumstances, Mr Finch very fairly presented the arguments on both sides, and the court is obliged to him.

I hope it will not seem discourteous if I do not set out all the arguments. In general, I have disregarded those arguments that were based on political considerations or practical difficulties and based my decision on what I consider the literal meaning of the ordinance.

Mr Finch began by submitting that the stipendiary should not have made his first finding, since that was going beyond what he had been asked to do. I find some difficulty in understanding the conduct of the proceedings and as it is unnecessary for me to deal with this finding, I prefer not to do so.

Mr Finch then dealt with the second finding and made the same submissions, in the same order, as in the lower court.

The first submission arises out of subs. (3) of s.224. This reads as follows—

> "Every place to which subs. (1) of this section applies shall have placed thereon such notices forbidding entry or otherwise as the Governor may consider desirable, and every such notice shall be in such form as the Governor may direct."

This is very badly drafted and is capable of more than one interpretation. The conclusion I have reached, trying to give the words their natural meaning, is that the Governor has a complete discretion and need not place any notice if he thinks a notice would be undesirable. I regard the subsection as enabling and not mandatory. I appreciate that it is in the public interest that innocent members of the public should know where they may and where they may not lawfully go, but this will undoubtedly be in the mind of the Governor when he exercises his discretion

This makes it unnecessary to consider the second submission, but I record my opinion that the sign "HMS Rooke" and insignia would not constitute a notice within the meaning of subs. (3). I think that for the purposes of that subsection, a notice must expressly forbid entry or as the case may be. But, of course, there is nothing to prevent the erection of such signs.

The third submission, which corresponds with the submission made on behalf of the respondent, falls away also as a result of my opinion on the first submission. If there need be no notice, the presence of a notice cannot be essential before an offence can be committed. I should in any case have come to the same conclusion, because to hold that a notice under subs. (3) is a necessary ingredient of the offence is to read something into the section that is not there. For the purposes of the present case, the essential ingredients of the offence charged are to be found in subs. (1), that is to say—

(a) there must have been an entry on land.

(b) the land must have belonged to or been in the occupation of the Ministry of Defence;

(c) the land must have been declared by notice in the Gazette to be closed to the public; and

(d) the entry must have been without the permission in writing of the Governor or other lawful authority.

Such an entry is made an offence by subs. (4), which expressly refers to subs. (1) and contains no reference, express or implied to subs. (3). Had the legislature intended that it should be an offence to enter on land on which a notice had been placed under subs. (3), it would have been a simple matter to have said so. In my opinion, the presence or absence of notices is irrelevant to the question of guilt or innocence, though it is, of course, highly relevant where sentences have to be considered.

Mr Finch touched on the question whether mens rea is necessary or whether s.224 creates an offence of strict or absolute liability. It is unnecessary for this appeal to decide that question and as it has not been fully argued, I prefer not to do so.

It follows that this appeal must succeed and the decision of the stipendiary is accordingly quashed. As the respondent is

out of the jurisdiction and the Attorney General has indicated the he does not intend to proceed with the matter, I make no order remitting the proceedings.