

O N A P P E A L

FROM THE COURT OF APPEAL OF THE WEST INDIES
ASSOCIATED STATES SUPREME COURT

B E T W E E N :

THE ATTORNEY GENERAL OF THE
STATE OF ST. CHRISTOPHER NEVIS
AND ANGUILLA

Appellant

- and -

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JOHN JOSEPH REYNOLDS

Respondent

CASE FOR THE RESPONDENT

RECORD

1. This is an appeal by leave of the Court of Appeal of St. Christopher Nevis and Anguilla (St. Bernard C.J. (Ag), Peterkin J.A., and Nedd J.A. (Ag)) from their Judgement, dated 28th November, 1977, which dismissed the Appellant's appeal from a Judgement of the High Court of St. Christopher Nevis and Anguilla (Glasgow J.), dated 15th October 1976, arising out of an action for damages and compensation for assault, battery and false imprisonment commenced by Writ dated the 6th February 1968.

pp.106-126

pp.83-95

p.3

2. By his Statement of Claim, dated 23rd February 1968, the Respondent alleged that on 11th June 1967 certain Police Officers, acting as servants and/or agents of the Crown in right of its Government of the State, without lawful authority and/or in the pretended exercise of lawful authority, unlawfully and maliciously assaulted and beat the Respondent, forcibly took him to prison where in bad faith he was unlawfully, maliciously and falsely imprisoned

pp.6-8

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until the 10th August 1967. Further, and in the alternative, the Respondent alleged that such arrest, detention and imprisonment was in contravention of the provision of section 3 of Chapter I Schedule 2 of the Saint Christopher Nevis Anguilla Constitution Order 1967 (S.l. 1967 No. 228) - hereinafter called "the Constitution".

pp.9-10

3. By his Defence, dated 9th March, 1968, the Appellant said that the said Police Officers were acting in the execution of their duty, that the Respondent's detention was lawful 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 asked the Court to discharge and make void the Respondent's claim by virtue of the provisions of the Indemnity Act 1968 No. 1 of 1968 of the Laws of the State, (hereinafter called "the Indemnity Act 1968").

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p.14

4. By Summons, dated 28th May, 1968, application was made on the part of the Appellant to stay the proceedings brought by the Respondent by virtue of the provisions of the Indemnity Act 1968. The said Summons was heard by Glasgow J. on 7th April, 1973 who having heard Counsel for both parties dismissed the Summons with costs.

p.17

pp.25-30

5. Thereafter, the Appellant applied by summons to have the matter heard by a Judge and special jury. Glasgow J. gave judgement against the Appellant on 21st February 1974, and ordered that the matter be tried by a Judge alone.

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p.31
pp.31-51
pp.51-53
pp.54-56

6. On the 26th July 1976, the matter came for trial before Glasgow J. The Respondent gave evidence and called two witnesses (Basil Egbert Samuels and Livingstone Sadio) in support of his claim. At the close of the Respondent's case, the Appellant stated that he did not propose to call any witnesses.

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p.57

7. Counsel for the Respondent then made the following submissions of law:-

pp.58-59

(i) That the validity of the Indemnity Act 1968 was tested in Suit B 1 of 1968 - Boon v. Attorney General and Renwick J. gave a

decision that the Indemnity Act was unconstitutional. In this action the Court had already ruled on 7th April, 1973 and therefore the Defence could not address argument to the Court on the basis of the Indemnity Act being an answer to the Claim in this Court.

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- 10 (ii) That in respect of the Defendant's justification for the unlawful imprisonment of the Respondent by reason of the provisions of the Emergency Power Regulations 1967, the Court was bound by the decisions of the Court of Appeal of St. Christopher Nevis and Anguilla in Charles v. Sir Fred A. Phillips and Sealey 10 W.I.R. 423 at p.428 and Herbert v. Phillips and Sealey 10 W.I.R. 435. Counsel for the Respondent then made submissions relating to the appropriate damages and/or compensation to which the Respondent was entitled.
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- pp.59-60
- pp.60-61

