

Regina v George, Regina v Burns, Regina v Burnett, Regina v Crawley

Court of Appeal, Criminal Division

Published July 12, 2010

Before Lord Justice Maurice Kay, Mr Justice Royce and Mr Justice Nicol

[Judgment May 28, 2010]

Where criminal liability was imposed by a statute on an individual who dishonestly agreed with one or more other people to do a prohibited act, the purpose and intention of Parliament was to criminalise that individual.

The Court of Appeal, Criminal Division so held when dismissing interlocutory appeals, under section 35 of the Criminal Procedure and Investigations Act 1996, by Martin George, Iain Burns, Alan Burnett and Andrew Crawley, who were each charged with an offence of price-fixing, contrary to section 188 of the Enterprise Act 2002, against a ruling by Mr Justice Owen at Southwark Crown Court on April 20, 2010, that the prosecution needed only to prove dishonesty on the part of the defendants and that proof of the dishonesty of the other parties to the undertaking was not required.

Miss Clare Montgomery, QC and **Miss Alison Pople** for George; **Mr Ben Emmerson, QC** and **Mr Adrian Darbishire** for Burns; **Mr William Boyce, QC** and **Mr Duncan Penny** for Burnett; **Mr Andrew Radcliffe, QC** and **Mr Neil Hawes, QC** for Crawley; **Mr Mark Lucraft, QC**, **Mr Richard Latham, QC** and **Mr Thomas Payne** for the Crown.

LORD JUSTICE MAURICE KAY giving the reserved judgment of the court, said that the four defendants, employees of British Airways, were alleged to have agreed with each other and with three employees of Virgin Atlantic Airways to fix the price for the supply by BA and Virgin of passenger air services.

The Virgin employees were prosecution witnesses, not defendants. At the preparatory hearing, the defendants had submitted that there had to be mutual dishonesty on the part of both the BA defendants and the named Virgin employees before the BA defendants could be found guilty of the offence under section 188. The judge disagreed.

Their Lordships agreed with the trial judge. It would be surprising if the legislative intention had been to relieve a dishonest defendant of criminal liability simply because dishonesty was not also established against any other individual.

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