

THE FORFEITURE OF WAR MEDALS TO THE CROWN: THE CASE OF CAPTAIN EVANS (1923)

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I

INTRODUCTION

The British Army recognises the brave and chivalrous acts of its soldiers during times of war by awarding them with various medals. Examples of these include, the Military Cross, the Distinguished Conduct Medal, and the Victoria Cross, among others. These awards are prestigious and are a symbol of the bravery, honour and dedication of those to whom they are awarded: to this effect reference may be made to the words of Sir Winston Churchill:

The object of giving medals, stars and ribbons is to give pride and pleasure to those who have deserved them. At the same time a distinction is something which everybody does not possess. If all have it, it is of less value. There must, therefore, be heart-burnings and disappointments on the borderline. A medal glitters, but it also casts a shadow.¹

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Sir Winton Churchill, 22nd March, 1944.

However, these prestigious medals carry with them a number of conditions and should these conditions be broken, the medals are ordinarily forfeited to the Crown. These prestigious medals are to be forfeited to the Crown when the recipient is dismissed from the Military, Air Force or Navy for misconduct, or suffers death by the sentence of a Court Martial, among others. Thus noted, this article is primarily concerned with the conditions for the forfeiture of medals to the Crown by a recipient who was convicted and sentenced to a term of imprisonment. The article is primarily concerned with the case of *Rex v. Evans*,² where the accused, Captain Charles Harold de Courcy Evans, was convicted for a term of imprisonment of four months with hard labour and made to forfeit his medals to the Crown. The article will consider whether or not the conditions for the forfeiture of his awards were met and if not, whether they may be reclaimed.

A. Brief Facts of the Case at hand – Rex v Evans

Captain Charles Harold de Courcy Evans, a European Settler from Abercorn in the British Colony of Northern Rhodesia, was attested as a Private in the British Army on 28th September, 1915. He took part in various military campaigns and was awarded with several medals for his acts of bravery and commitment; ancillary to this, he rose from the rank of Private to the rank of Captain before his fighting unit was disbanded and his services were no longer needed. With regard to his medals, Captain Evans was awarded with a Distinguished Conduct Medal, a Military Cross and Bar to the Military Cross, and a Russian Cross of St. George 2nd Class.

On the 14th of April, 1923, in the case of *Rex v. Evans*,³ Captain Evans was convicted in the Magistrates Court at Abercorn in Northern Rhodesia for the offence of breach of peace, trespass and assault and battery and sentenced to four months imprisonment with hard labour. Ancillary to this he was also convicted for the offence of supplying arms to a native and fined the sum of £ 5.00. Captain Evans, however,

² *Rex v. Evans* (1923).

³ *Rex v. Evans* (1923).

had pleaded not guilty to the charges against him. He did not appeal but the case was nonetheless reviewed by the High Court by Mr. Justice Macdonell on 14th May, 1923, who affirmed the conviction as one of assault, on 2nd April, 1923 and assault and battery on 4th April, 1923, instead of a conviction for trespass, breach of peace and assault and battery. The learned Justice also affirmed the sentence of four months' imprisonment with hard labour and also the conviction and sentence in respect of supplying arms to a native.

The facts leading up to the conviction of Captain Evans are that on 2nd April, 1923 he committed an assault on a Mr Lilley and also an assault and battery on 4th April, 1923. The second assault and battery were noted as having been part and parcel of the actions surrounding the first assault. Some of the facts of the actions leading to the prosecution of Captain Evans are noted in the statement of Justice Macdonell in his review of the judgment of the Magistrate, wherein he noted the following:

The prisoner's [Captain Evans'] behaviour was disgraceful throughout...to go at night with a gang of natives, one of whom you have armed with a rifle, to the house of a European (where to your knowledge there is a European woman) and make demand with menaces upon that European, can only be described as disgraceful...⁴

B. The Forfeiture of Captain Evans' Medals

The medals awarded to Captain Evans were forfeited to the Crown in consequence of him having been convicted. The notices of the forfeiture of his Distinguished Conduct Medal and his Military Cross appeared in the *London Gazette* dated 4th December, 1923. The notice with regard to his Distinguished Conduct Medal stated the following:

⁴ Rex v. Evans (1923): the High Court's review of the case was on 17th May, 1923.

The award of the Distinguished Conduct Medal to Harold Charles de Courcy Evans (late temporary Captain, Kings African Rifles), when serving as No. 1442 Private, 2nd Rhodesia Regiment, which was gazetted on the 31st May, 1916, is forfeited, under the terms of the Royal Warrant of the Medal dated 6th November, 1920.