8. Counsel for the Appellant made the following submissions of law:-

- (i) That there was nothing on the face either of the Emergency Power Regulations 1967 or of the Indemnity Act 1968 to reflect any invalidity and therefore they had to be presumed constitutional until declared otherwise.
- 30 (ii) The Leeward Island (Emergency Powers) Order in Council 1959 ("the 1959 Order") can be saved by S.103 of the Constitution. One must draw a distinction between the availability of the power (for the detention of persons) and its exercise.
- (iii) There is a distinction between a law which is unconstitutional because of lack of legislative competence and a law declared unconstitutional because it violates a prohibition in the Constitution. The former is void ab initio but the latter becomes unenforceable from the point in time when it is declared unconstitutional.
- 40 (iv) The point in time at which the Indemnity Act 1968 became unconstitutional is the date on which judgement was delivered declaring its unconstitutionality.
- pp.62-63
- pp.63-70
- p.71
- p.72

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Counsel for the Appellant then made submissions relating to damages and compensation.

pp.83-95
pp.83-85
p.85

9. Glasgow J. delivered a reserved Judgement on 15th October 1976. Having set out the relevant parts of the pleadings and the issues joined between the parties, the learned judge found, inter alia, the following facts:-

(i) On the 30th May, 1967, the Governor of St. Christopher, Nevis and Anguilla made a proclamation under section 3(2) of the 1959 Order 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 of Sections 14 and 17 of the Constitution. 10

(ii) On 30th May 1967, the Governor made the Emergency Powers Regulations 1967. The preamble to these Regulations states that they are made under S.3(1) of the 1959 Order and Section 17(1) of the Constitution. The relevant part of Regulation 3 reads:- 20

"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. 30

(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 be authorised by the Governor..." 40

(iii) On 10th June 1976, the Governor's Deputy, acting under the above named regulation, ordered the detention of the Respondent. The relevant Order read as follows:-

"WHEREAS I am satisfied with respect to John Reynolds that he has recently been concerned in acts prejudicial to the public safety and to public order I do hereby order and direct that (he) be detained."

(iv) The Respondent was arrested on 11th June, 1967 and detained in Her Majesty's Prison, Basseterre, for two months.

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(The learned judge then set out the facts found concerning the conditions in which the Respondent lived during the period of his detention).

p.88 1.3
- p.90 1.17

(v) During his detention the Respondent was handed a document delivered to him in purported compliance of section 3(2) of the Constitution (which requires that any person who is arrested or detained shall be informed as soon as reasonably practicable of the reasons for his arrest or detention). The reason given for the Plaintiff's detention was that he, during 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.

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p.90 1.18
- p.91 1.7

(The learned judge then considered the evidence relating to the Respondent's career and the effect of the period of detention upon him).

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p.91 1.8
- p.92 1.3

10. The learned Judge then considered the relationship between Regulation 3 of the Emergency Powers Regulations 1967 and sections 3 and 14 of the Constitution. After summarising the Appellant's submissions the learned Judge held himself bound by the Judgements in Charles v. Phillips and Sealey (1967) 10 W.I.R. 423 and Herbert v. Phillips and Sealey (1967) 10 W.I.R.435.

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11. The learned Judge then set out the history of the Appellant's summons to stay the proceedings by virtue of the Indemnity Act 1968 and noted that there had been no appeal in this case nor from the decision on the same point of Renwick J. in Suit No. B.1 of 1968 Boon v. Attorney General with which decision the learned Judge agreed.

p.93 1.16
- p.94 1.18

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p.94 1.19
- p.95 1.17

12. The learned Judge then assessed compensation and summarised the matters he took into consideration in so doing. He gave judgements for the Respondent for \$5,000.00 and costs.

pp.96-102

13. The Appellant appealed to the Court of Appeal of St. Christopher Nevis and Anguilla. The appeal was heard by St. Bernard C.J. (Ag), Peterkin J.A. and Nedd J.A. (Ag) and Judgement was given on 28th November 1977 unanimously dismissing the Appellant's appeal. The Court of Appeal allowed a cross-appeal by the Respondent on the question of damages and/or compensation, varied the amount and awarded to the Respondent the sum of \$18,000.00.

