3/19

THE RECORD

IN THE PRIVY COUNCIL NO. 8 OF 1978

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

BETWEEN :

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

Defendant/Appellant

AND

JOHN JOSEPH REYNOLDS

Plaintiff/Respondent

THE RECORD

IN THE PRIVY COUNCIL No. of 197

ON APPEAL FROM THE COURT

OF APPEAL OF THE WEST INDIES

ASSOCIATED STATES SUPREME

COURT

STATE OF SAINT CHRISTOPHER NEVIS ANGUILLA

SAINT CHRISTOPHER CIRCUIT

(CIVIL)

A.D.1973

BETWEEN:

THE ATTORNEY-GENERAL OF THE STATE OF SAINT CHRISTOPHER NEVIS ANGUILLA — Defendant/Appellant

AND

JOHN JOSEPH REYNOLDS — Plaintiff/Respondent

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IN THE HIGH COURT OF JUSTICE

STATE OF SAINT CHRISTOPHER NEVIS ANGUILLA

(CIVIL)

SAINT CHRISTOPHER CIRCUIT

NO. OF SUIT 15 of 1968

BETWEEN:-

JOHN JOSEPH REYNOLDS — Plaintiff

AND

THE ATTORNEY-GENERAL OF THE STATE OF SAINT CHRISTOPHER NEVIS ANGUILLA — Defendant

ELIZABETH THE SECOND, by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and of Our other Realms and Territories Queen, Head of the Commonwealth. Defender of the Faith.

To The Attorney General of the State of St. Christopher Nevis Anguilla of Attorney General's Chambers, Government Headquarters, Basseterre

We Command you, that within eight days after the service of this writ on you inclusive of the day of such service you

10 do cause an appearance to be entered for you in an action at the suit of John Joseph Reynolds.

/The Bay Road.....

The Bay Road, Basseterre, St. Kitts

and take notice, that in default of your so doing, the Plaintiff may proceed therein and judgment may be given in your absence.

Witness The Honourable Allan Lewis, Chief Justice of the West Indies Associated States Supreme Court, the 6th day of February 1968

Note:- This writ may not be served more than 12 Calendar months after the above date unless renewed by order of the Court.

The defendant may enter an appearance in person or by a solicitor either (1) by handing in the appropriate forms, duly completed at the Registry of the High Court or (2) by sending them to that office by post.

Form No. 1

INDORSEMENT OF CLAIM

THE PLAINTIFF CLAIMS damages and compensation for assault and battery and false imprisonment.

(Sgd.) Frederick Kelsick
Solicitor for the Plaintiff

This writ was issued by FREDERICK EDGAR KELSICK of Chambers, South Square Street, Basseterre in the Circuit of St. Christopher whose address for service is the same

Solicitor for the said plaintiff who resides at The Fortlands, Basseterre, St, Kitts.

IN THE HIGH COURT OF JUSTICE

ENTRY OF APPEARANCE

SAINT CHRISTOPHER NEVIS ANGUILLA

SAINT CHRISTOPHER CIRCUIT

BETWEEN:

THE ATTORNEY-GENERAL OF THE STATE OF SAINT CHRISTOPHER NEVIS ANGUILLA	DEFENDANT/APPELLANT
AND	
JOHN JOSEPH REYNOLDS	PLAINTIFF/RESPONDENT

To: The Registrar,

Supreme Court.

ENTER AN APPEARANCE for the Attorney-General of the State of Saint Christopher Nevis and Anguilla, the defendant in this action.

DATED the 10th day of February, 1968.

(Sgd). Eugene Walwyn
the Defendant whose address
for service is c/o The
Attorney-General's Chambers,
Basseterre, St. Kitts.

IN THE HIGH COURT OF JUSTICE

NOTICE OF APPEARANCE

SAINT CHRISTOPHER NEVIS ANGUILLA

SAINT CHRISTOPHER CIRCUIT

BETWEEN:

THE ATTORNEY-GENERAL OF THE STATE OF SAINT CHRISTOPHER NEVIS ANGUILLA	DEFENDANT/APPELLANT
AND	
JOHN JOSEPH REYNOLDS	PLAINTIFF/RESPONDENT

To: Frederick E. Kelsick Esq., M.A. LL.B.(Cantab),
Solicitor for the Plaintiff,
Chambers,
Basseterre,
St. Kitts.

TAKE NOTICE that appearance has been entered in this action for the Attorney-General of Saint Christopher Nevis and Anguilla, the defendant in this action.

DATED the 10th day of Februry, 1968.

(Sgd.) Eugene Walwyn,
the Defendant whose address for service is c/o the Attorney-General's Chambers, Basseterre, St. Kitts.

IN THE HIGH COURT OF JUSTICE

STATEMENT OF CLAIM

SAINT CHRISTOPHER NEVIS ANGUILLA

SAINT CHRISTOPHER CIRCUIT

BETWEEN:

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

AND

JOHN JOSEPH REYNOLDS — PLAINTIFF/RESPONDENT

1. The Plaintiff resides at Basseterre, St. Christopher in the State of Saint Christopher Nevis Anguilla and was at all material times a retired Inspector of the St. Kitts-Nevis-Anguilla Police Force and was in employment as a mercantile clerk.

2. The Defendant is sued in his style and title and capacity as Attorney-General of the State of St. Christopher Nevis Anguilla pursuant to the provisions of Section 13 (2) of the Crown Proceedings Ordinance Chapter 22 of the Laws of St. Christopher Nevis Anguilla.

10

3. On the 11th day of June, 1967 at Basseterre, St. Christopher certain police officers of the aforesaid State acting as the servants and/or agents of the Crown in right of its Government of the aforementioned State

/without .....

without lawful authority and/or in the pretended exercise of lawful authority unlawfully and maliciously assaulted and beat the Plaintiff forcibly took him to Her Majesty's Prison at Basseterre where he was in bad faith unlawfully and maliciously and falsely imprisoned and remained so unlawfully and maliciously and in bad faith and falsely imprisoned until the 10th day of August, 1967.

4. Further and in the alternative and by reason of the aforementioned matters the Plaintiff was unlawfully and maliciously and in bad faith arrested and detained and/or falsely imprisoned as aforesaid by the said servants and/or agents of the Crown in right of its Government of the State of Saint Christopher Nevis Anguilla in contravention of the provision of Section 3 of Chapter 1 Schedule 2 of the Saint Christopher Nevis Anguilla Constitution Order 1967.

5. By reason of the matters hereinbefore mentioned the Plaintiff was deprived of his liberty was unable to follow his calling as aforesaid was put to great inconvenience, discomfort and expense and has suffered severe damage.

AND the Plaintiff claims:-

1. Damages for assault, battery and false imprisonment.

/2. Further .....

2. Further and/or in the alternative compensation pursuant to the provisions of Section 3 (6) of Chapter 1 Schedule 2 of the Saint Christopher Nevis Anguilla Constitution Order 1967.

3. Such further and other relief as may be just and equitable.

4. Costs.

Dated the 23rd day of February, 1968.

(Sgd.) Frederick Kelsick
of Chambers, South Square Street,
Basseterre, St. Christopher,
Solicitor for the Plaintiff.

To: The Hon.,
The Attorney-General of the State of
St. Christopher Nevis Anguilla,
Government Headquarters,
Basseterre,
St. Kitts.

Delivered the 23rd day of February, 1968

IN THE HIGH COURT OF JUSTICE

DEFENCE

SAINT CHRISTOPHER NEVIS ANGUILLA

SAINT CHRISTOPHER CIRCUIT

BETWEEN:

THE ATTORNEY-GENERAL OF THE STATE OF SAINT CHRISTOPHER NEVIS ANGUILLA	DEFENDANT/APPELLANT
AND	
JOHN JOSEPH REYNOLDS	PLAINTIFF/RESPONDENT

1. The defendant admits the facts stated in paragraph 1 of the Statement of Claim.

2. The defendant denies the allegations set out in paragraphs 3, 4, and 5 of the Statement of Claim.

3. As to so much of the Statement of Claim as alleges assault and battery and/or false imprisonment the defendant says the police officers referred to in paragraph 3 of the Statement of Claim were on the 11th day of June, 1967 acting in the lawful execution of their duty and did not assault and beat the plaintiff as he alleges or in any way at any time.

4. The defendant admits that the plaintiff was detained at Her Majesty's Prison, Basseterre, St. Kitts, during the

/period stated....

period stated in the Statement of Claim, but says that this 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.

5. The plaintiff's claim ought to be discharged and made void by virtue of the provisions of the Indemnity Act, 1968, No. 1 of 1968, of the Laws of this State.

6. Save as is herein expressly admitted, the defendant denies each and every allegation contained in the plaintiff's Statement of Claim, as if the same were set out traversed seriatim.

Dated this 9th day of March, 1968.

(Sgd.)Eugene Walwyn
Attorney-General.

Delivered this 9th day of March, 1968.

To: Frederick E. Kelsick, Esq., M.A.;LL.B.(Cantab.),
Solicitor for the Plaintiff,
Chambers,
Basseterre,
St. Kitts.

IN THE HIGH COURT OF JUSTICE

JOINDER OF ISSUE

SAINT CHRISTOPHER NEVIS ANGUILLA

SAINT CHRISTOPHER CIRCUIT

BETWEEN:

THE ATTORNEY-GENERAL OF THE STATE OF SAINT CHRISTOPHER NEVIS ANGUILLA	DEFENDANT/APPELLANT
AND	
JOHN JOSEPH REYNOLDS	PLAINTIFF/RESPONDENT

The Plaintiff joins issue with the Defendant on his Defence.

Dated the 14th day of March, 1968.

(Sgd.) Frederick Kelsick
Solicitor for the Plaintiff

To: Eugene Walwyn Esq.,
Attorney-General,
St. Kitts.

IN THE HIGH COURT OF JUSTICE

ENTRY OF ACTION FOR TRIAL

SAINT CHRISTOPHER NEVIS ANGUILLA

SAINT CHRISTOPHER CIRCUIT

BETWEEN:

THE ATTORNEY-GENERAL OF THE STATE OF SAINT CHRISTOPHER NEVIS ANGUILLA	DEFENDANT/APPELLANT
AND	
JOHN JOSEPH REYNOLDS	PLAINTIFF/RESPONDENT

ENTER this Action for Trial.

Dated the 26th day of March, 1968.

(Sgd.) Frederick Kelsick,
Solicitor for the Plaintiff.

