# Director of Public Prosecutions v Smith

**VISCOUNT KILMUIR LC.**

My Lords, the respondent, Jim Smith, was convicted on 7 April 1960, of the wilful murder on 2 March 1960, of Leslie Edward Vincent Meehan, a police officer acting in the execution of his duty. Such a crime constitutes capital murder under s 5 of the Homicide Act, 1957, and, accordingly, the respondent was sentenced to death. There was never any suggestion that the respondent meant to kill the police officer, but it was contended by the prosecution that he intended to do the officer grievous bodily harm as a result of which the officer died.

In his final direction to the jury, the trial judge, Donovan J said:

> "... if you are satisfied that ... he must as a reasonable man have contemplated that grievous bodily harm was likely to result to that officer ... and that such harm did happen and the officer died in consequence, then the accused is guilty of capital murder ...
>
> "On the other hand, if you are not satisfied that he intended to inflict grievous bodily harm upon the officer--in other words, if you think he could not as a reasonable man have contemplated that grievous bodily harm would result to the officer in consequence of his actions--well, then, the verdict would be guilty of manslaughter."

The respondent appealed to the Court of Criminal Appeal alleging misdirection by the trial judge, the main ground being that the direction cited above was wrong in that the question for the jury was what he, the respondent, in fact contemplated. The appeal was heard by the Court of Criminal Appeal on 9 May and 10, 1960, when the court allowed the appeal, substituted a verdict of guilty of manslaughter, and imposed a sentence of ten years' imprisonment. The court gave its reasons on 18 May 1960. They upheld the respondent's contention, holding that ([1960] 2 All ER at p 455):

> "... there always remained the question whether the appellant [the present respondent] really did ... realise what was the degree of likelihood of serious injury."

Thereupon the Attorney General gave his fiat certifying that the appeal of Jim Smith involved a point of law of exceptional public importance and that, in his opinion, it was desirable in the public interest that a further appeal should be brought. The matter now comes before your Lordships' House on the appeal of the Director of Public Prosecutions. The appeal certainly involves an important question, raising, as it does, the question what is the proper direction to be given to a jury in regard to the necessary intent which has to be proved in cases of murder, and also in cases under s 18 of the Offences against the Person Act, 1861[b].

[b] See 5 Halsbury's Statutes (2nd Edn) 793. The section deals with "Shooting or attempting to shoot, or wounding, with intent to do grievous bodily harm, or to resist apprehension."

The facts can be summarised as follows: At about 7.30 pm on 2 March 1960, the respondent, accompanied by a man named Artus, was driving a Ford Prefect motor car through Woolwich. In the boot and the back of the car were sacks containing scaffolding clips that they had just stolen. The car was stopped in Beresford Square by the police officer on point duty in the normal course of traffic control and, while so stopped, PC

Meehan, who was acquainted with the respondent, came to the driver's window and spoke to him. No doubt as a result of what PC Meehan saw in the back of the car, he told the respondent when the traffic was released to draw in to his near-side. The respondent began to do so, and PC Meehan walked beside the car. Suddenly, however, the respondent accelerated along Plumstead Road and PC Meehan began to run with the car shouting to the officer on point duty to get on to the police station. Despite the fact that the respondent's car had no running board, PC Meehan succeeded in hanging on and never let go until some 130 yards up Plumstead Road when he was thrown off the car and under a bubble car coming in the opposite direction, suffering a crushed skull and other injuries from which he died. What happened during the time the car travelled that 130 yards was the subject of considerable evidence. The police officer on traffic duty, PC Baker, said that he last saw the car doing what he thought was about twenty miles per hour with PC Meehan running and holding on to it. Mr Doran, a bus driver, whose vehicle had also been held up in Beresford Square, said that the respondent's car suddenly accelerated with PC Meehan holding on to it; that it started to zigzag; and that the police officer appeared to be thrown across the bonnet of the car. Mr Lynch, who was standing in the centre of the square, said that the car suddenly accelerated, zigzagging all the time, the police officer holding on, his feet hanging on the ground; that it kept on accelerating and he thought he saw the right hand of someone in the car trying to push the officer off. He thought that the car reached a speed of thirty to sixty miles per hour. Four cars were coming in the opposite direction. The driver of the first car, a Mr Gill, said that the respondent's car appeared to come at him at a fast to medium speed. There appeared to be someone on the car either falling from the driver's seat or picked up on the bonnet. He felt a slight bump on the rear of his car but sufficient to make him stop. The driver of the second car, a Mr Mills, said that he saw the respondent's car gathering speed and swerving towards him. The side of his car was struck. The driver of the third car, a Mr Eldridge, thought that the respondent's car was travelling at about forty to fifty miles per hour; he saw what he could only describe as an object hanging on below the driver's window. His car was struck violently, the off-side front mudguard being bashed in. Having regard to the fact that there were no marks on the respondent's car the inevitable conclusion is that the contact of all three cars was with PC Meehan. Mr Rollingson, the driver of the fourth car, a bubble car, said that the respondent's car was going very fast and swerving. He saw something coming towards him; there was a terrific crash and he stopped and PC Meehan was underneath his car. The respondent's car went tearing up the road. Mr Heywood, a cyclist, who was ahead of the respondent's car and was passed by the car just after PC Meehan was thrown off, described the car as going fast. Finally, Artus, the passenger in the respondent's car, described how the officer was holding on to the door by the driver's window with his left hand and was banging the windscreen with his right hand. He said that the respondent said: "Let go, Bert."