The notice with regard to his Military Cross Medal stated the following:

His Majesty the KING has directed that the Military Cross and Bar to the Military Cross, which were awarded to Harold Charles de Courcy Evans (late temporary Captain, Kings African Rifles), and gazetted on the 17th April 1917 and 1st January 1918 respectively, shall be cancelled, and that his name shall be erased from the Register in consequence of his having been convicted by the Civil Power.

Captain Evans Medal Index Card shows that his other ward medals were forfeited.

C. Other Convictions against Captain Evans

Based on the fact that this article is concerned with the forfeiture of the medals by Captain Evans to the Crown, it is important to take note of any other offences for which he was convicted. The rationale behind this is that the offences and convictions of a recipient are the major considerations when a decision is being made to have the recipient of the medals forfeit them to the Crown. The following facts and convictions are noted from the correspondence in Captain Evans file at the National Archives, in Lusaka, Zambia.⁵ It is worth

⁵ The territory today known as Zambia is the former British Colony of Northern Rhodesia.

noting that the file comprises of various documents including letters to the British High Commissioner regarding Captain Evans and his convictions, among others.

Captain Evans, in addition to having been convicted for the offence of assault and assault and battery and having been sentenced to four months' imprisonment with hard labour, was further convicted for the following offences:

- i. He was convicted for the crime of sodomy with a native named Funga on or about the 27th October 1922 in the Tanganyika District, being tried by Mr Moffat Thomson, Acting Magistrate, at Abercorn, and two Assessors on the 1st, 2nd and 3rd August. He was sentenced to eight months imprisonment with hard labour and his deportation recommended.
- ii. He was again convicted for similar offences (that is, the crime of sodomy) with a native named Yohani, at various places in the Tanganyika District, during 1922, being tried by the Acting Magistrate on the 6th, 7th and 8th August and was sentenced to twelve months imprisonment with hard labour concurrently with the previous sentence, and deportation again recommended.

No appeal against either conviction or sentence was lodged, but the High Court approved the recommendation and confirmed the convictions and sentences.

II

History and Development of the Law pertaining to the Forfeiture of Medals

The history of the British honours system is a long and great one and has been in existence from time immemorial. This honours

system may be said to comprise of Orders⁶ and Decorations⁷; the latter being of primary concern to this article. In particular, the article is concerned with the law and conditions governing the award and forfeiture of the Distinguished Conduct Medal and the Military Cross as these were the medals that were forfeited to the Crown by Captain Evans. The conditions which are discussed below with regard to the forfeiture of the two medals are those that this article has determined from the research conducted, to have been in force in the year 1923. Thereafter, consideration is given to the law currently applicable to the forfeiture of all medals.

It is vital to note that the law and conditions governing the forfeiture of medals is promulgated by way of Royal Warrants issued by the Crown. The issuance of these Royal Warrants governing medals of the armed forces is done pursuant to the exercise of the Royal Prerogative. The Royal Prerogative has been defined as, “the special rights, powers, and immunities to which the Crown alone is entitled under the Common Law.” Thus, one of the notable powers exercised by the Crown on a regular basis in pursuance of the Royal Prerogative, is the power to grant honours.⁸

⁶ “An Order was essentially a group of men banded together for a specific purpose. That purpose could be either religious, as in the case of the great Monastic Orders, or military and political, as it was in the cases of most of the Orders of Knighthood founded after 1350. Certainly by the middle of the fourteenth century the Garter existed in a form that was to be the guide for all other Orders subsequently founded in England. The characteristics of an Order as it emerged from the Middle Ages were fourfold: it was a fraternal organization; the number of members was specifically limited by the laws that controlled it; each member was a Knight regardless of his other rank or station; each member wore some distinguishing badge signifying his membership.” Excerpt obtained from: Charles James Risk, “British Orders and Decorations,” Accessed: 16th November, 2016, <https://numismatics.org/digitalibrary/ark:/53695/nnan23229>.

⁷ These decorations were given in recognition of individual valor: Charles James Risk, “British Orders and Decorations,” Accessed: 16th November, 2016, <https://numismatics.org/digitalibrary/ark:/53695/nnan23229>.

⁸ Royal Central, “What exactly are the Queen’s powers?” Accessed: 16th November, 2016. <https://royalcentral.co.uk/blogs/insight/how-far-does-the-royal-prerogative-really-reach-37843>.