IN THE HIGH COURT OF JUSTICE

NOTICE OF ENTRY OF ACTION FOR TRIAL

SAINT CHRISTOPHER NEVIS ANGUILLA

SAINT CHRISTOPHER CIRCUIT

BETWEEN:

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

AND

JOHN JOSEPH REYNOLDS — PLAINTIFF/RESPONDENT

TAKE NOTICE of trial of this action for Monday the 8th day of April, 1968, at the Court House, in the town of Basseterre, in the Island of Saint Christopher.

Dated the 26th day of March, 1968

(Sgd.) Frederick Kelsick,
Solicitor for the Plaintiff.

To: The Hon.,
The Attorney-General,
Attorney-General's Chambers,
Basseterre.

Delivered the 26th day of March, 1968

1968 R. No. 15

IN THE WEST INDIES ASSOCIATED STATES SUPREME COURT

HIGH COURT

SAINT CHRISTOPHER CIRCUIT

BETWEEN:

JOHN JOSEPH REYNOLDS — Plaintiff

AND

THE ATTORNEY-GENERAL OF THE STATE OF SAINT CHRISTOPHER, NEVIS AND ANGUILLA — Defendant

SUMMONS

Let all parties concerned attend the Judge in Chambers at the Supreme Court House in the Town of Basseterre in the Island of Saint Christopher, on Tuesday the 4th day of June, 1968, at ten o'clock in the forenoon, on the hearing of an application on the part of the Defendant to stay proceedings herein brought by the Plaintiff, by virtue of the provisions of the Indemnity Act, 1968, No.1 of 1968 of the Laws of this State, and for the costs of the action and of this Summons.

Dated the 28th day of May, 1968

This Summons was taken out by Messrs. Adams, Walwyn & Brookes, of Central Street, Basseterre, St. Kitts, Solicitors for the Attorney-General.

To: Frederick E. Kelsick, Esq., M.A.; LL.B.,
Chambers,
South Square Street,
Basseterre, St. Kitts.
Solicitor for the Plaintiff.

C E R T I F I C A T E

issued pursuant to Section 3 (2) of the Idemnity Act, 1968, No. 1 of 1968 of the Laws of the State of Saint Christopher, Nevis and Anguilla

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I, ROBERT LLEWELLYN BRADSHAW of the Town of Basseterre in the Island of Saint Christopher, Premier of the State of Saint Christopher, Nevis and Anguilla and Minister for Home Affairs in the Government of the said State, hereby certify that

John Reynolds

was lawfully taken into custody by certain Police Officers of this said State acting in the execution of their duty and was also lawfully detained in Her Majesty's Prison in the Town of Basseterre aforesaid on the 11th day of June, 1967, pursuant to a Detention Order dated the 10th day of June, 1967, and signed by His Excellency the Governor's Deputy and made under and by virtue of the Leeward Islands (Emergency Powers) Order in Council, 1959; S.I. 1959, No. 2206); section 17 (1) of the Constitution of Saint Christopher, Nevis and Anguilla, the Proclamation

/declaring.....

declaring a period of emergency in the said State, as published in Statutory Rules and Orders, 1967, No. 15 of 1967; and the Emergency Powers Regulations, 1967, published in Statutory Rules and Orders, 1967, No. 16 of 1967.

Certified and dated at Government Headquarters, Church Street, in the Town of Basseterre in the Island of Saint Christopher, this 13th day of May, 1968.

(sgd.) Robert Llewellyn Bradshaw,

Robert Llewellyn Bradshaw
Premier/Minister of Home Affairs.

IN THE HIGH COURT OF JUSTICE

STATE OF ST CHRISTOPHER NEVIS ANGUILLA

SAINT CHRISTOPHER CIRCUIT

(CIVIL)

Suit No. 15 of 1968

BETWEEN:

JOHN JOSEPH REYNOLDS — PLAINTIFF

and

THE ATTORNEY GENERAL OF THE STATE OF SAINT CHRISTOPHER-NEVIS-ANGUILLA — DEFENDANT

Before the Hon. Mr. Justice Eardley Glasgow

On the 7th day of April, 1973.

UPON reading the Defendant's Summons dated the 28th day of May, 1968 and filed herein on the said 28th day of May, 1968, and upon hearing Mr. Frederick E. Kelsick of Counsel for the Plaintiff and Mr. Eugene Walwyn of Counsel for the Defendant thereon IT IS ORDERED that the Defendant's said Summons be dismissed and the Costs, to be taxed, of and occasioned by this Summons be the Plaintiff's in any event.

By the Court.

Sd. H. Matadial
Registrar.

IN THE WEST INDIES ASSOCIATED STATES SUPREME COURT

HIGH COURT

SAINT CHRISTOPHER CIRCUIT

Between:

John Joseph Reynolds — Plaintiff

and

The Attorney-General of the State of Saint Christopher Nevis Anguilla — Defendant

Application

Let all parties concerned attend the Honourable Mr. Justice E. Glasgow on the 3rd day of March, 1973 at 9 o'clock in the forenoon at the Court House, Basseterre, on the hearing of an application in the above matter by the Defendant pursuant to the provisions of Cap. 38 Section (2) of the Laws of the State for an order that the above matter be tried by a judge and Special Jury.

Dated this 24th day of February, 1973.

(Sgd) Eugene Walwyn
for Adams Walwyn & Brookes

This Summons was taken out by Messrs. Adams, Walwyn & Brookes, of Central Street, Basseterre, St. Kitts, Solicitors for the Attorney-General.

To: Frederick E. Kelsick, Esq.,M.A.,LL.B.,
Chambers,
South Square Street,
Basseterre, St. Kitts.
Solicitor for the Plaintiff.

1968 R. No.15

IN THE WEST INDIES ASSOCIATED STATES SUPREME COURT

HIGH COURT

SAINT CHRISTOPHER CIRCUIT

Between

JOHN JOSEPH REYNOLDS Plaintiff

and

THE ATTORNEY-GENERAL OF THE STATE OF SAINT CHRISTOPHER, NEVIS AND ANGUILLA Defendant

S U M M O N S

Let all parties concerned attend the Honourable Mr.Justice Eardley Glasgow on the 3rd day of March, 1973 at 9 o'clock in the forenoon in the Court House, Basseterre, on the hearing of an application in the above matter by the Defendant pursuant to the provisions of Order 70 Rule 3 of the Rules of the Supreme Court 1939 that the Notice of Action for trial and Entry of Action for trial be set aside on the grounds that Order 30 of Cap. 79, Rules of the Supreme Court, St. Christopher, has not been complied with.

10 Dated the 24th day of February, 1973

Sd. Eugene Walwyn

for Adams, Walwyn & Brookes,

Solicitors.

This Summons was taken out by Messrs. Adams, Walwyn & Brookes, of Central Street, Basseterre, St. Kitts, Solicitors for the Attorney-General.

To: Frederick E. Kelsick, Esq., M.A., LL.B.,
Chambers,
South Square Street,
Basseterre,
St. Kitts.

Solicitor for the Plaintiff.

Saint Christopher Circuit

IN THE HIGH COURT OF JUSTICE

(CIVIL)

Suit No. 15 of 1968

Between:

John Joseph Reynolds — Plaintiff

and

The Attorney General of the State of St. Christopher-Nevis-Anguilla — Defendant

F. E. Kelsick and C. Wilkin for Plaintiff

M. Davis Q.C., E. Walwyn and L. Moore (Attorney General) for Defendant

Wednesday 28th February, 1973

R U L I N G

The Plaintiff in this action was bound under Order 30 rule 1 of the Old Rules, to take out a Summons for directions. He did not do so. His failure to do so must be treated as an irregularity. The Entry for Trial and the Notice of Entry of Action for Trial filed by the Plaintiff are both irregular since they should have followed the Summons for directions.

/ In pursuance.....

In pursuance of the Provisions of Order 2 Rule 1 of the Rules of the Supreme Court (Revision) 1970, I hereby set aside the said Entry for Trial and the Notice of Entry of Action for Trial and order that the Plaintiff do take out a Summons for directions under Order 25 of the 1970 Rules within seven days from the date hereof, such Summons to be returnable in 14 days.

Sd. E.F. Glasgow

Puisne Judge.

IN THE WEST INDIES ASSOCIATED STATES SUPREME COURT

HIGH COURT

SAINT CHRISTOPHER CIRCUIT

BETWEEN:

John Joseph Reynolds	Plaintiff
and	
The Attorney-General of the State of Saint Christopher-Nevis-Anguilla	Defendant

Summons for Direction

Let all parties concerned attend the Honourable Mr. Justice Eardley Glasgow on the 17th day of March 1973 at 9 o'clock in the forenoon at the Court House, Basseterre on the hearing of an application for directions in this action.

(1) That trial of this action should be by a Judge with special jury.

Dated this 24th day of February, 1973

(Sgd.) Eugene Walwyn
for Adams, Walwyn & Brookes

This Summons was taken out by Messrs. Adams, Walwyn & Brookes, of Central Street, Basseterre, St. Kitts, Solicitors for the Attorney-General.

To: Frederick E. Kelsick, Esq., M.A., LL.B.,
Chambers,
South Square Street
Basseterre, St. Kitts
Solicitors for the Plaintiff.

IN THE HIGH COURT OF JUSTICE

STATE OF SAINT CHRISTOPHER NEVIS ANGUILLA

SAINT CHRISTOPHER CIRCUIT

(CIVIL)

Suit No.15 of 1968

Between:

JOHN JOSEPH REYNOLDS — PLAINTIFF

and

THE ATTORNEY GENERAL OF THE STATE OF SAINT CHRISTOPER NEVIS ANGUILLA — DEFENDANT

O R D E R

Before Mr. Justice Eardley Glasgow

Dated the 28th day of February, 1973

UPON THE APPLICATION of the Defendant in open Court after the commencement of the trial and UPON HEARING Counsel for the Defendant and for the Plaintiff IT IS ORDERED that the Entry for Trial and the Notice of Entry of Action for Trial filed by the Plaintiff in this Action be set aside.

AND IT IS ORDERED that the Plaintiff do take out a Summons for Directions within seven days from the date hereof such Summons to be returnable in 14 days.

By the Court

Sd. H. Matadial
Registrar.

IN THE HIGH COURT OF JUSTICE

(CIVIL)

Suit No. R 15 of 1968

Between

JOHN JOSEPH REYNOLDS — Plaintiff

and

THE ATTORNEY-GENERAL OF THE STATE OF SAINT CHRISTOPHER-NEVIS-ANGUILLA — Defendant

F. E. Kelsick and C. L. Wilkin for Plaintiff

Attorney-General (L. L. Moore) and M. Davis, Q.C., for Defendant

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1974 Jan. 31 Feb. 21

IN CHAMBERS

J U D G M E N T

GLASGOW, J.