After PC Meehan had been thrown off, the respondent drove his car a little further up Plumstead Road and into a side turning where he and Artus threw the sacks of clips out of the car. Artus then went off but the respondent returned to the scene. According to PC Weatherill, the respondent first asked: "Is he dead?" and then, on being told that it was believed so, he said: "I knew the man, I wouldn't do it for the world. I only wanted to shake him off." The respondent, however, denied that he had spoken the last few words. The respondent was taken to the police station. On being arrested and cautioned, he said: "I didn't mean to kill him but I didn't want him to find the gear." The respondent then made and signed a statement in which, inter alia, he said:

> "P.C. Meehan jumped on the side of the car and I got frightened. I don't know what I got frightened about. I don't think I thought of the stolen gear I had on board. I don't know what I did next in respect of driving the car. All I know is when he fell off he must have been hurt. I knew he fell off, and I then took a turning off the Plumstead Road. I drove up this turning some way and turned right down a back street.
>
> "I stopped the car in this back street, as George wanted to get out of it. I got out too and chucked the gear out of the car on to the pavement. I got rid of it, because I was scared the police would find it in my motor."

The respondent gave evidence at the trial. He said that, when PC Meehan jumped on the side of the car, his foot went down on the accelerator and he was scared. "I was scared very much. I was very much frightened." He agreed that he did not take his foot off the accelerator.

> "I never thought of it, sir. I was frightened. I was up in the traffic. I never thought of it. It happened too quick."

Asked why he did not take his foot off the accelerator, he said: "I would have done, but when he jumped on the side he took my mind off what I was doing." "When he jumped on I was frightened. I was up the road before it happened. It all happened in a matter of seconds." He further said that, when going up Plumstead Road, he didn't realise that the officer was still hanging on to the car. Asked about his car swerving, he said: "My motor was swaying because of the load in the back."

In this state of the evidence, the defence was twofold--(i) That he did not realise the officer was hanging on to the car until the officer fell off and that he could not keep a straight course having regard to the weight of metal in the back. In other words, he raised the defence of accident. (ii) Alternatively, that it was a case of manslaughter and not murder in that he had no intent to kill or to do grievous bodily harm.

As regards the defence of accident, the learned judge went through the relevant evidence, and ended by saying this:

> "There is a limit, is there not, members of the jury, to human credulity, and you may think that the accused man's unsupported assertion on this part of the case goes well past it, that the evidence is overwhelming, and he knew his car was carrying the officer up the road? The matter is one for you, but if you arrive at the conclusion that, of course, he knew, it is one which I would regard as abundantly right. Indeed, on the evidence I do not see how you could properly arrive at any other conclusion. If that be so the defence of pure accident goes."

My Lords, it would seem that this observation was fully justified on the evidence, and the jury by their verdict must have rejected the possibility of accident. Indeed, the defence of accident was never suggested either in the Court of Criminal Appeal or in your Lordships' House.