D. The Distinguished Conduct Medal

According to the Royal Warrant published in the *Supplement to the London Gazette* dated 19th November, 1920, it is noted that the Distinguished Conduct Medal was promulgated on 30th September, 1862 by Her Majesty Queen Victoria by way of a Warrant issued under her Royal Sign Manual. The medal bore on it the words, “For Distinguished Conduct in the Field”, and was granted to sergeants, corporals and privates of the Regular Army for distinguished conduct in the Field in any part of the world.

By way of the Royal Warrant published in the aforementioned Supplement to the London Gazette, on 19th November, 1920, the terms and conditions attached to the award of the Distinguished Conduct Medal were amended. The Royal Warrant set out the conditions giving rise to the forfeiture of the medal. It was therefore, ordained that the recipient of the medal who suffered death by sentence of a Court Martial, or, who was dismissed from the military on account of a conviction by the Civil Power⁹ or penal servitude¹⁰ was mandated to forfeit the medal. Ancillary to this, it was ordained that where the recipient of the medal was convicted by the Civil Power, he became liable to forfeit his medal “at the discretion” of the Army Council.

E. The Military Cross

The Royal Warrant pertaining to the Military Cross which was published in the *Supplement to the London Gazette* dated 19th November, 1920, states that the Military Cross was promulgated as a new decoration by His Majesty King George V, on 28th December, 1914. The medal was to be awarded to Officers of certain ranks¹¹ in the Army in cognisance of distinguished and meritorious services in times of war.

⁹ A search on the term Civil Power means “the collective power of the people or the Commonwealth”: <https://www.yourdictionary.com/civil-power>.

¹⁰ Sentenced to imprisonment with hard labour.

¹¹ In particular, it was to be awarded to a Captain, or a Commissioned Officer of a lower grade, or a Warrant Officer Class I or II.

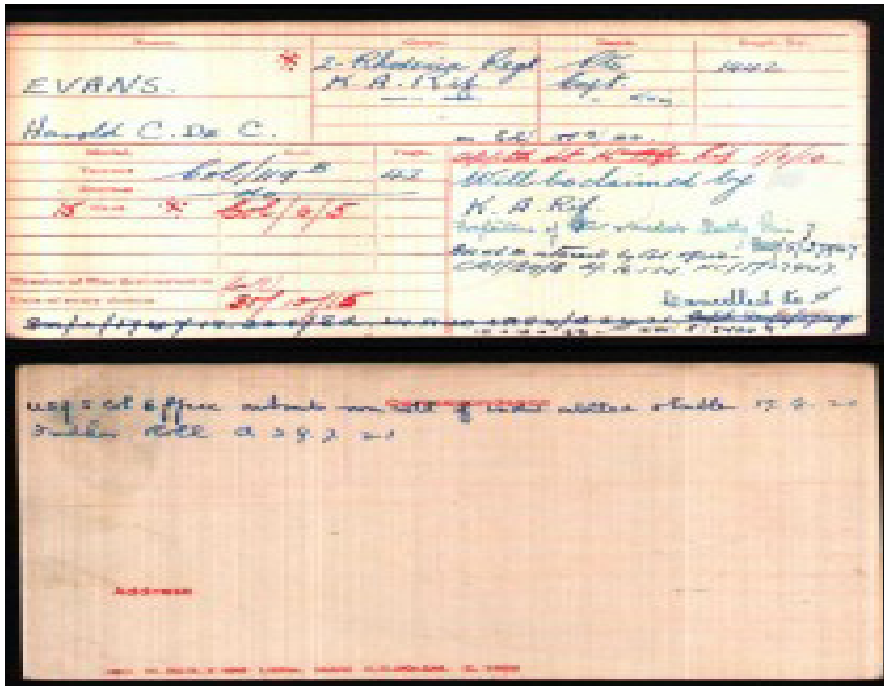
The conditions set out in the Royal Warrant giving rise to the forfeiture of the medal were analogous to those set out above giving rise to the forfeiture of the Distinguished Conduct Medal. Therefore, where a recipient was convicted by the Civil Power he was liable to forfeit his Military Cross “at the recommendation” of the Army Council.

