CASE FOR THE APPELLANT

IN THE PRIVY COUNCIL
Civil Appeal No. 8 of 1978
ON APPEAL FROM THE COURT OF APPEAL
OF THE WEST INDIES ASSOCIATED STATES SUPREME COURT
SAINT CHRISTOPHER NEVIS ANGUILLA
SAINT CHRISTOPHER CIRCUIT

BETWEEN:-

THE ATTORNEY GENERAL OF THE STATE OF SAINT CHRISTOPHER NEVIS AND ANGUILLA — DEFENDANT/APPELLANT

vs.

JOHN JOSEPH REYNOLDS — PLAINTIFF/RESPONDENT

Case For The Appellant

1. This is an appeal from a judgement dated the 28th day of November 1977 of the Court of Appeal of the West Indies Associated States Supreme Court Saint Christopher Circuit (St. Bernard C.J. (ag.) Peterkin J. A. and Nedd J. A. (ag.)) dismissing an appeal from a judgement dated the 15th day of October 1976 of the High Court of Justice of the West Indies Associated States Supreme Court Saint Christopher Circuit (Glasgow J.) ordering the Appellant to award the Respondent the sum of $18,000.00.

2. The issues of this appeal depend upon the following provisions of the statues and orders:-

(1) The Leeward Islands (EMERGENCY POWERS) Order in Council 1959 (S.I. 1959/2206).

(2) The Emergency Powers Regulations (Statutory Rules and Orders) 1967 No. 16 of 1967.

(3) The Indemnity Act 1968 No. 1 of 1968 (SKNA).

(4) The Saint Christopher Nevis Anguilla Constitution Order 1967.

Of (1) supra - the provisions relied on are sub-section (1) of Section 3 of the Order of 1959.

"3. ADMINISTRATOR MAY MAKE EMERGENCY LAWS FOR HIS COLONY (1) the Administrator of a colony to which this order applies may, during a period of emergency in that colony make

/such

such laws as appear to him to be necessary or expedient for securing the public safety, the defence of the colony or the maintenance of public order or for maintaining supplies and services essential to the life of the community.

Of (2) supra - the provisions relied on are Regulation 3 of the Emergency Powers Regulations (S.R. & O.) No 16 of 1967.

"3. Detention of Persons (1) If the Governor is satisfied that any person has recently been concerned in acts prejudicial to the public safety, or to public order or in the preparation or instigation of such acts or in impeding the maintenance of supplies and services essential to the life of the community and that by reason thereof it is necessary to exercise control over him, he may make an order against that person directing that he be detained.

"(2) Any person detained in pursuance of this regulation shall be deemed to be in lawful custody and shall be detained in such place as may be authorised by the Governor."

Of (3) supra - the provisions relied on are Sections 3 (1), (2), 5 and 6 of the Indemnity Act 1968 No. 1 of 1968

"3 (1) No action or other legal proceeding whatsoever, whether civil or criminal, shall be instituted in any court of law for or on account of or in respect of any act, matter or thing done, whether within or without the State, during the State of Emergency before the passing of this Act, if done in good faith, and done or purported to be done in the execution of his duty or for the defence of the State or the public safety, or for the enforcement of discipline, or otherwise in the public interest, by a person holding office under or employed in the service of the Crown in any capacity, whether naval, military, air-force, or civil or by any other person acting under the authority of a person so holding office or so employed; and if any such proceeding has been instituted whether before or after the passing of this Act, it shall be

/discharged

discharged and made void:"

Of - Section 3(2) "For the purposes of this section a certificate by a Government Department that any act, matter, or thing was done under the authority of a person so holding office or so employed as aforesaid, or was done in the execution of a duty, shall be sufficient evidence of such authority or duty and of such act, matter, or thing having been done thereunder, or in execution thereof, and any such act, matter, or thing done by or under the authority of a person so holding office or so employed as aforesaid shall be deemed to have been done in good faith unless the contrary is proved."

"5. All laws, Acts, Ordinances, Proclamations, Regulations, Orders, Resolutions and other legislative acts made, issued, passed or done by the House of Assembly, the Cabinet, the Governor, a Minister or any other lawful authority during the State of Emergency before the passing of this act, for the peace, order, or good government of the State shall be deemed to be and always to have been valid and of full effect until repealed or superseded by such lawfully constituted legislative authority of the State, notwithstanding that any such legislative act may have repealed, suspended or been inconsistent with the law previously in force in the State."