The Defendant, by his solicitors, Adams, Walwyn & Brookes filed a summons on the 23rd February, 1973, applying for an order "pursuant to the provisions of Cap. 38 section 20 (2) of the Laws of the State" that the above matter be tried by a judge and special jury.

Section 20 (2) of the Jury Act (Cap. 38) provides that a Judge may, at any time, on the application of any party

/to any.....

to any civil proceeding, order that the proceeding be tried by a Judge and special jury upon such terms as he may think fit, and may appoint a special day on which the trial shall commence.

At the hearing of the summons, Mr. Davis stated that under subsection (2) (b) of Section 28 of the Supreme Court Act (Cap. 79) the Defendant was entitled to have the action tried with a jury unless the Court was of opinion that the trial thereof requires any prolonged examination of documents or accounts or any scientific or local examination which cannot conveniently be made with a jury. Mr. Davis also referred to section 20 (2) of the Jury Act (Cap. 38) and stated that the Jury Act provides for trial by jury in certain cases. Mr. Davis pointed out that under section 28 of the Supreme Court Act the Defendant's entitlement to have the action tried with a judge and jury was dependent on the success of an earlier summons by which the Defendant sought to have set aside a Notice of Entry of Action for Trial and an Entry of Action for trial which were alleged to have been entered irregularly by the Plaintiff.

Mr. Kelsick stated that section 28 of the Supreme Court Act (Cap. 79) which came into force on the 1st January,

/1940, ...

1940, seems to repeal by implication Section 20 (2) of the Jury Act (Cap. 38), which came into force on the 1st July,1914.

At page 191 of Maxwell on Interpretation of Statutes (12th Edition), the following passage occurs:-

> "A later Statute may repeal an earlier one either expressly or by implication. But repeal by implication is not favoured by the courts ..... If, therefore, earlier and later statutes can reasonably be construed in such a way that both can be given effect to, this must be done."

It is now necessary to examine the provisions of section 20 of the Jury Act and the provisions of section 28 of the Supreme Court Act with a view to seeing whether they can reasonably be construed in such a way that both can be given effect to.

Subsection (1) of Section 20 of the Jury Act empowers any party to any civil proceeding <u>who is entitled to have the same tried by a Judge and jury</u>, to have the same tried by a Judge and special Jury, on giving notice in writing to that effect to the other party to the proceeding, and also to the Registrar of the Circuit

/ in which .....

in which the trial is to be held such notice to be given not less than 14 days before the day fixed for the holding of the Circuit Court at which the proceeding is to be tried. It is important to note that subsection (1) of section 20 of the Jury Act applies only to parties who are entitled to have their civil proceedings tried by a Judge and jury.

Subsection (2) of Section 20 of the Jury Act provides that a Judge may, at any time, on the application of any party to any civil proceeding order that the proceeding be tried by a Judge and special jury upon such terms as he may think fit, and may appoint a special day on which the trial shall commence.

Subsection (1) of Section 28 of the Supreme Court Act provides that subject as thereinafter provided, any action to be tried before the Court may, in the discretion of the Court or a Judge, be ordered to be tried with or without a jury: Provided that the mode of trial shall be by a Judge without a jury unless upon the application of any party to the action, a trial with a jury is ordered.

Subsection (2) of Section 28 of the Supreme Court Act

/provides .....

provides that any party to the action may within ten days after the action has been set down for trial apply to have the action tried with a jury, and if the Court or a Judge is satisfied that -

(a) a charge of fraud against the party; or

(b) a claim in respect of libel, slander, malicious prosecution, false imprisonment, seduction or breach of promise of marriage

is in issue, the action shall be ordered to be tried with a jury unless the Court or a Judge is of opinion that the trial thereof requires any prolonged examination of documents or accounts or any scientific or local investigation which cannot conveniently be made with a jury; but that, save as aforesaid the granting of a jury shall in every case be discretionary.

It will be seen that section 28(2) of the Supreme Court Act makes it necessary for a party who desires his action to be tried by a Judge and jury, to apply to a Court or Judge within ten days after the action has been set down for trial, for an order that the action be tried with a Judge and jury. I am of the view that failure to apply to the Court or a Judge within the time stated in section 28 (2) of the Supreme Court Act is fatal, and that in such a case the mode of trial

/must be .....

must be by a Judge without a jury. The fact that the Supreme Court Act does not empower the Court or a Judge to extend the period of ten days specified in section 28 (2) of the said Act is significant. The Court's power to extend time contained in Order 3 rule 5 of the Rules of the Supreme Court 1970, relates only to the time within which a person is required or authorised by the Rules of the Supreme Court, or by any judgment, order or discretion, to do any act in any proceedings.

10 In my judgment, section 28 of the Supreme Court Act repeals by implication the whole of section 20 of the Jury Act. In the result, the Defendant's application is too late and must be dismissed with costs. Ordered accordingly.

(Sd.) E. F. Glasgow
Puisne Judge.

Monday 26th July 1976

Suit 15/68

JOHN JOSEPH REYNOLDS

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

Mr. F. E. Kelsick for Plaintiff

Attorney-General (Mr. L. Moore) for Defendant with him Messrs H. Browne and Tapley Seaton.

Mr. Kelsick calls -

John Joseph Reynolds sworn says:-

Live Bay Road, Irish Town, Basseterre. I help to keep the books and the storeroom at the Ocean Terrace Inn, Basseterre. I am 66 years old. Immediately prior to 10/6/67 I was working as manager of the Esso Service Station, Basseterre. That is situated at the corner of Fort and Cayon Streets. Prior to that I had been a member of the Leeward Islands Police Force and later on the St. Kitts Nevis and Anguilla Police Force. I retired from the Police Force on 26/10/64 with the rank of Inspector of Police.

On 11/6/67 at about ten minutes to 8 a.m. I was home and the Police came to my residence - Inspector Delsol

/and others....

and others. Inspector Delsol read to me a statement and arrested me. He gave me a paper. It was the same thing he had read out to me. This is the paper that Inspector Delsol read out to me and gave me. (Tendered admitted and marked Ex. J.R.1). They arrested me and took me to H.M. Prison, Basseterre. I was placed outside on the verandah where other detainees were at the time. I was locked up in a cell from 8 p.m. on 11/6/67 to 6 a.m. on the following morning. The size of that cell is about 20 feet by 16 feet or thereabout. There were 4 other persons - all men - in the same cell with me. They were Geoffrey Boon, James Gaskell, and two others whose names I cannot now remember. The door of the cell was locked. The cell had three windows - two on the South and one on the West. The windows were all of the same size - approximately 6 feet by 4 feet. The windows had iron grilles across them. There was no arrangement in that room for personal sanitation. I was detained from 11/6/67 to 10/8/67. I was in that room the whole time. Before we go in at 8 p.m. every day we were given a utensil or chamber pot - one for each person. Sometimes the men messed in the chamber pot. I can remember

/calling two ....

calling two to three times to guard telling them of the condition of the cell and asking him to let us throw them out. I was told that after the cells are closed at night they cannot be open unless with instructions from the Keeper. This continued until the night before I was released. There was a light in the cell and the switch for the light was also in the cell so we could switch it off or on. There was a room where prisoners went to ease their bowels, and we had to go to the same place. It had something like a gutter and you stooped over it and water flushed all the time. It had no seat. You had to stoop down. It had no door. The opening was about 3 to 4 feet wide. This place was situated not very far from the main prison gate and the opening was on the eastern side. That eastern side looked on to the eastern wall of the prison and diagonal to the Labour Department then. The Labour Office was then East of the main prison gate. At times when I went to ease my bowels I could see the clerks at the Labour Office looking down at me. They were both men as well as women. Immediately in front of this privy was a roadway in the prison yard along which

/passed .....

passed prisoners and warders. I went and spoke to the Prison Keeper and as a result he made arrangement that we use his toilet - we the detainees. I think there were about 16 detainees. There was room with no roof on top. It measured about 20 feet by 16 feet on the western side of the Prison building. It had a doorway of about 5 to 6 feet wide and the height was about 7 feet. There was no door attached to the doorway. I bathed there, prisoners bathed there with me, as well as other detainees. That doorway was far away from the Labour Office. I did not get any food from the prison. I was told that if I wanted food I had to eat the same meals as prisoners. I did not eat the prison food. I got my wife to send three meals a day from the commencement of my detention until the last day when I was released. Last day I only got two meals. My wife and children were allowed to come in to the goal to see me - not from the beginning. There was a bar set up at the gate. Those who came to see me, I had to speak to them through the bar. The bar was made of wood. It was about 8 feet in height and about 3 feet 6 inches to 4 feet wide with boards at intervals of

/about .....

about 2 to 3 inches. That arrangement continued for about 5 weeks. It stopped and persons were able to come and see us. This stopped after about 2 weeks. After that we had to receive our visitors through the same bars. I was not allowed reading matter for the first week of my detention. The room in which I was placed with the 4 others was hot both day and night. I felt humiliated about the place where I had to bathe and ease my bowels. The scent of the chamber pots interfered with my rest at night. One night I had to get up and take some newspaper and cover the chamber pot that had in excreta. I slept on a canvas cot. They gave me a blanket which I rested on the canvas cot so that I could make it soft. A state of emergency had been declared on 30/5/67. After I was detained I was given a further document in prison. I left thatdocument in the prison. I never recovered it. The paper contained that during the year 1967 that both within and outside the State I did acts prejudicial to the safety of the State of St. Christopher Nevis and Anguilla. There was a hearing in connection with my detention while I was in prison. It was presided over

/by Mr. Cecil Hewlett ....

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 was represented by Mr. Joseph Archibald who was then the Senior Crown Counsel. Mr. Kelsick was representing Boon and Dickenson, Mr. Kawaja was representing myself. Mr. Henville was representing Henry S. Charles. That's as far as I can recall. Mr. Dickenson was one in the cell with me. Shefton 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 said "so I can make my recommendation". Mr. Archibald replied "I will speak to the authorities". The Chairman, Mr. Hewlett, then told James Gaskell, Livingstone Sadio and myself "Do not attend any other

/hearings ...

hearings unless you are called". I was never called. I think Gaskell had left the prison on 2/8/67. As far as I know I was released by an order of the Court. I have at my home a copy of the Labour Spokesman newspaper published in 1967 which contains a statement of the grounds on which I was detained. As manager of the Esso Service Centre I used to work for $150 a month plus 10 per cent of the profits. My 10 per cent came to $25 to $30 per week but it never fell below $25. When I was released on 10/8/67 I found somebody else working in the job. I spoke to Mr. Brookes and to Mr. Adams in connection with the job. Mr. Brookes was the one in charge of that department. The law firm of Adams, Walwyn and Brookes hired the place from Esso, purchased the goods from Esso and carried on the business. Mr. Walwyn was at that time the Attorney-General of the State. I had been employed by Mr. Brookes on behalf of Adams, Walwyn and Brookes. I was not successful in getting back the job. I received no pay during the time I was in goal.