It is in regard to the second defence that the summing-up of the learned judge has been criticised and, indeed, has been held to amount to a misdirection by the Court of Criminal Appeal. It is said that the jury were misdirected as to the intent which has to be proved in order to constitute the necessary ingredient of malice. The passages complained of are these:

> "The intention with which a man did something can usually be determined by a jury only by inference from the surrounding circumstances including the presumption of law that a man intends the natural and probable consequences of his acts.

* * *

> "If you feel yourselves bound to conclude from the evidence that the accused's purpose was to dislodge the officer, then you ask yourselves this question: Could any reasonable person fail to appreciate that the likely result would be at least serious harm to the officer? If you answer that question by saying that the reasonable person would certainly appreciate that, then you may infer that that was the accused's intention, and that would lead to a verdict of guilty on the charge of capital murder.

* * *

> "Now the only part of that evidence of P.C. Weatherill which the accused challenges is the part that incriminates him, namely, 'I only wanted to shake him off.' He says he did not say that. Well, you may think it is a curious thing to imagine, and further it may well be the truth--he did only want to shake him off; but if the reasonable man would realise that the effect of doing that might well be to cause serious harm to this officer, then, as I say, you would be entitled to impute such an intent to the accused, and, therefore, to sum up the matter as between murder and manslaughter, if you are satisfied that when he drove his car erratically up the street, close to the traffic on the other side, he must as a reasonable man have contemplated that grievous bodily harm was likely to result to that officer still clinging on, and that such harm did happen and the officer died in consequence, then the accused is guilty of capital murder, and you should not shrink from such a verdict because of its possible consequences.

> "On the other hand, if you are not satisfied that he intended to inflict grievous bodily harm upon the officer--in other words, if you think he could not as a reasonable man have contemplated that grievous bodily harm would result to the officer in consequence of his actions--well, then, the verdict would be guilty of manslaughter."

The main complaint is that the learned judge was there applying what is referred to as an objective test, namely, the test of what a reasonable man would contemplate as the probable result of his acts, and, therefore, would intend, whereas the question for the jury, it is said, was what the respondent himself intended. This, indeed, was the view of the Court of Criminal Appeal who said ([1960] 2 All ER at p 455):

> "Once mere accident was excluded, the present case became one in which the degree of likelihood of serious injury to the police officer depended on which of the not always consistent versions of the facts given by witnesses for the prosecution was accepted. It was one in which it could not be said that there was a certainty that such injury would result; and it was one in which there always remained the question whether the appellant really did during the relevant ten seconds realise what was the degree of likelihood of serious injury. If the jury took the view that the appellant [the present respondent] deliberately tried to drive the body of the police officer against oncoming cars, the obvious inference was open to them that the appellant intended serious injury to result; if, however, they concluded he merely swerved or zigzagged to shake off the officer, or if they concluded that for any reason he may not have realised the degree of danger to which he was exposing the officer, a different situation would arise with regard to the inferences to be drawn. In the former case the jury might well have felt they were dealing with consequences that were certain; in the latter only with degrees of likelihood."

Putting aside for a moment the distinction which the court of Criminal Appeal were seeking to draw between results which were "certain" and those which were "likely", they were saying that it was for the jury to decide, whether, having regard to the panic in which he said he was, the respondent in fact at the time contemplated that grievous bodily harm would result from his actions or, indeed, whether he contemplated anything at all. Unless the jury were satisfied that he in fact had such contemplation, the necessary intent to constitute malice would not, in their view, have been proved. This purely subjective approach involves this, that, if an accused said that he did not in fact think of the consequences and the jury considered that that might well be true, he would be entitled to be acquitted of murder.