"6 This Act shall be deemed to have come into force on the 30th day of May, 1967."

Of (4) supra - The Provisions of the Saint Christopher Nevis and Anguilla Constitution Order 1967 relied on are:-

1. No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases, that is to say:-

(a) in consequence of his unfitness to plead to a criminal charge;

(b) in execution of the sentence or order of a court, whether established for Saint Christopher, Nevis and Anguilla or some other country, in respect of a criminal offence of which he has been convicted;

/(c) in ....

(c) in execution of the order of the High Court or the Court of Appeal punishing him for contempt of that court or of another court or tribunal;

(d) in execution of the order of a court made to secure the fulfilment of any obligation imposed on him by law;

(e) for the purpose of bringing him before a court in execution of the order of a court;

(f) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law of Saint Christopher, Nevis and Anguilla;

(g) under the order of a court or with the consent of his parent or guardian, for his education or welfare during any period ending not later than the date when he attains the age of eighteen years;

(h) for the purpose of preventing the spread of an infectious or contagious disease;

(i) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community;

(j) for the purpose of preventing the unlawful entry of that person into Saint Christopher, Nevis and Anguilla or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Saint Christopher, Nevis and Anguilla or for the purpose of restricting that person while he is being conveyed through Saint Christopher, Nevis and Anguilla in the course of his extradition or removal as a convicted prisoner from one country to another; or

(k) to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Saint Christopher, Nevis and Anguilla, or prohibiting him from being within such an area, or to such extent as may be reasonably justifiable for the taking of proceedings against that person with a view to the making of any such order or relating to such an order after it has been made, or to such extent as may be reasonably justifiable for restraining that person during any visit that he is permitted to make to any part of Saint Christopher, Nevis and Anguilla in which, in consequence of any such order, his presence would otherwise be unlawful.

/(2) Any .....

(2) Any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.

(3) Any person who is arrested or detained -

(a) for the purpose of bringing him before a court in execution of the order of a court; or

(b) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law of Saint Christopher, Nevis and Anguilla,

and who is not released, shall be brought without undue delay before a court.

(4) Where any person is brought before a court in execution of the order of a court in any proceedings or upon suspicion of his having committed or being about to commit an offence, he shall not be thereafter further held in custody in connection with those proceedings or that offence save upon the order of a court.

(5) If any person arrested or detained as mentioned in subsection (3)(b) of this section is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

(6) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person or from any other person or authority on whose behalf that other person was acting.

(7) For the purposes of subsection(1)(b) of this section a person charged before a court with a criminal offence in respect of whom a special verdict has been returned that he was guilty of the act or omission charged but was insane when he did the act or made the omission shall be regarded as a person who has been convicted of an offence and the detention of a person in consequence of such a verdict shall be regarded as detention in execution of the order of a court.

Sections "14. Nothing contained in or done under the authority of a law enacted by the Legislature shall be held to be inconsistent with or in contravention of section 3 or section 13 of this Constitution to the extent that the law authorises the taking during any period of public emergency of measures

/that .....

that are reasonably justifiable for dealing with the situation that exists in Saint Christopher, Nevis and Anguilla during that period".

"15 - (1) When a person is detained by virtue of any such law as is referred to in section 14 of this Constitution the following provisions shall apply, that is to say:-

"(a) he shall, as soon as reasonably practicable and in any case not more than seven days after the commencement of his detention, be furnished with a statement in writing in a language that he understands specifying in detail the grounds upon which he is detained;

"(b) not more than fourteen days after the commencement of his detention, a notification shall be published in the Official Gazette stating that he has been detained and giving particulars of the provision of law under which his detention is authorised;

"(c) not more than one month after the commencement of his detention and thereafter during his detention at intervals of not more than six months, his case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice from among persons who hold the office of magistrate of St. Christopher Nevis and Anguilla or who are entitled to practise as a barrister or a solicitor in Saint Christopher, Nevis and Anguilla;

"(d) he shall be afforded reasonable facilities to consult a legal representative of his own choice who shall be permitted to make representations to the tribunal appointed for the review of the case of the detained person; and

"(e) at the hearing of his case by the tribunal appointed for the review of his case he shall be

/permitted ...

permitted to appear in person or by a legal representative of his own choice.