(At this stage Mr. Kelsick applies to insert after the end of paragraph 2 of the claim the word

/"Particulars".....

"Particulars"

Loss of earnings for the
period of 2 months at the
rate of $250 a month $ 500

Compensation for loss of
employment - 6 months earnings $1500

Attorney-General objects to application on the grounds that the amendment applied for is sought too late. Sup. Ct. Practice 1976 O 18 r 12 (291) O 18 r 8 RSC (1970) O 18 r 12.

Attorney-General submits that it would be surprising inconvenient and unjust if the amendment were allowed particularly after evidence led. Special damage cannot be claimed save by special pleading and beyond that, that evidence in relation to it would be admissable where the special damage had not been specifically pleaded and particularised. Furthermore, that the discretion of the Court to permit amendments would not be properly exercised in this case for it would negate a rule well founded in practice, justice and convenience.

/Mr. Kelsick: ...

Mr. Kelsick:

O 18 must be read in conjunction with O 20 which gives the power to the Court to allow a Plaintiff to amend his writ or a party to amend any pleading at any stage of the proceeding. Court here to do justice. If amendment can be granted without too great inconvenience to the other side, the amendment will be granted as a matter of course. Loufti v C. Czarnikow Ltd. (1962) 2 All ER 823.

Attorney-General in reply:

The principle to which I referred has not disappeared. It would be improper for Court to grant the amendment in this case. (Ruling reserved).

Witness continues -

I did not get any employment until 1/10/74 when I got my present employment. I was a member of the Leeward Islands Police Force from 20/10/33. I remained such member for 26 years. I was a member of the St. Kitts Nevis and Anguilla Police Force for about 4 years. I retired from the Force because I reached my age limit. This is my discharge certificate from the St. Kitts Nevis

/and Anguilla.....

and Anguilla Police Force. It was given to me by the Chief of Police Mr. Wade. It is dated 15/3/68. It is signed by Mr. Wade. (Certificate tendered admitted and marked Ex. JR 2). During the time I was a member of the Police Force I received the Police Long Service Medal and the Police Efficiency Medal. I am a married man. At the time I was detained one of my children was 33, one was 28, one was 23 and one was 17. I missed my wife and children terribly while I was detained.

10 xxd Attorney-General: I was not in the Force in 1968. I had retired some 4 years earlier. The last sentence on Ex JR 2 above the Chief of Police's signature does not relate to the date of the certificate. I was made Inspector in 1960. The rank just before Inspector is Station Sergeant. I became Inspector 27 years after joining the Force. It would not be considered in my time a meteoric rise During my days in the Police Force I was not subject to specialised courses. I began to take a course on Police Duties from Bennett College when they stopped me. I
20 became a Police prosecutor. I had about 8 years experience as a Police prosecutor. I am not versed but I

/would know.....

would know that if a witness does not recollect, it is open to him to say he does not recollect rather than to guess the answer. It is not true that the manager of the Esso Service Center at that time was the firm of Adams Walwyn and Brookes. It is not true that I was a salesman at the Servicenter. I had 3 girls and one male beside myself working at the Servicenter. I sometimes serve customers but it was not part of my regular duties. Monies were collected daily at the gas station. I checked the money, noted it in the book and took it to the office of Adams Walwyn and Brookes. I did that every day except Sundays and Public Holidays. I paid the other employees every week. They entered the wages paid in the same book, deducted the amount paid out, and handed in the balance. My book was countersigned in the office.

Adjourned 1.45 p.m.

On Resumption

I took on the three young ladies and the male person who worked at the station without reference to the firm. At that time there was a controversy over the ownership of the gas station - as to whether it was Mr. Seaton's

/own or .....

own or Esso's. There was no understanding that the station belonged to the firm. I don't know whether they were leasing. I don't know whether or not the firm was agents for Esso, I was just given a job. Mr. Brookes was the one who dealt with me. I did not have a written contract. The male and female attendants did not get percentage of profits too. I bank OTI's money at Barclays Bank. There is a lodgement book. I do not make up the lodgement book. I make out the order for the drafts and sign for them. Sometimes Mrs. Pereria makes out the lodgement book, sometimes Mrs. Hawley. I am not a messenger at O.T.I. I have had occasion to go inside the prison before 11/6/67 when I was a policeman. That also happened when I was a senior police officer. I had never observed the conditions of the prison before. I did not know of the rules operating in the prison. I have observed from on top the Police Station the premises of the Prison. I observed more from on top the Police Station than when I went in there. When I was an inmate there from 11th June, I observed how the prisioners were treated. I observed with regard to confinement. I was not looking so keenly at prisoners who were remanded

/from those .....

from those who were convicted. Those who were inmates there as prisoners were locked up at 6 p.m. Prisoners were confined also until 6 next morning. There were no other facilities in the prison other than those I described for inmates of the prison other than officers. I am not in a position to say whether or not they served a variety of meals to inmates on any given day. I do not know what sleeping facilities the prisoners had. I don't think the prisoners lived in individual single cells. Detainees, including myself, played outdoor games in the prison compound. I can only remember volley ball. I had been told from the beginning that my family would be allowed to bring me food. They also brough me clothing. Friends and well-wishers sent us drinks. We could drink them as we liked. The room in which I was kept with 4 others is not a normal cell. I have heard them call it the Chapel. The latest we had on the light was about 9.30. The light was taken off because the people in there wanted it off. I don't think that every effort was made to promote my comfort. I think that one of the detainees had a radio on the verandah where we met during

/the day time.....

the day time. All the detainees were allowed to mix quite freely and hold discussions. I was not comfortable to have walls all around me and I could not move freely. I had no special training with arms. I learnt to shoot annually in the Police Force. I learnt with small arms - .303 rifles. I was never ever a marksman. I didn't like shooting. I have been called upon to carry arms and live ammunition during my 30 odd years in the Police Force. I only did that when I was a Constable. When I was a Station Sargeant I was stationed in Basseterre, Sandy Point and Anguilla, and Nevis as well. At that time the Station Sergeant was in charge of Sandy Point. He was in control of the arms and ammunition at the Station. When I was Station Sergeant in Anguilla, I was also the person in charge of the Station and therefore the person having the control of the arms and ammunition kept at the Station. I was officer in charge of the Station in Anguilla in 1953. I stayed in Anguilla about a year and six months.

Adjourned to 27/7/76

/Tuesday....

Tuesday 27th July 1976

On Resumption 9 a.m.

Ruling: Leave to amend refused.

John Joseph Reynolds, sworn, continues in xxn:-

There were two Police Stations in Anguilla while I was there - one was at the Valley and the other at Sandy Ground. Crocus Hill in The Valley where the Police Station was situate is the highest point in Anguilla and is about the centre of Anguilla. The other Station is about 3 miles south-west of the Valley, at Sandy Ground. The one at Sandy Ground was a substation. I was over that too. While I was there I got to know a good portion of Anguilla reasonably well, as also many of the people in Anguilla. I have been back to Anguilla as an Acting Assistant Supt. of Police. I think it was in 1962 that I was back in Anguilla as an Acting Assistant Supt. of Police. On that occasion I stayed about 2 weeks. I have not been back to Anguilla since I left in 1962. I did not go there in 1967. When Delsol came to arrest me I was not worried because I heard they were going to lock me up. I heard so on the morning of the 10th June when I was going home.

/Some folks.....

Some folks met me on the Bay Road and told me that I should try to go to Antigua because they are going to lock me up today. I told them I'm not going because I don't do nothing. The persons who told me so were Market Keeper Warner and some others. I would not call Market Keeper Warner a person close to the Governor. I am a member of the People's Action Movement. I am now an executive member of the People's Action Movement. I have sometimes worked for that organisation, performing janitorial services for the organisation. I have not been involved in membership recruitment. I was elected to the role of executive member. I think I was elected to the executive out of sympathy. Mr. Market Keeper Warner to whom I referred earlier was Mr. Herman Warner is now deceased. I have discussed matters political with the late Mr. Warner. I am able to say that Mr. Warner was on my side. When I went home on the 10th June just after leaving Warner, the telephone rang and I answered it, and I heard a voice say to me "you better left the State or else they going to lock you up today". I did not recognise the voice, I asked who was speaking. I got no answer so I put down the telephone.

/ I stick .....

I stick to what I said yesterday about my not liking to shoot and never being a marksman. I do not recall in 1959 having obtained 74 points in the annual musketing course. I have never ever worn a marksmanship badge. I was never informed that I was entitled to wear a marksman bade. (Witness shown a document). I have seen forms like the one shown me. I admit that the form shown me is an official form kept by a public department of this State. The clerks fill those forms as part of their duties. Entries are made on a form like this when you do good work. This form is a confidential form. The person to whom the form relates does not know what is on the form. The form relates to John J. Reynolds. I am conversant with Prison Regulations relating to this prison. Admit I applied for the job of Keeper of the Prison in 1958 stating that I am conversant with the Regulations. When Mr. Delsol read the order to me, he gave me a copy which I read. He also gave me time to straighten some business and then I went with him quite easy. I did not say to Delsol "Man I haven't done anything". I was making a sacrifice for the people of the State. "Sacrifice" means that you

/are bearing.....

are bearing something that you should not have borne. It is still a sacrifice but I am seeking redress for my sacrifice. I was not expecting to be arrested. The atmosphere that morning was that people were here and people were there, and talking about the shoot down. I do accept that there was some shooting that morning of the 10th June. I would say that the atmosphere was tense. I found persons who appeared perturbed - upset. I was not perturbed or upset. When they told me that they were going to arrest me. I was vex. I have heard that some persons from Anguilla were arrested in connection with the shooting. I did not see any of those persons on that morning. ..While I was detained, I saw some of these persons pass in the corridor in HM Prison. I knew Todville by sight but I did not know the others. None of them has ever come to my home. I know Collins Hodge, I first knew him subsequent to his trial. He has never come to my house. I think that Hodge and Todville came back on a boat long time after. I did not become friendly with them. I knew on the morning of 10th June while I was walking along the Bay Road, of the State of

/Emergency .....