My Lords, the proposition has only to be stated thus to make one realise what a departure it is from that on which the courts have always acted. The jury must of course in such a case as the present make up their minds on the evidence whether the accused was unlawfully and voluntarily doing something to someone. The unlawful and voluntary act must clearly be aimed at someone in order to eliminate cases of negligence or of careless or dangerous driving. Once, however, the jury are satisfied as to that, it matters not what the accused in fact contemplated as the probable result, or whether he ever contemplated at all, provided he was in law responsible and accountable for his actions, i.e., was a man capable of forming an intent, not insane within the M'Naghten Rules and not suffering from diminished responsibility. On the assumption that he is so accountable for his actions, the sole question is whether the unlawful and voluntary act was of such a kind that grievous bodily harm was the natural and probable result. The only test available for this is what the ordinary, responsible man would, in all the circumstances of the case, have contemplated as the natural and probable result. That, indeed, has always been the law and I would only make a few citations.

The true principle is well set out in that persuasive authority The Common Law by Holmes J. After referring to Stephens' Digest of the Criminal Law and the statement that foresight of the consequence of the act is enough, he says (at p 53):

> "But again, What is foresight of consequences? It is a picture of a future state of things called up by knowledge of the present state of things, the future being viewed as standing to the present in the relation of effect to cause. Again, we must seek a reduction to lower terms. If the known present state of things is such that the act done will very certainly cause death, and the probability is a matter of common knowledge, one who does the act, knowing the present state of things, is guilty of murder, and the law will not inquire whether he did actually foresee the consequences or not. The test of foresight is not what this very criminal foresaw, but what a man of reasonable prudence would have foreseen."

And again (at p 56):

> "But furthermore, on the same principle, the danger which in fact exists under the known circumstances ought to be of a class which a man of reasonable prudence could foresee. Ignorance of a fact and inability to foresee a consequence has the same effect on blameworthiness. If a consequence cannot be foreseen, it cannot be avoided. But there is this practical difference, that whereas, in most cases, the question of knowledge is a question of the actual condition of the defendant's consciousness, the question of what he might have foreseen is determined by the standard of the prudent man, that is, by general experience."

In *R v Faulkner*, the Court of Crown Cases Reserved for Ireland, on grounds immaterial to this case, quashed a conviction for arson of a sailor who with intent to steal tapped a cask of rum. He was holding a lighted match and the rum caught fire and the vessel was destroyed. Palles CB stated the law as follows ((1877), 13 Cox, CC at p 561):

> "In my judgment the law imputes to a person who wilfully commits a criminal act an intention to do everything which is the probable consequence of the act constituting the corpus delicti which actually ensues. In my opinion this inference arises irrespective of the particular consequence which ensued being or not being foreseen by the criminal, and whether his conduct is reckless or the reverse. This much I have deemed it right to say to prevent misconception as to the grounds upon which my opinion is based."

In *R v Lumley* ((1911), 22 Cox, CC 635 at p 636), Avory J directed the jury in these terms:

> "When he did the act, did he contemplate, or must he as a reasonable man have contemplated, that death was likely to result, or must he as a reasonable man have contemplated that grievous bodily harm was likely to result? If, in your opinion, he must as a reasonable man have contemplated either of those consequences, then your duty is to find him guilty of murder."

In *R v Philpot*, the accused had strangled his wife. In evidence, he said:

> "something seemed to snap in my head, and I jumped up and caught her by the throat. I lost control of myself altogether. I did not know what I was doing exactly; I felt as if I was holding a very strong galvanic battery, and wanted to leave go, and could not."

The real issue was whether or not he was sane at the time. The jury found that he was sane and that he acted in a fit of temper without intending to kill her. In answer to a question from the judge, the foreman said:

> "The jury are unanimously and emphatically of opinion that at the moment of the act the prisoner did not realise the consequences of what he was doing."

The judge then asked them to reconsider their verdict, saying that a man is held to intend the consequences of his act and, as a result, the jury found the accused guilty of murder. The Court of Criminal Appeal (consisting of Lord Alverstone CJ Hamilton J and Lush J), in dismissing the appeal said ((1912), 7 Cr App Rep at p 143):

> "The jury found that he killed her in a fit of temper; they added that he did not realise the consequences of his act, but they cannot have meant that he began to do a harmless act, or one but little blameworthy, which afterwards developed into something causing death. They must have meant that the failure to realise the consequences was due to the fit of temper. In the circumstances it was not a misdirection to tell the jury that a man is held to intend the consequences of his act. The only act in question was that which caused death, and the appellant who committed this act, if sane, must be held to have intended that consequence."