"(2) On any review by a tribunal in pursuance of this section of the case of a detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his detention to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

"16 - (1) If any person alleges that any of the provisions of Sections 2 to 15 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him (or in the case of a person who is detained if any other person alleges such a contravention in relation to the detained person) then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the High Court for redress.

"17 - (1) The Governor may, by Proclamation which shall be published in the Official Gazette declare that a state of emergency exists for the purposes of this Chapter.

"(2) Every declaration of emergency shall lapse -

"(a) in the case of a declaration made when The Legislature is sitting, at the expiration of a period of seven days begining with the date of publication of the declaration; and

"(b) in any other case, at the expiration of a period of twenty-one days begining with the date of publication of the declaration, unless it has in the meantime been

/approved

approved by a resolution of the House of Assembly supported by the votes of two thirds of all the members of the House.

"41 - (4) No law made by the Legislature shall come into operation until it has been published in the Official Gazette but the Legislature may postpone the coming into operation of any such law and may make laws with retrospective effect."

"103 - (1) The existing laws shall, as from the commencement of this Constitution, be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with The West Indies Act 1967, this Constitution and the Courts Order.

"(2) Where any matter that falls to be prescribed or otherwise provided for under this Constitution by the Legislature or by any other authority or person is prescribed or provided for by or under an existing law (including any amendment to any such law made under this section), that prescription or provision shall, as from the commencement of this Constitution have effect (with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with the West Indies Act 1967, this Constitution and the Courts Order) as if it had been made under this Constitution by the Legislature or, as the case may require, by the other authority or person.

"(3) The Governor may by Order made at any time before 1st September 1967 make such amendments to any existing

/law

law as may appear to him to be necessary or expedient for bringing that law into conformity with the provisions of the West Indies Act 1967, this Constitution and the Courts Order or otherwise for giving effect or enabling effect to be given to those provisions."

"108. The Leeward Islands (Emergency Powers) Order in Council 1959 '(S.I. 1959/2206(1959 I,p.561)) shall cease to have effect as part of the law of St. Christopher Nevis and Anguilla on 1st September, 1967 or such earlier date as the legislature may prescribe."

3.(1) On 30th May, 1967 the Governor of St. Christopher, Nevis and Anguilla issued a proclamation under section 3(2) of the Leeward Islands (Emergency Powers) Order in Council, 1959 (S.I. 1959/2206) and section 17 of the Constitution declaring that a state of public emergency existed in the State. The Proclamation also purported to bring into effect as at 30th May, 1967, the provisions of the 1959 order and sections 14 and 17 of the Constitution. The Emergency Powers Regulations, 1967, were made under section 3(1) of the 1959 order and section 17(1) of the Constitution. p 107, ll, 19, 20 p108 ll,1-9

(ii) On the 10th June, 1967, the Governor's Deputy acting under section 3(1) of The Emergency p109 ll, 3-4

/Powers

Powers Regulations ordered the detention of the Respondent.

(iii) At about 7.50 a.m. on the 11th June, 1967 the Respondent was arrested at his home at Basseterre after the order had been read to him and taken to Her Majestys' Prison in Basseterre where he was detained until his release on the 10th August, 1967. p.110 - 11 1-5 p.110 l 5

(iv) Some time after the commencement of his detention the Respondent was given a document in compliance with section 3(2) of the Constitution, which requires that any person who is arrested or detained shall be informed, as soon as is reasonably practicable and in a language that he understands, of the reasons for his arrest or detention. The reason given for the Respondents' detention was that he, during the year 1967 both within and outside of the State, encouraged civil disobedience throughout the State, thereby endangering the peace, public safety and public order of the State. p.110 ll 14 - 19 p111 ll 1-5

(v) The Respondent alleged that he was unlawfully and maliciously and in bad faith arrested and detained and/or falsely imprisoned as aforesaid by the servants and/or agents of the p.84 ll 15 - 23

/Crown

Crown in right of its Government of the State of Saint Christopher, Nevis and Anguilla in contravention of the provisions of section 3 of Chapter I Schedule 2 of the Saint Christopher Nevis Anguilla Constitution Order 1967.