Emergency. The State of Emergency had been declared on 30/5/67. Nobody trouble me for 11 days thereafter. At that time I was not a member of the executive. At that time my party had several hundred members and supporters. I don't think all the detainees were members of PAM. They were within the categories members and supporters. I should like to add that there were two which I wouldn't call members or supporters - James Gaskell and Geoffrey Boon. Boon was not a member. I saw the list. He never gave me any contributions for the party. Boon's name was on the paper to ask. I never heard why I was detained apart from what I read on the paper. I suspected they detained me because I heard the Premier of this State, I think on 4th or 5th June, in a broadcast from the House of Assembly Chambers stated that there were ex-policemen training people at Sandy Point to use rifles, and as I knew that Cpl. Charles and I were the only two ex-policemen who were members of PAM at the time, and coupled with what I had heard on the Saturday before the broadcast. I went to Antigua for about a month after I came out of detention.

Rexd Mr. Kelsick: I asked Delsol to allow me to check a

/few parcels .....

few parcels of money that I had at my home so that I could give it to my daughter Sheila who was then at home, to be given in at the office of Adams Walwyn and Brookes for Mr. Brookes. On Saturday 10/6/67 after I received the phone call I went back to the Servicenter which was open for business the whole day. There was one of the attendants there. I checked the contents of oil, tyres etc. that was in the Servicenter with the cash that was there and saw that it was correct. I then went and cut my hair, and went to a pasture at Dieppe Bay where the Moravian Sunday School was having an outing. I closed the service station at about 10.05 p.m. on 10/6/67. I found one Vauhaligan Walwyn doing my work when I came out. He is still there. I should have taken holiday and I didn't take it, so they gave me the money instead; also I was due some amount of my 10 per cent of the profits. That was paid to me. In the prison we were allowed soft drinks, beer and giant malt. We were not allowed wines and spirits. We played volleyball for about 2 weeks when the warders stopped us. We attempted to lift weights but the warders took away the

/iron bars....

iron bars and weights. Sadio was available about 2 weeks after I had been in the prison. I as well as the others were not free because every where we moved you had a warder with a rifle walking behind you. If you go to the toilet a prison warder remains by the door with a rifle. The same thing happened when we went to have a bath. At one time they drew a line by a breadfruit tree in the prison and said nobody is to pass that line. I went to the Keeper and spoke to him. The line was removed. The line had been there just about an hour, an hour and a half. I became an Executive member of PAM on 26/1/68. I think I was made an executive member because I was arrested and thrown in gaol.

Basil Egbert Samuels sworn states

Live Fort Street, Basseterre. Businessman. I am in my 62nd year. I was born in St. Kitts and lived here all my life except for short periods away from the Island. For 15 years I had been Manager of St. Kitts Nevis Anguilla Co-oprateres Groceries Ltd. I have known Plaintiff for over 30 years in St. Kitts. I met him as a member of the Leeward

/Islands .....

Islands Police Force and had dealings with him from time to time, mostly when I was a member of the Defence Force. To the best of my knowledge I have always found Plaintiff to be a very decent and upright person. I followed his career in the Police Force from a private up to A.S.P. During that time my impression of Plaintiff is that he was an upright person. Plaintiff is married. I know his wife well. I knew her before she was married to him I would say that Plaintiff is a serious-minded family man. He has children I know them fairly well. Their conduct and bearing reflect a good home upbringing. Plaintiff is a member of the Moravian Church to the best of my knowledge. If one could judge from the number of times he goes to church I would say he is a good churchman.

xxd Attorney General: I was told that I was asked to give evidence in support of Plaintiff's good character. The St. Kitts Nevis Anguilla Co-op Groceries Ltd ran into voluntary liquidation after I had opened my own business - about 2 years after. That grocery was a public company belonging to shareholders. I was one of them. I was

/manager and

manager and secretary. When the Co. went into liquidation the shareholders got 75 per cent of their shareholdings if my memory serves me right. I left because of a misunderstanding between the then managing director and myself. I was not a member of the Police Force. Plaintiff came here from Antigua a young man in the police force and I would see him progressing from private until he left. I can't say that I knew Plaintiff to possess any special military capability. I was a farily good shot. I don't know what Plaintiff's capability in shooting was not having heard of it or been present when he did his shooting. I worked at Scotch House Grocery as a clerk. I knew Plaintiff's wife as a domestic servant working for Mr. Emile Delisle. She c: invariably to Scotch House for supplies. I belong to the Anglican Church. I have sang solos or in groups. I can't recall having sang in a group with Plaintiff. My family and Plaintiff's family are quite friendly.

Rexd Mr. Kelsick: Every shareholder during my time of office got his investment back in dividends in totc. The last dividend paid was 10 per cent.

/livingstone Sadio....

Livingstone Sadio sworn states:

Live St. Johnston Avenue, Basseterre, Chauffeur. I know Plaintiff. On Sunday 11/6/67 I was taken from New Town by Insp. Edgings and two other policemen, to the Basseterre Police Station. When I got by the desk Mr. Edgings read a paper to me. Then he took me from there and carried me by the prison. I stayed there from 11/6/67 to 10/8/67. I met Plaintiff inside there. I know Mr. Hewlett. He came there for a tribunal. A tribunal was held in the Prison Officer's office. Mr. Hewlett was Chairman, then you had Mr. Joseph Archibald, Senior Crown Counsel. He and Mr. Eugene Walwyn was the prosecuting part. Mr. Weekes and Mr. Warner were taking notes. Mr. John Kelsick, Mr. Crawford who dead and Mr. Reginald Kawaja were also present. They were trying to help on the detainees part. During the sitting Mr. Archibald said he does not have any evidence leading to Plaintiff, Gaskell and myself. As far as I can remember, Mr. Hewlett asked Mr. Archibald what the whole affair was. Then Mr. Hewlett said "since you say you have no evidence

/against Gaskell,...

against Gaskell, Reynolds and Sadie, you can let them go out and keep them out of it" - the balance of the tribunal. Mr. Hewlett further said that he will make some kind of recommendation in connection with me and Reynolds and Gaskell. Then Mr. Archibald said he will have to report to the authorities. I did not attend any further hearings. Some of the other detainees went there on a few other days. Plaintiff did not attend any further hearings - not that I could remember. Gaskell left before me. I stayed the end. I was in cell No. 1 in the gaol. It was about 10 feet by 6 feet. I was with 4 others in that cell - Dr. Herbert, Cecil Roberts, Valentine Smith, Terrence Henry. The door of the cell was locked at night. When we first got there they started locking us up at 9 p.m. After that they started locking us in 8 p.m. They opened up at 6 a.m. We had to answer the calls of nature in a potty and leave it there till next morning - one for each person. (A.G. objects to the evidence which has been given and which will be given on the ground that it is irrelevant.

Mr. Kelsick: Evidence adduced to show the likelihood of the truth of Plaintiff's evidence.

/Adjourned .....

Adjourned to 1.30 p.m.

On resumption 1.35 p.m.

Court rules that the evidence given by the witness so far is irrelevant).

Livingstone Sadio (reminded of oath) continues in xn in chief:-

I know where Plaintiff slept at night at the prison. I have been into that room. I have spent some times 2 to 3 hours in Plaintiff's room and he has spent 2 to 3 hours in my room during the day. When Gaskell left; they put me over in Plaintiff's cell. I stayed there from the time Gaskell left to the time I was freed. While I was in Plaintiff's cell we had the usual chamber pot. When anybody mess in the night, it had to stay there till morning. Someone would have to cover it with a piece of paper or something to keep the scent down. I found that very awful.

xxd A.G.: Declined

John Joseph Reynolds (recalled at the request of Mr. Kelsick. A.G. not objecting sworn states:

I have already given evidence in this case. I said

/that I.....

that I left in the prison the paper containing the reason for my detention and that the reason is in a copy of the Labour Spokesman which I had left at home. This is the copy of the Labour Spokesman to which I referred. It is dated Saturday 17th June, 1967. At page 1 there is a heading "Detainees given written statements as to why they are detained." What is in the newspaper is the same as what was in the paper given to me. (Newspaper tendered, not objected to, put in and marked Ex. JR3). Before I brought my claim I had my solicitor write the other side. This is a copy of said letter. (Tendered not objected to, put in and marked Ex JR4).

xx'd Attorney-General: I never went back to try to find the paper I left in the goal.

No re x -

Close of Plaintiff's Case.

Attorney-General states he does not propose to call any witnesses.

Case

Adjourned to 30/7/76

/Adjourned to 3/8/76 ...

Adjourned to 3/8/76
Tuesday 3rd August, 1976
On Resumption 9.40 a.m.

Mr. Kelsick addresses.

Plaintiff was on 11/6/67 detained at H.M. Prison, Basseterre by virtue of an order of the Governor of the State. Defendant says that Plaintiff was detained by lawful authority. Defendant pleads Indemnity Act, 1968 (No. 1). By summons dated 28/5/63 Defendant sought a stay of the proceedings by virtue of the said Indemnity Act. S. 3 of Indemnity Act. The summons was accompanied by a certificate signed by the Premier/Minister of Home Affairs. The validity of the Indemnity Act was tested in Suit B 1 of 1968 - Boon v Attorney-General and Renwick, J. gave a decision. Court heard summons on 7/4/73 and at that hearing, after hearing counsel for both sides, Court dismissed the summons with costs and an order to that effect was filed on the same day. In so far as paragraph 5 of the Defence is concerned and indeed any other argument that may be raised on the Indemnity Act, Court has already ruled and therefore it is not open to the Defence to raise the Indemnity Act as a Defence to this

/claim or to.....

claim or to address argument to the Court on the basis of the Indemnity Act being an answer to the claim in this Court.

Ex JR 1 is Defendant's justification for the unlawful imprisonment. Ex JR sets out as a basis for imprisonment exactly what was set out as the basis for the imprisonment of Henry Strickland Charles who was on 14/6/67 detained at H.M.'s Prison by virtue of an order dated 13/6/67 signed by the Governor's Deputy. Charles v Sir Fred A Phillips and Sealy 10 WIR 423, at page 428. It is abundantly clear that Plaintiff's detention is stated by Defendant to have been made under and by virtue of the same orders, regulations and proclamations as were the basis of the detention of Henry Strickland Charles. I Therefore submit that the decison in Charles' case is a precedent directly in point to the issue of law raised in this case by the Defendant as to the legality of the detention of the Plaintiff. All I ask is that Your Lordship accept and apply the decision in Charles' case. I will also refer Your Lordship to the case of Herbert v Phillips and Sealey 10 WIR 435 which is

/based on similar....

based on similar facts. Page 451 in Herbert's case, where Court of Appeal confirms its own decision on a particular issue.