In *Public Prosecutions Director v Beard* your Lordships' House had to consider how far evidence of drunkenness could be taken into consideration in order to determine whether the accused had the necessary intent. Reference was made to *R v Meade*, in which the Court of Criminal Appeal had said that it was a defence if it was shown that the accused's mind was so affected by drink that he was incapable of knowing that what he

was doing was dangerous. In dealing with that case, Lord Birkenhead LC in his speech said ([1920] AC at p 503):

> "Your Lordships have had the advantage of a much more elaborate examination of the authorities upon which the rule is founded than was placed before the Court of Criminal Appeal, and I apprehend can have no doubt that the proposition in *Meade's* case in its wider interpretation is not, and cannot be, supported by authority. The difficulty has arisen largely because the Court of Criminal Appeal used language which has been construed as suggesting that the test of the condition of mind of the prisoner is not whether he was incapable of forming the intent but whether he was incapable of foreseeing or measuring the consequences of the act."

Coming to more recent times, the judgment of the Court of Criminal Appeal in *R v Ward* is to the same effect. Lord Goddard CJ said ([1956] 1 All ER at p 567; [1956] 1 QB at p 356):

> "The test must be applied to all alike, and the only measure that can be brought to bear in these matters is what a reasonable man would contemplate or would not contemplate. If the act is one about which the jury can find that a reasonable man would say: 'It would never occur to me that death would result or grievous bodily harm would result', then the jury can find him guilty of manslaughter. If, however, the jury come to the conclusion that any reasonable person (that is to say, a person who cannot set up a plea of insanity) must have known that what he was doing would cause at least grievous bodily harm, and if the child died of that grievous bodily harm, then a verdict of murder is justified and what was done does amount to murder in law."

Indeed, the only case which could possibly be said to support the view taken by the Court of Criminal Appeal in the present case is *R v Vamplew*, in which a young girl of thirteen was charged with the wilful murder of an infant about ten weeks' old by administering poison. In summing-up, Pollock CB directed the jury ((1862), 3 F & F at p 522) that:

> "the crimes of murder and manslaughter were in some instances very difficult of distinction. The distinction which seemed most reasonable consisted in the consciousness that the act done was one which would be likely to cause death. No one, however, could commit murder without that consciousness. The jury must be satisfied, before they could find the prisoner guilty, that she was conscious, and that her act was deliberate. They must be satisfied that she had arrived at that maturity of the intellect which was a necessary condition of the crime charged."

It is clear, however, from the argument in the case and, indeed, from the last sentence of the direction of the chief baron that the real issue in the case was whether, by reason of her age, the accused had the necessary mens rea. Indeed, it so cited in Archbold's Criminal Pleading Evidence and Practice (34th Edn), para 28 and para 2472.

My Lords, the law being as I have endeavoured to define it, there seems to be no ground on which the approach by the trial judge in the present case can be criticised. Having excluded the suggestion of accident, he asked the jury to consider what were the exact circumstances at the time as known to the respondent and what were the unlawful and voluntary acts which he did towards the police officer. The learned judge then prefaced the passages of which complaint is made by saying, in effect, that if, in doing what he did, he must as a reasonable man have contemplated that serious harm was likely to occur then he was guilty of murder. My only doubt concerns the use of the expression "a reasonable man", since this to lawyers connotes the man on the Clapham omnibus by reference to whom a standard of care in civil cases is ascertained. In judging of intent, however, it really denotes an ordinary man capable of reasoning who is responsible and accountable for his actions, and this would be the sense in which it would be understood by a jury.

Another criticism of the summing-up and one which found favour in the Court of Criminal Appeal concerned the manner in which the trial judge dealt with the presumption that a man intends the natural and probable consequences of his acts. I will cite the passage again:

> "The intention with which a man did something can usually be determined by a jury only by inference from the surrounding circumstances including the presumption of law that a man intends the natural and probable consequences of his acts."