(vi) The Appellant claims that the Respondent's detention was lawfully enforced by virtue of Detention Orders made and issued by the proper authority, acting in good faith or otherwise in the public interest in the State of Saint Christopher Nevis and Anguilla during a period of public emergency characterised by a Declaration of a State of Emergency proclaimed on the 30th May, 1967. The Appellant also contends that the Respondent's claim ought to be discharged and made void by virtue of the provisions of the Indemnity Act, 1968 No. I of 1968 of the Laws of this State. p.85. ll 9-18

(vii) The action first came on for trial before Glasgow J who gave judgement in the matter on October 15th 1976. The Court held inter alia that in Charles v Phillips and Sealey (1967) 10 W.I.R. 423 the Court of Appeal, on the 10th August, 1967 expressed the view that regulation 3 of the Emergency Powers Regulations, 1967 offends against p92 l 4-18

/section 3

section 3 of the Constitution and has not been shown to be authorised within the provisions of section 14 of the Constitution. The Court accordingly held that the detention order in respect of the appellant Charles was invalid and his detention under the said order unlawful. The detention order in respect of the appellant Charles was made on 13th June, 1967 by the Governor's Deputy, and was similar to the detention order made in respect of the Plaintiff. The judgement of the Court of Appeal in Charles' case was not appealed against. It follows, therefore, that if Charles' detention was unlawful the Plaintiff's arrest and detention were unlawful.

(viii) Glasgow J expressed the view that in his opinion, 'the position here is virtually the same as in England, namely, that the decisions of the Court of Appeal upon questions of law must be followed by the Courts of first instance and are, as a general rule, considered by the Court of Appeal to be binding on itself, until a contrary determination has been arrived at by the Judicial Committee of the Privy Council. There are, however, three exceptions to this rule. Of the three exceptions, the only one which deserves mention in this case is that the Court of Appeal is not bound to p.93 ll.5-15

/follow

follow a decision of its own if given per incuriam Paragraph 1687 of Vol. 22 of Halsbury's Laws of England.
(3rd Edition) refers.

(ix) With regards to the Indemnity Act 1968, No. 1 of 1968 Glasgow J ruled that the Act was unconstitutional, null, void and of no effect in that the said Act of 1968 seeks to prevent the Respondent from having access to the High Court and from alleging that there has been in relation to him a contravention of the provisions of Section 3 of the Constitution. p.94 ll 10-14

(x) Judgement was awarded to the Respondent in the sum of $5,000.00 by Glasgow J.

(xi) By notice of Appeal dated the 25th day of November, 1976, the Appellant appealed to the Court of Appeal of the West Indies Associated States Supreme Court of the Saint Christopher Circuit and a Notice of Respondent dated the 16th day of December, 1976 taken out and served by the Respondent constituted a cross appeal by the Respondent alleging that the award of $5,000.00 awarded to the Respondent by way of damages or compensation was insufficient and unreasonable having regard to p96 pp.104-105 ll 1-11

(a) the period of his detention

/(b) the ...

(b) the physical inconvenience and discomfort suffered by him during such detention;

(c) the place and manner of his detention.

(xii) The judgement of the Court of Appeal was delivered by Peterkin J.A. on 28th November, 1977. The learned judges first itemised the grounds of appeal and having synthesised the evidence in the matter extracted three aspects of the case which fell to be considered, namely the Emergency Powers Regulations, 1967, (S.R. & O. No. 16), the Indemnity Act, 1968, and the detention of the Respondent. The Appellant contended that the decisions in Charles V Phillips and Sealey, 10 W.I.R. 423, and Herbert V Phillips and Sealey 10 W.I.R. 435 are erroneous and the Court of Appeal was invited not to follow those decisions.

pp. 106-125

pp. 85-92

p112 ll 13-15

p112 ll 10-19

(xiii) The Appellant also contended that the Order of 1959 was an "existing law"; that the Order of 1959 was an Order of the Legislature as it then existed; that in relation to a pre-Constitution law the Constitution does not strike it down but rather requires it to be brought into conformity with it by a process of construction in accordance with section 103(1) and (2) of the Constitution.

p. 113 ll 12-18

/(xiv) The .....