If Defendant was unlawfully imprisoned, he is entitled to compensation under the Constitution Section 3 (6) of the Constitution does not shut out Plaintiff's common law right to damages if the view were to be taken that compensation is something less than damages at common law. Nothing in the Constitution suggests that it is taking away any common law rights. The use of the word "compensation" in that context is intended to insure that in any event, the least that the Plaintiff could receive would be an amount which amounted to compensation as defined at law without taking away his right to damages if they could be greater.

Mayne and Mac Gregor on Damages (12th Ed.) 721 paragraph 850-5 also 3rd Cumulative supplement 12th Ed. Dumbell v Roberts and others (1944) 1 AllER 326 at page 330 letters H to A. How reasonable was the manner of the imprisonment? How close did Defendant come to justifying the acts which

/it did ?....

it did? Plaintiff was imprisoned in HM's Prison under conditions not far better than the conditions under which ordinary prisoners are kept. Conditions of real discomfort. Conditions could have been alleviated, or modified, but they were not.

Reasons for detention are as vague as they could conveniently have been put. Counsel for the State told the Chairman of the tribunal that he had nothing against Plaintiff. Court, will have to come to the conclusion that there never was any justification in fact for Plaintiff's detention on the grounds on which he was allegedly detained. If Court takes that view, that would mean that there would be no basis for saying that the damages which Plaintiff should receive should be reduced by virtue of the fact that the Defendant had reasonable grounds for its suspicion which it used as the basis for Plaintiff's detention. Defendant has never resiled from its position. It still maintains that Plaintiff's imprisonment was justified.

Adjourned to 1.30 p.m.

On Resumption 1.38 p.m.

/Mr. Browne .....

Mr. Browne addresses:

Defendant will contend that the proclamation of 30/5/67 declaring the State of Emergency was valid. What is in dispute is whether the regulations made after the said proclamation were valid. These Regulations are No. 16 of 1967. Defendant will say that the said Regulations were valid notwithstanding the judgements in Charles v Phillips and others (10 WIR 423) and Herbert v Phillips (10 WIR 435). Defendant will contend that even if this Court is of the view that the said Regulations were invalid that such invalidity was healed by virtue of the Indemnity Act, No. 1 of 1968, Section 5 of Act 1/68 goes beyond what's normal or accustomed Indemnity Act usually does. Defendant will say that the point in time when Regulations 16/67 were declared unconstitutional is indeed very significant from Defendant's point of view, the point being that when one looks at the Regulations there was nothing on the face of same to reflect any invalidity: hence they had to be presumed constitutional until declared otherwise. The same principles with regard to the presumption of

/constitutionality.....

constitutionality will apply equally to the Indemnity Act and the point in time when that said Act was declared unconstitutional by Renwick, J. In addition to that, if at the end of the day the Court is of the view that the Regulations are unconstitutional and that the Indemnity Act is also unconstitutional the Defendant will look at the effect of declaring the Regulations and Act unconstitutional with regard to the facts of this specific case. Further the Defendant will raise the question whether the servant of the State who carried out the arrest acted bona fide and had reasonable authority to do so. Regulation 3 of Regulations 16/67. We accept that the order to detain was made under Regulation 3 of Regulations 16/67. Herbert v Phillips et al at 444 letter D. In answer to that, the Court held at page 445 letter A. Section 14 of the Constitution S 103 of the Constitution. When the Constitution came into effect on 29/2/67 Defendant is saying that the 1959 order was an existing law. One has to look at the 1959 Order to see if it is saved by S. 103 of the Constitution. If when the Court looks at the order, it is manifestly and palpably inconsistent with any of the provisions of the Constitution,

/then the Order.....

then the Order must fall; but that is not to be before an attempt has been made to construe it with such modifications, adaptations and qualifications to bring it into conformity with the Constitution. The power under the Order of 1959 which enables the Governor to take preventive measures, e.g. the detention of persons if he is satisfied that the situation demands it, opens the use of the power subjectively, when however one puts this against the requirement of S.14 of the Constitution, one is not to look at the wide discretion given to the Governor to determine the validity of that regulation which gives him that power, but to the exercise of the power. It is the exercise which must be tested to determine whether it is reasonably justifiable. A distinction has to be made between the availability of the power and its exercise. S. 3(1) (f) of the Constitution. Inherent in S. 3(1)(f) is the principle that when once you exercise your power under S. 3(1)(f), if the power is a reasonable exercise of the power and the Plaintiff is thereby detained, there is no legal basis for the contention that because the power is wide and far-reaching, his right is

/being infringed.....

being infringed. Francis v Chief of Police (1973) 2 All ER 251 PC., at page 259 letter F. S. 103(2) of the Constitution. The Order of 1959 was an existing law under that Order the Governor was empowered to deal with the situation as he conceived it. Dealing with a State of Emergency is a matter which falls to be prescribed by the Legislature under S. 14 of the Constitution but that same matter dealing with State of Emergency had already been prescribed by an existing law, viz the 1959 Order, and under S. 103 (2) that prescription has to be deemed to be the prescription of the Legislature, hence it is the Legislature which must be taken to have given the Governor the authority to exercise his discretion to make the Regulations and to take preventive measures. Page 259 Francis v Chief of Police supra. In the Regulations themselves the Governor has set himself self-restricting guidelines which guide him in the exercise of his power, and these said guidelines fall within the purview of the Constitution becuase his satisfaction is predicated on the belief that a person who is to be detained or who has been detained is one who has

/recently .....

recently been concerned in acts prejudicial to the public safety or to public order. What is crucial is the exercise of the power, not the availability of the power. Francis' judgement does not stand alone. Beckles v Dellamore (1965) 9 WIR 299, at page 301 letter B. The 1959 Order was a law in existence deemed to have been prescribed by the Legislature under S.103(2). That Order in no way offends the Constitution and even if it appeared to have offended the Constitution; it can be made peacefully co-exist because there is an anus on the construing body. i.e. the Court to read the existing law. i.e. the 1959 Order, with such modifications, etc. as may be necessary to bring it into conformity with the Constitution. If in an existing law one has the expression "if he is satisfied" and in the Constitution the expression is "reasonably justifiable" the existing law, when read as required by S.103 (1) of the Constitution must incorporate the "reasonably justifiable" requirement with a view of conforming with the provisions of the Constitution. Even though that authority can be exercised by the Court, the Governor in his Regulations 16/67 has taken the caution to set down the guidelines on which he will act, which indicated that any action based on these guidelines are reasonably

/justifiable.....

justifiable in the circumstances. Page 305 Beckles v Dellamore last paragraph. It is Plaintiff's duty to prove to the Court that the Regulations under which he was detained were regulations not reasonably justifiable to deal with the situation that existed at the time of the detention. B. Surinder Singh v Government of Federation of Malaya (1962) 28 Malaya Law Journal page 169.

Adjourned to 4/8/76

Wed. 4th August 1976

On Resumption 9.07 a.m.

Mr. Browne continues his address.

Surinder Singh's case is authority for the proposition that an existing law when put side by side with the Consitution if on the face of it, it appears to offend the provisions of the Constitution that nevertheless does not render the law void. What is required is a reading into the existing law the appropriate provisions of the Constitution as required by the Consitution itself - in this case S.103 (1) of the Constitution so as to bring the law into conformity with the Constitution. Herbert v Phillips et all page 449, letter F. Assar Singh v Mentic Besar Jahore

/2 M.LJ (1969).....

2 M.LJ (1969) page 30. With respect to the existing law and S. 15 I submit that even if the regulations in dispute when looked at by themselves, can be said to be unconstitutional, that is not an end to the matter. Given the fact that the said regulations must be operative within the ambet of the Constitution, the Constitution itself in its S. 15 lays down certain procedures which must be followed in the event the subject is detained. Upon these procedures being taken into account and carried out, whatever the authority for the detention within the terms of the regulations such detention cannot but be reasonably justifiable when the regulations themselves are tempered and guided by S. 15 of the Constitution. Constitutional Law of India by Seervai (1968) page 288 paragraph 11.10 - Test of Reasonablesness. Page 290 Seervai, paragraph 11.12. The test of reasonableness is not the same in all cases. The test varies with the circumstances and the specific case in hand. What therefore might have been reasonable, say, in Charles' case, or in Herbert's case, might well be inappropriate to Reynolds' case, the facts surreunding which instigated actions by the

/executive.....

executive. Given that principle I must say that a ruling of the Court of Appeal in the Charles' case and Herbert's case and the faulting of the relevant order applicable to those cases - the detention order - does not necessarily make the detention of the Plaintiff Reynolds unlawful. Page 291 Seervai paragraph 11.14. That is exactly what S.15 of the Constitution does. Basu's Commentaries on the Constitution of India Vol. 1 page 592. Under the 1959 Order and the Regulations made thereunder, the mere fact that the Governor is vested with an arbitrary discretion does not effect the constitutional validity of the Regulations because of the presumption in his favour that the power will be reasonably exercised. When one looks at a document which purports to give an authority power, and ex facie the power is valid and the exercise of that power is good, there is no basis in law for challenging action taken under the authority. There was nothing on the face of the detention order to signal any unconstitutionally, and the Police when they acted bona fide in pursuance of that order acted in accordance with the law. 46 Digest (Blue Band) page 446 paragraph 834. Hazelton v Potter 5 CLR 445.

/Action taken.....

Action taken by the executive under authority which ex facie appeared to be valid, if subsequently that authority turns out to be unconstitutional, whatever actions were taken under the ambet of the presumed legality are not open to question in a Court of law unless it is just shown by him who avers that the authority was exercised mala fide. Mc Ardie v Egan (1933) All ER Reprint page 611. Presumed constitutionally. If it is accepted that legislation is presumed constitutional until declared to be otherwise, then that resumption must be in favour of the regulations in question because it was not until 10/8/67 that the Regulations were first declared unconstitutional: vide Charles v Phillips et al. In the last line of paragraph 3 of S/C Plaintiff says he was released on 10/8/67 and the declaration as to the "invalidity" of the Regulations was not made in a case in which Plaintiff was a party but with respect to one Henry Strickland Charles. That further reinforces the bona fides of the executive officers with regard to the Plaintiff. Seervai page 557 paragraph 15.69. Page 54 paragraph 3.1(1). Seervai page 161 paragraph 8.10.

/A distinction.....