It is said that the reference to this being a presumption of law without explaining that it was rebuttable amounted to a misdirection. Whether the presumption is one of law or of fact or, as has been said, of common sense, matters not for this purpose. The real question is whether the jury should have been told that it was rebuttable. In truth, however, as I see it, this is merely another way of applying the test of the reasonable man. Provided that the presumption is applied, once the accused's knowledge of the circumstances and the nature of his acts have been ascertained, the only thing that could rebut the presumption would be proof of incapacity to form an intent, insanity or diminished responsibility. In the present case, therefore, there was no need to explain to the jury that the presumption was rebuttable.

Strong reliance was, however, placed on *R v Steane* ([1947] 1 All ER 813 at p 816; [1947] KB 997 at p 1004), in which Lord Goddard CJ said:

> "No doubt, if the prosecution prove an act the natural consequences of which would be a certain result and no evidence or explanation is given, then a jury may, on a proper direction, find that the prisoner is guilty of doing the act with the intent alleged, but if, on the totality of the evidence, there is room for more than one view as to the intent of the prisoner, the jury should be directed that it is for the prosecution to prove the intent to the jury's satisfaction, and if, on a review of the whole evidence, they either think that the intent did not exist or they are left in doubt as to the intent, the prisoner is entitled to be acquitted."

That, however, was a very special case. The appellant had been charged and convicted of doing acts likely to assist the enemy, with intent to assist the enemy. His case was that, while he might have done acts likely to assist the enemy, he had only done so out of duress and in order to save his wife and children. Accordingly, this was a case where, over and above the presumed intent, there had to be proved an actual intent or, it might be said, a desire by the appellant to assist the enemy.

It was also said that the Court of Criminal Appeal were right in stating the law thus ([1960] 2 All ER at p 453):

> "The law on this point as it stands today is that this presumption of intention means that, as a man is usually able to foresee what are the natural consequences of his acts, so it is, as a rule, reasonable to infer that he did foresee them and intend them. Although, however, that is an inference which may be drawn, and on the facts in certain circumstances must inevitably be drawn, yet if on all the facts of the particular case it is not the correct inference, then it should not be drawn."..

This passage in the judgment of the court of Criminal Appeal seems to have been lifted verbatim from the judgment of Denning LJ in *Hosegood v Hosegood* ((1950), 66 (pt 1) TLR 735 at p 738), a case dealing with proof of constructive desertion. In that case, my noble and learned friend, Denning LJ was approving the school of thought which said that a husband is not to be found guilty of constructive desertion, however bad his conduct, unless he had in fact an intention to bring the married life to an end. Accordingly, the words in that passage were being used in connexion with a case where an actual or overall intent or desire was involved. No such overall intent or desire is involved in the consideration of intent to kill or to do grievous bodily harm. Thus an overall intent or desire, e.g., an intent or desire to escape, could not afford any defence. While, however, I can see no possible criticism of the trial judge in regard to the use he made of the presumption in the present case, I cannot help feeling that it is a matter which might well be omitted in summing-up to a jury. The phrase "presumption of law" and the reference, if it has to be made, to the presumption being "rebuttable" are only apt to confuse a jury. In my opinion, the test of the reasonable man, properly understood, is a simpler criterion. It should present no difficulty to a jury and contains all the necessary ingredients of malice aforethought.

Before leaving this part of the case, I should mention that the Court of Criminal Appeal in their judgment ([1960] 2 All ER at p 454) drew a distinction between serious harm which was "certain" to result and serious harm which was "likely" to result. In their judgment, if serious harm was certain to result the presumption could safely be relied on and there was no need for the judge to tell the jury that it was rebuttable. On the

other hand, if serious harm was only a likely consequence a judge should, in their opinion, tell the jury that the presumption was rebuttable and that it was for them to determine whether the accused in fact intended to inflict serious harm. My Lords, there is, in my opinion, no warrant for such a distinction and no authority can be adduced in support thereof. Indeed, counsel for the respondent did not, in your Lordships' House, seek to support the distinction. The Court of Criminal Appeal apparently based their opinion on the passage which I have already cited in the judgment given by Lord Goddard CJ in *R v Ward* ([1956] 1 All ER at p 567; [1956] 1 QB at p 356), in which the words "must have known that what he was doing would cause at least grievous bodily harm" occur. They treated these words as the true ratio of the decision in *R v Ward*, whereas the case really decided that the direction to the jury was correct--a direction which had used the word "likely" not "certain". It seems clear that Lord Goddard was not considering the distinction which the Court of Criminal Appeal have drawn. In my opinion, the true question in each case is whether there was a real probability of grievous bodily harm.