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pp.104-105

p.106 1.4
- p.107 1.18
p.107 1.19
- p.112 1.12

14. In giving the judgement of the Court of Appeal, Peterkin J.A. set out the grounds of appeal relied upon by the Appellant and then summarised the facts as found by the trial Judge. The learned Judge in particular included in his Judgment the following evidence of the Respondent which was said by him to stand uncontroverted:-

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p.111 1.8
- p.112 1.12

"There was a hearing in connection with my detention while I was in prison. It was presided over by Mr. Cecil Hewlett. Mr. Hewlett is now a Judge of the West Indies Associated States Supreme Court. That tribunal heard evidence of all the persons who were detained under the Emergency Regulations, as to what has been done by any of the detainees in connection with our arrest. The Government were represented by Mr. Joseph Archibald who was then Senior Crown Counsel. Mr. Kelsick was representing Boon and Dickenson, Mr. Kawaja was representing myself. Mr. Hemolie was representing Henry St. Charles. That's as far as I can recall. Mr. Dickenson was in one cell with me. Shelton Warner was another. The hearings lasted about 2 weeks. I think they started off early in July. I was present during the course of these hearings. Mr. Hewlett told the Senior Crown Counsel "You have not led any evidence against James Gaskell, Livingstone Sadio and John Reynolds". Mr. Archibald replied "I have no evidence against them". The Chairman, Mr. Hewlett, then told James Gaskell, Livingstone Sadio and myself "Do not attend any other hearings unless you are called". I was never called."

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15. The learned Judge said that three aspects of the matter fell to be considered, namely the Emergency Power Regulations, 1967, (S.R. and O. No. 16), the Indemnity Act, 1968 and the detention of the Respondent. The learned Judge reviewed the Appellant's argument on the validity of the Emergency Powers Regulations 1967 which was that the 1959 Order was an "existing law" which was not struck down by the Constitution but which was required to be brought into conformity with it by a process of construction in accordance with section 103(1) and (2) of the Constitution which read,

p.112 1.13-15

p.112 - 1.16 -
p.115 1.2

"(1) The existing laws shall, as from the commencement of this Constitution, be construed with such modification, 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.

p.114

(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".

The learned Judge considered that he was bound by the previous decisions of the Court of Appeal in Charles v. Phillips and Sealey and Herbert v. Phillips and Sealey and he cited a passage from the Judgement of Scarman L.J. in Tiverton Estates Limited v. Wearwell Limited (1974) 1 A.G.R. 209 at pp.228 and 229 in support of his decision.

p.116 11.17-18

p.115 1. 8 -
p.116 1.15

16. The learned Judge then set out sections 3 and 5 of the Indemnity Act 1968 which read as follows:-

p.117 1. 11
- p.120 1.7

"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, airforce, 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 and made void: 10 20

Provided that this section shall not prevent -

- (a) the institution or prosecution of proceedings on behalf of Her Majesty or any Government Department of the State;
- (b) the institution or prosecution of proceedings in respect of any rights under or alleged breaches of, contract, if the proceedings are instituted within one year from the termination of the State of Emergency or the date when the cause of action arose, whichever may be the later. 30

(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. 40

5. All laws, Acts, Ordinances, proclamations, regulations, orders, resolutions and other

10 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."

20 The learned Judge construed those sections as
purporting not only to deem legal and constitutional
the detention of the Respondent during the state of
emergency as therein defined but also to prohibit
his taking any action whatsoever before any Court
to determine the legality of his detention. The
learned Judge thought that the effect of the
Indemnity Act would be that the legality or
otherwise of any act of arrest or detention, even
if done in total disregard of the Constitution,
and however capricious, would not be justiciable.
Section 16 of the Constitution reads:-

p.120 11.8-15

30 "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.

p.120 1.16
- pp.122 1.3

40 (2) The High Court shall have original
jurisdiction -

- (a) to hear and determine any application
made by any person in pursuance of sub-
section (1) of this section; and
- (b) to determine any question arising in
the case of any person which is referred
to it in pursuance of sub-section (3) of
this section

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and may make such declarations and orders issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of sections 2 to 15 (inclusive) of this Constitution:

Provided that the High Court may decline to exercise its powers under the subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law." 10

p.122 11.
4-10 The learned Judge concluded that the Indemnity Act sought to amend Section 16 of the Constitution by taking away the fundamental right of access to the High Court by the Respondent which the Constitution ensured to him and that in his opinion the Indemnity Act was therefore unconstitutional, null and void.

p.122 1.11 17. The learned Judge then turned to the question of the Respondent's detention. He rejected the Appellant's argument that the evidence showed that the Respondent was aware of the reasons for his arrest. The learned Judge took the Respondent's evidence to be his version of what he thought the other side's reason for arresting him, not what they were in fact. In the view of the learned Judge, the fact that a person is detained during a State of Emergency does not per se make that detention lawful. In order to make his detention lawful it must be shown that the detention of the Respondent was reasonably justifiable for dealing with the situation that existed in the State during the State of Emergency. The learned Judge found that on the evidence the detention of the Respondent had not been shown to have been reasonably justifiable. He concluded that the detention of the Respondent was unlawful irrespective of the Constitutionality of all or any of the Acts, Orders, or Regulations which governed or purported to govern his detention and that accordingly, for the reasons given, he would dismiss the Appellant's appeal. 20

p.123 11.2-9
p.123 11.11-15 30

p.123 11.16-18
p.124 11.2-7 40

p.124 1.8
- p.125 1.14 18. The learned Judge then considered the Respondent's cross-appeal. He reviewed the facts of the Respondent's detention and came to the conclusion that the sum awarded by Glasgow J. was wholly inadequate. He considered that the

damages should be aggravated and he allowed the cross-appeal, varied the amount and awarded to the Respondent \$18,000.00 to include a small sum as exemplary damages.

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19. The Appellant was granted leave to appeal to Her Majesty in Council by Order dated the 30th November, 1977.

p.127

10 20. The Respondent respectfully submits that this Appeal ought to be dismissed and the Judgements of Glasgow J. in the High Court, and of St. Bernard C.J. (Ag), Peterkin J.A. and Nedd J.A. (Ag) in the Court of Appeal, were correct. It is respectfully submitted that the Respondent was unlawfully detained and falsely imprisoned; that the Respondent's detention and its enforcement were not made lawful by virtue of the Detention Order made under the Emergency Powers Regulations 1967 nor by virtue of the provisions of the Indemnity Act 1968.

20 21. The Respondent respectfully submits that the Judgements of the High Court and of the Court of Appeal of St. Christopher Nevis and Anguilla are right and ought to be affirmed and that this appeal ought to be dismissed with costs for the following (among other)

R E A S O N S

30 (1) BECAUSE the Emergency Power Regulations 1967 were invalid and that S.3 thereof offends against section 3 of the Constitution and has not been shown to be authorised within the provisions of section 14 of the Constitution. Charles v. Phillips and Sealey (1967) 10 W.I.R. 423 and Herbert v. Phillips and Sealey (1967) 10 W.I.R. 435 were correctly decided.

(2) BECAUSE the Indemnity Act 1968 (and particularly Sections 3, 5 and 6 thereof) contravenes and/or seeks to amend S.16 of the Constitution and thereby to take away the Respondent's right of access to the High Court and which is therefore null and void.

40 (3) BECAUSE the detention of the Respondent was unlawful irrespective of the Constitutionality of all or any of the Acts, Orders or Regulations which governed or purported to govern his detention.

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- (4) BECAUSE of the other reasons in their respective Judgements given by Glasgow J. (Ag) and Peterkin J.A.
- (5) BECAUSE the award of \$18,000.00 made by the Court of Appeal was a proper award on the evidence and because on the Pleadings it was open to the Court of Appeal to include in that award a small sum as exemplary damages.

JONATHAN HARVIE.

IN THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL OF THE WEST
INDIES ASSOCIATED STATES SUPREME
COURT

B E T W E E N :

THE ATTORNEY GENERAL OF
THE STATE OF ST. CHRISTOPHER
NEVIS AND ANGUILLA Appellant

- and -

JOHN JOSEPH REYNOLDS Respondent

CASE FOR THE RESPONDENT

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