A distinction is made 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. Jain on India Constitutional Law (2nd Ed) page 479. Ex JR 1. Grounds for Plaintiff's detention. Plaintiff said he suspected why he was arrested. Christie Leachinsky (1947) 1 ALL ER567. S. 15(1)(a) of the Constitution requires a detainee to be furnished with a statement in writing specifying in detail the grounds upon which he is detained. Beckles v Dellamore supra.

Detention is a preventive measure.

Adjourned to 1.30 p.m.

On Resumption 1.35 p.m.

Mr. Browne continues his address.

Indemnity Act 1968 (No.1 of 1968). Defendant has pleaded the Indemnity Act as an answer to the S/C

Only section 3 of the Indemnity Act was canvassed in the proceedings before Renwick, J., Penultimate paragraph of judgement of Renwick, J. Defendant contends that

/subsection.....

subsection 3(1) of Act 1/68 is a procedural device akin to the limitation period which is so well known to the law. Sections 3 and 13 of the Constitution can be abrogated by the Legislature during a State of Emergency: S 14 of the Constitution Section 41(4) of the Constitution empowers the Legislature to make retrospective legislation, and legislation to abrogate rights under S.3 of the Constitution can properly be made by the Legislature during a state of public emergency.

Attorney General states:

S. 5 of the Indemnity Act is an attempt by the Legislature to abrogate, albeit retrospectively, S.3 of the Constitution.

Mr. Browne continues:

The point in time in which the Indemnity Act became unconstitutional is the date on which judgement was delivered declaring its unconstitutionality.

Re Damages: Plaintiff averred in his Statement of Claim that he was maliciously assaulted and beaten and was forcibly taken to H.M. Prison. The evidence bespeaks

/otherwise. .....

otherwise. Plaintiff said under oath that he went without resistance. No evidence that he was even touched. Plaintiff has the use of an officer's toilet after some time. That bespeaks 2 things -

(1) that those who had immediate control over his movements were amenable to humanitarian and sanitary suggestions

(2) the authorities did all they could reasonably do in the interest of Plaintiff's comfort.

The detention of Plaintiff has elevated him in the social status. Before Plaintiff was detained, he performed janitorial services for P.A.M. Plaintiff is now a member of the executive.

On authority of Beckles v Dellamore it is Plaintiff to show that his detention was not reasonably justifiable. Defendant can justify Plaintiff's detention. There was a State of Emergency proclaimed on 30/5/67. Plaintiff admits there was shooting on 10/6/67. He admits that the atmosphere in the country was tense. Plaintiff said that he suspected that he was arrested because the authorities were of the view that he had been training people to use rifles.

/ Plaintiff said.....

Plaintiff said he was not upset. S. 3(6) of Constitution. Even though Defendant is saying that Plaintiff was lawfully detained, if at the end of the day the Court is of the view that he was unlawfully detained he would be entitled to compensation/damages. Eric Clarke v John Davis et al 8 Jamaica Law Reports page 504. Regulations made under 1959 Order are valid. If the Order is valid, the Regulations too are valid. If the Regulations are valid, so was the detention order.

C.A.V.

15/68
EXH. J.R.1

ORDER

MADE UNDER

THE EMERGENCY POWERS REGULATIONS, 1967

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, and that by reason thereof it is necessary to exercise control over him:

NOW, THEREFORE, in pursuance of the power conferred on me by Regulation 3 of the Emergency Powers Regulations, 1967, and all other powers thereunto enabling me,

I DO HEREBY ORDER AND DIRECT that the said

JOHN REYNOLDS

be detained.

Ordered by me this 10th day of June, 1967.

(sgd.) B.F. Dias
Governor's Deputy

ST. CHRISTOPHER NEVIS ANGUILLA POLICE FORCE

No. R-3

DISCHARGE CERTIFICATE

Name: John Joseph REYNOLDS

Force No.: L.I.P. 92; St. CNA 3

Rank last held: Inspector of Police

Period of Service: Leeward Islands Police Force, 20th October, 1933 to 31st December, 1959 : 26 years 2 months 11 days. St. Christopher Nevis Anguilla Police Force, 1st January, 1960 to 26th October, 1964: 4 years 9 months 26 days

Reason for cessation of employment in the Force:

10 Retired having attained age limit.

Particulars of personal description: Date of Birth - 27th October 1909 Height: 5ft 11 ins. Colour - Black

Trade or Calling - Carpenter

Recommendation by Chief of Police: A dependable and knowledgeable Officer

(Sgd.) J. Lynch-Wade
Chief of Police

Police Headquarters,
Basseterre, ST. KITTS, W.I.
Date: 15th.March,.1968

THE LABOUR SPOKESMAN

SATURDAY 17th JUNE 1967

Detainees Given Written Statements As To Why They Are Detained

Section 15 (1) of our Constitution makes provisions for the protection of persons detained under emergency laws. Section 15 (1) states -

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.....

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

Yesterday afternoon, the Attorney General, the Hon. Eugene Walwyn, and the Senior Crown Counsel, Mr. Joseph S. Archibald, visited Her Majesty's Prison in Cayon Street, Basseterre, and delivered Statements in Writing to some of the men detained there.

The Statements are signed by the Secretary to the Cabinet,

/Mr.Probyn Inniss,.....

Mr. Probyn Inniss, M.B.E., and the Permanent Secretary in the Ministry of Home Affairs, Mr. Ira Walwyn, and are dated the 16th June, 1967.

HERBERT

The Statement delivered to William V. Herbert, Jnr., reads as follows:-

That you DR. WILLIAM V HERBERT on several occasions during the year 1967, both within and outside of the State, encouraged certain residents in the State and other persons to use unlawful, felonious and murderous means to overthrow the lawful government of Her Majesty in the State, and that you were concerned in armed rebellion against the said lawful government, thereby endangering the peace, public safety and public order of the State.

BOON

The Statement delivered to Geoffrey R. Boon reads as follows:-

That you GEOFFREY ROGER BOON on several occasions during the year 1967 encourage civil disobedience to the laws of the State and incited unlawful means to overthrow the lawful government of Her Majesty in the State, thereby

/endangering.....

endangering the peace, public safety and public order of the State.

DICKINSON ETC.

The Statements delivered to Courtenay Dickinson, John Reynolds, George Flemming and James M. Gaskell read as follows:-

That you ..... 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.

HENRY ETC.

The Statements delivered to Terrence Henry, Cecil Roberts, Livingstone Sadie and Valentine Smith read as follows:-

Thar you .... during the year 1967, encouraged and were concerned in armed rebellion against the lawful government of Her Majesty in the State, thereby endangering the peace, public safety and public order of the State.

30th January, 1968

The Hon.,
The Attorney General,
Attorney-General's Chambers,
Administration Building,
Basseterre

Dear Sir,

We have been instructed by our client Mr. John Reynolds of the Bay Road, Irish Town, Basseterre, St. Kitts to claim damages and compensation from the Government of the State of St. Christopher Nevis Anguilla for assault, battery and false imprisonment arising from his unlawful apprehension and imprisonment under the illegal and pretended exercise of powers under The Leeward Islands (Emergency) Powers Order in Council, 1959, (S.I. 1959, No. 2206) and The Emergency Powers Regulations, 1967, S.R. and O. No. 16 of 1967. Our client was unlawfully imprisoned on the days between the 10th June, 1967, and the 10th August, 1967.

This letter is written in order to afford you the opportunity to make some reasonable offer by way of settlement of our clients's claim. We shall be obliged to receive a satisfactory reply to the letter within five (5) days

/from the.....

from the date hereof failing which we have instructions to commence proceedings against you to protect our client's interests in respect of the said matters of complaint.

Yours faithfully

(sgd.) Kelsick _ Kelsick

.....

Solicitors for Mr. John Reynolds.

SAINT CHRISTOPHER NEVIS AND ANGUILLA

SAINT CHRISTOPHER CIRCUIT

IN THE HIGH COURT OF JUSTICE

(CIVIL)

Suit No. 15 of 1968

Between

JOHN JOSEPH REYNOLDS — Plaintiff

and

THE ATTORNEY GENERAL OF THE STATE OF ST. CHRISTOPHER NEVIS ANGUILLA — Defendant

F.E. Kelsick for Plaintiff

The Attorney General (L. Moore) for Defendant; with him H. Browne and T. Seaton, Crown Counsel.

1976. July 26, 27. August 3, 4 Oct. 15

J U D G M E N T

GLASGOW, J.

The Plaintiff claims against the Crown in right of its Government of the State -

(a) Damages for assault, battery and false imprisonment;

(b) Further and/or in the alternative compensation pursuant to the provisions of section 3(6) of Chapter 1Schedule 2 of the Saint Christopher Nevis Anguilla Constitution Order 1967;

/(c) Such

(c) Such further and other relief as may be just and equitable;

(d) Costs.

In his Statement of Claim the Plaintiff alleged that on the 11th June, 1967 at Basseterre, St. Christopher, certain Police Officers of the State of St. Christopher, Nevis and Anguilla, acting as the servants and/or agents of the Crown in right of its Government of the aforementioned State, without lawful authority and/or in the pretended exercise of lawful authority, unlawfully and maliciously assaulted and beat the Plaintiff, forcibly took him to Her Majesty's Prison at Basseterre where he was in bad faith unlawfully and maliciously and falsely imprisoned until the 10th day of August, 1967.

The Plaintiff alleged further and in the alternative and by reason of the aforementioned matters that he was unlawfully and maliciously and in bad faith arrested and detained and/or falsely imprisoned as aforesaid by the said servants and/or agents of the Crown in right of its Government of the State of Saint Christopher Nevis Anguilla in contravention of the provisions of section 3 of Chapter 7 Schedule 2 of the Saint Christopher Nevis Anguilla Constitution Order 1967.

/The Plaintiff.....

The Plaintiff also alleged that by reason of the matters hereinbefore mentioned, he was deprived of his liberty, was unable to follow his calling and was put to great inconvenience, discomfort and expense and has suffered severe damage.

In the Statement of Defence the Defendant denied all of the above allegations. The Defendant admitted that the Plaintiff was detained at Her Majesty's Prison, Basseterre, St.Kitts during the period stated in the Statement of Claim, but said that the 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 characterisd by a Declaration of a State of Emergency proclaimed on the 30th May, 1967. The Defendant also contended that the Plaintiff's claim ought to be discharged and made void by virtue of the provisions of the Indemnity Act, 1968, No.1 of 1968, of the Laws of this State.

The facts, as I find them, are as follows: On the 30th May, 1967, the Governor of St.Christopher, Nevis and Anguilla made a proclamation under section 3(2) of the Leeward Islands (Emergency Powers) Order in Council, 1959 (S.I. 1959/2206)

/(hereinafter.....