(xiv) The Court of Appeal narrowed the issues to result in the determination of the question whether the Court of Appeal is bound by its own previous decisions. The Court though finding itself attracted to the argument of learned Counsel, and expressed the view that it had certain misgivings in respect of some of the findings in Charles V Phillips and Sealey, arrived at the conclusion that the Court of Appeal is bound by its previous decisions and proferred the case of TIVERTON ESTATES LTD. V WEARWELL LTD., 1974 IAER 209, at pages 228 and 229 per Scarman L. J. in support thereof. p.115 ll 3-11

(xv) The Court of Appeal said that 'If Charles V Phillips and Herbert V Phillips have been wrongly decided, then the Judicial Committee of the Privy Council is in my view the only tribunal to set them right. In dealing with the Indemnity Act 1968 No. I of 1968 said that 'It is clear that what the Indemnity Act seeks to do is to amend section 16 of the Constitution. It seeks to take away the fundamental right of access to the High Court by the Respondent which the Constitution ensures to him and which cannot be so easily amended, being an entrenched clause of the Constitution." The Court was therefore of the opinion p.117- ll 2-5 p.122 ll 4-10

/that

that the Indemnity Act is unconstitutional, null and void.

(xvi) In examining the detention of the Respondent the Court without determining where the burden of proof lies came to the conclusion that it was clear from the evidence in this case that the detention of the Respondent has not been shown to have been reasonably justifiable. p 123 ll 16-18

(xvii) The Appellants' Appeal was accordingly dismissed and the cross appeal brought by the Respondent was allowed and the $5,000.00 compensation awarded by Glasgow J. was varied by the Court of Appeal in the sum of $18,000.00 that sum to include a small sum as ex-emplary damages. p 124 ll 6 p. 125 ll 11-14

(xviii) The Appellant respectfully submits that both Courts erred in holding that they were bound by the decisions of the Court of Appeal in Charles V Phillips and Herbert V Phillips. Both Courts failed to appreciate the fact that the Saint Christopher, Nevis and Anguilla Constitution Order 1967 in its Section 16 clothes the High Court with the duty to interpret the Constitution as it sees it within the terms of the Constitution itself and also to interpret the law in such a way as to give same, if at all possible, a peaceful co-existence with the said Constitution.

/Further .....

Further and/or in the alternative the Appellant respectfully submits that the decisions in both Charles V Phillips and Herbert and Phillips were both obviously and palpably wrong in law and were given per incuriam.

(xix) The Appellant respectfully submits that both Courts were wrong in law in deeming the Indemnity Act 1968 No. I of 1968 unconstitutional, null, void and of no effect. The Appellant says that the Indemnity Act sought to do retrospectively that which it could properly have done retrospectively. Further and or in the alternative the Appellant says that the Indemnity Act even if unconstitutional was not void ab initio but voidable inasmuch as the subjects with which it sought to deal are within the competence of the St. Christopher Nevis Anguilla House of Assembly.

Reasons

(1) Because S.16 of the Constitution seeks judicial interpretations from the High Court of the existing laws vis a vis the terms of the Constitution which accord with the terms of the Constitution and not in accordance with cases already decided the decisions of which are not consonant with the Constitution. And further because

/the ...

the decisions in Charles and Phillips and Herbert and Phillips run counter to the Privy Council decisions of (i) B. Surrender Singh Kanda V Gov't. Fed. of Malaya (1962) 28 M.L.J. 169; (ii) Assa Singh V Mentri Bessar Johore (1969) 2 M.L.J. 30 and Francis V Chief of Police (1973) 2 AER 251.

(2) Because S. 41(4) of the Constitution without any delimitation gives the Legislature authority to make laws with retrospective effect - albeit - impliedly within the terms of the Constitution. And further that the Legislature is empowered under S. 103(2) of the Constitution to create laws relating to the personal liberty of the subject.

Henry L. Browne
Of Counsel.

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Defendant/Appellant

vs.

JOHN JOSEPH REYNOLDS

Plaintiff/Respondent

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