E. Circumstances giving rise to the Decision to forfeit Medals

From the above discussion of the two medals, it is noted that the forfeiture of the same was not mandatory upon the conviction by the Civil Power, but rather, was at the discretion or recommendation of the then Army Council. One major consideration for the council was whether the holder of the honours or medals, has brought the honours system into disrepute. In this regard, the former English Prime Minister, Gordon Brown stated that one of the major considerations is whether the retention of the award or medals would bring the honours system into disrepute. He stated this in his written answer¹² to the House of Commons regarding the forfeiture of medals. Thus, quoting his answer verbatim, he stated that:

The statutes of most orders of knighthood and the royal warrants of decorations and medals include provision for the Queen to “cancel and annul” appointments and awards. Cancellation is considered in cases where retention of the appointment or award would bring the honours system into disrepute. There are no set guidelines for cancellations, which are considered on a case-by-case basis.

¹² “Written Answers for 12 February 2009 (pt 0004)”. House of Commons Hansard.



The cancellation order: HCdeC Evans MC Bar DCM forfeited-2RR-1-2KAR

A. The Law at Present with regard the Forfeiture of Awards

The contemporary law and provisions pertaining to the forfeiture of the various medals awarded by the Crown to members of the military forces, including the Distinguished Conduct Medal and the Military Cross, are now contained under one Royal Warrant which was issued on 10th June, 1985. This Royal Warrant provides that where a recipient of a medal is convicted “by a civil court in respect of which that Court ordered a term of imprisonment of more than 6 months,” he is liable to forfeit his medals to the Crown at the discretion of the Defence Council.

III

Consideration of the Decision to Forfeit Captain Evans' Medals

The decision to cancel and forfeit the medals (particularly, the Distinguished Conduct Medal and the Military Cross) awarded to Captain Evans, as noted above, appeared in the *London Gazette* on the 4th December, 1923. This was several months after the various convictions suffered by Captain Evans. Taking into account the primary object of this article, which is to consider whether the decision to forfeit the awards of Captain Evans was rightly reached or not, this article will not endeavour to discuss the judgments rendered by the Magistrates Court against Captain Evans (judgments which in any case were reaffirmed by the High Court even though there had been no appeal).

The decision to forfeit Captain Evans medals was based on the fact that he had been convicted by the Civil Power and this was noted in the notice of forfeiture published in the *London Gazette* on 4th December, 1923.¹³ The decision pertaining to the forfeiture of his medals was, therefore, not an erroneous one as the Royal Warrants discussed above, relating to the medals, provided that a recipient of the medals who was convicted by the Civil Power was liable to forfeit his medals. It is also worth noting, according to the Royal Warrants as at 19th November, 1920 and which were in force throughout 1923, the term of imprisonment was not a factor to be considered when deciding whether or not to forfeit the medals of a recipient who has been convicted. Therefore, the provision relating to the term of imprisonment in the Royal Warrant of 1985 was not applicable in the case of Captain Evans.

In the alternative, even if the term of imprisonment was a factor that was to be considered, Captain Evans' medals would still have

¹³ Reference to the forfeiture of his medals due to his having been convicted by the Civil Power was particularly noted with regard to the notice of forfeiture concerning the Military Cross. However, considering that the 2 medals were forfeited at the same time it is safe to infer that the decision to do so by the then Army Council was due to the same reason.

been forfeited. This is due to the fact that, the Royal Warrant of 1985 provides that one must have been sentenced to more than 6 months imprisonment, however, Captain Evans was on aggregate sentenced to a term of 24 months imprisonment for the various crimes that he had been found guilty of committing.

IV

Conclusion

In conclusion, this article considered the case of Captain Evans who forfeited the medals awarded to him for his brave and chivalrous acts on the battle field during the First World War, and in particular, for the battles fought within the colonial territories. The primary concern of the article was whether the decision to cancel and forfeit the medals awarded to Captain Evans was right, taking into consideration the conditions in force as at 1923 governing the grant and forfeiture of the medals. The article considered the conditions applicable to the Distinguished Conduct Medal and the Military Cross, as the forfeiture and cancellation of only these medals appear in his file at the National Archives in Lusaka, Zambia.

Captain Evans file at the National Archives reveals that he had been convicted for several offences in 1923 and was sentenced to a total of 24 months' imprisonment. The offences for which he was convicted are assault and assault and battery and sodomy. Although he did not appeal against his convictions, they were all reviewed and affirmed by the High Court.

The article noted that the conditions governing the medals forfeited by Captain Evans provided that a recipient of the medals was liable to forfeit the same upon him being convicted by the Civil Power. Therefore, the decision to have Captain Evans forfeit his medals to the Crown for in consequence of his various convictions was not an erroneous one.