

that under it a prisoner of war has no immunity from the consequences of his committing an act which if committed by a member of one of our own armed forces would be punishable as a crime. Indeed, order-in-council 4121 hereafter referred to specifically so provides. But since no Canadian soldier could have occasion in Canada to attempt to escape from custody as a prisoner of war he could never commit an act in aid of such an attempt.

"The court based its conclusion on the terms of the Geneva Convention as relating to prisoners of war and set out many of the articles. It is unnecessary to repeat them, but it suffices to point out that no distinction seems to be made in any of them which would justify the conclusion that offences committed in aid of escape occupy a preferred position. Indeed, Article 51 seems to indicate the exact opposite. It is as follows:

'Attempted escape, even if it is not a first offence, shall not be considered as an aggravation of the offence in the event of the prisoner of war being brought before the courts for crimes or offences against persons or property committed in the course of such attempt.'

That clearly envisages offences punishable by the courts when committed in the course of an attempt to escape.

"Article 52, which also deals with the subject of escape, provides:

'Belligerents shall ensure that the competent authorities exercise the greatest leniency in considering the question whether an offence committed by a prisoner of war should be punished by disciplinary or by judicial measures.'

'This provision shall be observed in particular in appraising facts in connection with escape or attempted escape.'

On the 13th of December, 1939, shortly after the outbreak of the present war an order-in-council (No. 4121) was passed under the authority of the War Measures Act making 'Regulations Governing the Maintenance of Discipline Among and the Treatment of Prisoners of War'. These regulations follow very closely the articles of the Geneva Convention, some of them being in the exact words.

"Regulation 7 provides that:

'A prisoner of war shall be subject to

the law relating to the Naval Service, the Militia or the Air Force of Canada, as the case may be, in like manner as if he were a member of the Naval Service, the Militia or the Air Force except that a prisoner of war, class 1, holding Naval, Militia or Air Force rank in the service of his own country may not be deprived of such rank by a Canadian tribunal of officials.'

"Regulation 53 provides that:

'The commandant of any camp or other place set apart for the internment of prisoners of war, or the officer commanding a body of troops having custody of prisoners of war in the field or upon the line of march, upon receiving information of a charge made against a prisoner of war under his custody of having committed an offence, shall dismiss the charge if he in his discretion thinks it ought not to be proceeded with, but where he thinks the charge ought to be proceeded with, he may forthwith submit a report to the district officer commanding the military district in which the camp is situated, who shall give such orders as may be necessary, or he may deal with the case summarily.'

"Then 63 is as follows:

'When the district officer commanding a military district to whom a case has been submitted under paragraph 53 of these regulations considers that the charge cannot properly be disposed of in any other manner, he shall take steps to bring the accused to trial before a military court, or may, in the case of a civil offence, communicate with civil powers in order that the accused may be dealt with by a civil court of criminal jurisdiction.'

It is under the final portion of this article that this case came before the civil courts. If attention had been given to the fact that for the theft of a motor car a judge or magistrate in a civil court is not permitted to exercise an unfettered discretion in imposing such a sentence as he thinks the case deserves, but is compelled to impose a term of imprisonment of one year at the least, it might not have been thought desirable to have the case dealt with in a civil court. One can hardly think that any magistrate or judge would have deemed this offence, under its special circumstances, deserving