The last criticism of the summing-up which was raised before your Lordships was in regard to the meaning which the learned judge directed the jury was to be given to the words "grievous bodily harm". The passages of which complaint is made are the following:

> "When one speaks of an intent to inflict grievous bodily harm upon a person, the expression grievous bodily harm does not mean for that purpose some harm which is permanent or even dangerous. It simply means some harm which is sufficient seriously to interfere with the victim's health or comfort.

* * *

> "... in murder the killer intends to kill, or to inflict some harm which will seriously interfere for a time with health or comfort.

* * *

> "If the accused intended to do the officer some harm which would seriously interfere at least for a time with his health and comfort, and thus perhaps enable the accused to make good his escape for the time being at least, but that unfortunately the officer died instead, that would be murder too."

The direction in these passages was clearly based on the well-known direction of Willes J in *R v Ashman* and on the words used by Graham B, in *R v Cox*. Indeed, this is a direction which is commonly given by judges in trials for the statutory offence under s 18 of the Offences against the Person Act, 1861, and has on occasions been given in murder trials: cf *R v Vickers*.

My Lords, I confess that, whether one is considering the crime of murder or the statutory offence, I can find no warrant for giving the words "grievous bodily harm" a meaning other than that which the words convey in their ordinary and natural meaning. "Bodily harm" needs no explanation and "grievous" means no more and no less than "really serious". In this connection, your Lordships were referred to the judgment of the Supreme Court of Victoria in *R v Miller*. In giving the judgment of the court, Martin J having expressed the view that the direction of Willes J could only be justified, if at all, in the case of the statutory offence, said ([1951] VLR at p 357):

> "It is not a question of statutory construction but a question of the intent required at common law to constitute the crime of murder. And there does not appear to be any justification for treating the expression 'grievous bodily harm' or the other similar expressions used in the authorities upon this common law question which are cited above as bearing any other than their ordinary and natural meaning."

In my opinion, the view of the law thus expressed by Martin J is correct and I would only add that I can see no ground for giving the words a wider meaning when considering the statutory offence. It was, however,

contended before your Lordships on behalf of the respondent that the words ought to be given a more restricted meaning in considering the intent necessary to establish malice in a murder case. It was said that the intent must be to do an act "obviously dangerous to life" or "likely to kill". It is true that, in many of the cases, the likelihood of death resulting has been incorporated into the definition of grievous bodily harm, but this was done no doubt merely to emphasise that the bodily harm must be really serious, and it is unnecessary, and I would add inadvisable, to add anything to the expression "grievous bodily harm" in its ordinary and natural meaning.

To return to the summing-up in the present case, it is true that, in the two passages cited, the learned judge referred to "grievous bodily harm" in the terms used by Willes J in *R v Ashman*, but in no less than four further passages and, in particular, in the vital direction given just before the jury retired he referred to "serious hurt" or "serious harm". Read as a whole it is, I think, clear that there was no misdirection. Further, on the facts of this case, it is quite impossible to say that the harm which the respondent must be taken to have contemplated could be anything but of a very serious nature coming well within the term "grievous bodily harm".

Before leaving this appeal I should refer to a further contention which was but faintly adumbrated, namely, that s 1(1) of the Homicide Act, 1957, had abolished malice constituted by a proved intention to do grievous bodily harm and that, accordingly, *R v Vickers* which held the contrary was wrongly decided. As to this, it is sufficient to say that, in my opinion, the Act does not in any way abolish such malice. The words in parenthesis in s 1(1) of the Act and a reference to s 5(2) make this clear beyond doubt.

In the result, the appeal should, in my opinion, be allowed and the conviction of capital murder restored.

**LORD GODDARD.**

My Lords, I agree with the opinion which has just been pronounced.

**LORD TUCKER.**

My Lords, I also agree.

**LORD DENNING.**

My Lords, I agree.

**LORD PARKER OF WADDINGTON.**

My Lords, I also agree.