(hereinafter referred to as the 1959 Order) and section 17 of the Constitution, declaring that a state of public emergency exists 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.

On the 30th May, 1967 the Governor made the Emergency Powers Regulations, 1967. The preamble to these Regulations States that they are made under section 3(1) of the 1959 Order and section 17(1) of the Consittution. Regulation 3 of these Regulations, so far as it is relevant, is as follows:

"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.....

the Governor....."

On the 10th June, 1967, the Governor's Deputy, acting under the above mentioned regulation, ordered the detention of the Plaintiff. The relevant order reads 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, and that by reason thereof it is necessary to exercise control over him:

NOW, THEREFORE, in pursuance of the power conferred on me by Regulation 3 of the Emergency Powers Regulations, 1967, and all other powers thereunto enabling me,

I DO HEREBY ORDER AND DIRECT that the said

JOHN REYNOLDS

be detained.

Ordered by me this 10th day of June, 1967.

(sgd.) B.F. Dias
Governor's Deputy"..

At about 7.50 a.m. on the 11th June, 1967 the Plaintiff was at his home at Bay Road, Irish Town, Basseterre, when Inspector Delsol and other Police Officers came to his home.

/Inspector.....

Inspector Delsol read to the Plaintiff the said order of the 10th June, 1967. The Inspector then arrested the Plaintiff and gave him an original of the said order. The Police Officers took the Plaintiff to Her Majesty's Prison in Basseterre where he was placed outside on the verandah where other detainees were at the time. The Plaintiff was locked up in a room from 8 p.m. on the 11th June to 6 a.m. on the following day. The size of the room was about 20 feet by 16 feet. There were four other men in the room with the Plaintiff. The room had three windows with iron grilles across them. The windows were all of the same size - about 6 feet by 4 feet. There was no arrangement in the room for personal sanitation. The room in which the Plaintiff and the four other men were locked up is normally used as a Chapel.

The Plaintiff was detained in Her Majesty's Prison, Basseterre, from the 11th June, 1967 until his release on the 10th August, 1967. During the entire period of his detention his wife sent him his meals and clothing. Between 6 a.m. and 8 p.m. of each day, the Plaintiff and the other detainees were allowed to play outdoor games such as volley ball on the prison compound. They were also allowed to receive and consume at leisure such drinks as friends and well-wishers sent

/them.....

them. At the commencement of their detention, visitors were only allowed to see and speak with them through wooden barriers erected at the prison gate, but the barriers were later removed and relatives and friends of the detainees were permitted to visit them in the prison compound. About two weeks later, however, the barriers were re-erected at the prison gate during visiting hours, and visitors were once more excluded from the prison compound. The Plaintiff and the other detainees were allowed to mix quite freely and to hold discussions every day between 6 a.m. and 8 p.m.

There was a room where both prisoners and detainees went to ease their bowels before they were locked in for the night. The room contained something like a gutter along which water ran continuously. Detainees and prisoners had to stoop over this gutter. There was no toilet seat. The room had no door, merely an opening about 3 to 4 feet wide. This room was situated not far from the main prison gate, and the opening was on the eastern side. The Labour Office was then East of the main prison gate. Sometimes when the Plaintiff went to ease his bowels, he would observe clerks at the Labour Office - both male and female - looking down at him. Immediately in front of this privy there was a roadway in the prison yard

/along.....

along which passed prisoners and prison warders. The Plaintiff went and spoke with the Prison Keeper. As a result it was arranged that the detainees should use the toilet used by the Prison Keeper.

There was a room measuring about 20 feet by 16 feet situate on the western side of the prison building. The room was roofless, and had a doorway about 5 to 6 feet wide. It was in that room that the Plaintiff, the other detainees and the prisoners had their bath.

At 8 p.m. every day the Plaintiff and his four room-mates were locked in their room for the night. Each of them was first given a chamber pot which he took into the room. Occasionally one or more of the occupants of the room cased their bowels in the chamber pots during the night. The stench thus created had to be endured until 6 o'clock on the following morning. In the room the Plaintiff slept on a canvas cot upon which he placed a blanket which was given to him.

Some time after the commencement of the Plaintiff's detention, he was handed a further document in the prison. That further document was delivered to him in purported compliance with the provisions of section 3(2) of the Constitution, which requires that any person who is arrested or detained

/shall be.....

shall be informed as soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention. The reason given for the Plaintiff's 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.

The Plaintiff was born on the 27th October, 1909. He was a member of the Leeward Islands Police Force from the 20th October, 1933 to the 31st December, 1959, and a member of the St. Christopher Nevis and Anguilla Police Force from the 1st January, 1960 to the 26th October, 1964. He retured on the 26th October, 1964 - having attained the age limit - with the rank of Inspector of Police. Prior to his retirement he had acted as Assistant Superintendent of Police on at least one occasion. In his Discharge Certificate date 15th March, 1968, the Plaintiff was described by the Chief of Police as a dependable and knowledgeable officer. The Plaintiff is and was at all material times a married man. At the time of his detention, three of his children were over 21 years of age and one was under 21 years of age. The Plaintiff stated that he missed his wife and children terribly during the period of his detention.

/I believe.....

I believe him. The Plaintiff is, and was at all material times, a member of a political party called the People's Action Movement.

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 section 3 of the Constitution and has not been shown to be authorised within the provisions of section 14 of the Constitution. That 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.

Mr. Browne, Crown Counsel, argued on behalf of the Defendant, that the Emergency Powers Regulations, 1967 were valid notwithstanding the judgements of the Court of Appeal in Charles v Phillips and Sealey (supra) and Herbert v Phipps

/and Sealey.....

and Sealey (1967) 10 W.I.R. 435. Mr. Browne also contended that even if this Court is of the view that the said Regulations were invalid, that such invalidity was healed by virtue of the Indemnity Act, 1968 (No. 1 of 1968).

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

On the 28th May, 1968 the Defendant filed a summons applying to stay the proceedings herein brought by the Plaintiff by virtue of the Indemnity Act, 1968 (No. 1 of 1968) and for the costs of the action and of the summons. On the 7th April, 1973 this Court dismissed the said summons and ordered that the taxed costs of and occasioned by the summons be the Plaintiff's in any event. No appeal was lodged against the

/Court's.....

Court's decision on the summons. In dismissing the summons, this Court agreed with the decision of Renwick, J. in Suit No. B.1 of 1968 - Boon v The Attorney General of the State of Saint Christopher Nevis Anguilla - in which that learned Judge stated:

"In this action the Plaintiff is alleging that there has been a contravention in relation to him of his right to personal liberty which right is guaranteed as one of the fundemental rights and freedoms enshrined in the Constitution.

The Act of 1968 seeks to prevent the Plaintiff 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 and is therefore unconstitutional.

This summons is hereby dismissed with costs to the Plaintiff to be taxed."

There was no appeal from the said decision of Renwick, J. in Boons case.

Section 3(6) of the Constitution reads as follows:-

"(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.....

any other person or authority on whose behalf that other person was acting".

The word "compensation"is defined in Osborn's Concise Law Dictionary (2nd Edition) as "pecuniary recompense for some loss or damage incurred". The losses proved to have been suffered by the Plaintiff in this case are all non-pecuniary. In assessing compensation, I have taken into consideration the fact that during the two months of his detention the Plantiff was deprived of his liberty. I have also taken into account the physical inconvenience and discomfort suffered by the Plaintiff, the injury to his reputation, and the fact that for the period of his detention the Plaintiff was deprived of the society of his wife and children. I am unable to find any similar cases decided in the region or elsewhere. They might have assisted me on the question of quantum.

There will be judgement for the Plaintiff for $5,000.00 and costs to be taxed.

(Sgd.) E.F. Glasgow
Puisne Judge

IN THE HIGH COURT OF JUSTICE

NOTICE OF APPEAL

SAINT CHRISTOPHER NEVIS ANGUILLA

SAINT CHRISTOPHER CIRCUIT

CIVIL APPEAL NO. 2 of 1976

BETWEEN:

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

AND

JOHN JOSEPH REYNOLDS — PLAINTIFF/RESPONDENT

TAKE NOTICE that the Defendant/Appellant being dissatisfied with the decision more particularly stated in paragraph 2 hereof of the High Court given by the Honourable Mr. Justice Eardley Glasgow dated the 15th day of October, 1976 does hereby appeal to the Court of Appeal upon the grounds set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4.

AND the Appellant further states that the names and addresses including his own of the persons directly affected by the appeal are those set out in paragraph 5.

2. Those parts of the decision complained of are:-

"In my opinion, the position here is virtually the same as in England, namely; that the decisions

/of the Court ....

of the Court of Appeal upon questions of law must be followed by 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 follow a decision of its own if given per incuriam. Paragraph 1687 of Vol. 22 of Halsbury's Laws of England (3rd Edition) refers.

"On the 28th May, 1968 the Defendant filed a summons applying to stay the proceedings herein brought by the Plaintiff by virtue of the Indemnity Act, 1968 (No. 1 of 1968) and for the costs of the action and of the summons. On the 7th April, 1973 this Court dismissed the said summons and ordered that the taxed costs of and occasioned by the summons be the Plaintiff's in any event. No appeal was lodged against the Court's decision on

/the summons

the summons. In dismissing the summons this Court agreed with the decision of Renwick, J. in Suit No. B. 1 of 1968 - Boon v The Attorney General of the State of Saint Christopher Nevis Anguilla - in which that learned Judge stated:

> "In this action the Plaintiff is alleging that there has been a contravention in relation to him of his right to personal liberty which right is guaranteed as one of the fundamental rights and freedoms enshrined in the Constitution.
>
> The Act of 1968 seeks to prevent the Plaintiff 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 and is therefore unconstitutional.
>
> This summons is hereby dismissed with costs to the Plaintiff to be taxed."

There was no appeal from the decison of Renwick, J. in Boon's case.

/Section 3(6)....

Section 3 (6) of the Constitution reads as follows:-

"(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."

The word "compensation" is defined in Osborne's Concise Law Dictionary (2nd Edition) as "pecuniary recompense for some loss or damage incurred". The losses proved to have been suffered by the Plaintiff in this case are all non-pecuniary. In assessing compensation, I have taken into consideration the fact that during the two months of his detention the plaintiff was deprived of his liberty. I have also taken into account the physical inconvenience and discomfort suffered by the Plaintiff, the injury to his reputation, and the fact that for a period of his detention the Plaintiff was deprived of the society of his wife and children.

/I am unable ...

I am unable to find any similar cases decided in the region or elsewhere. They might have assisted me on the question of quantum.

There will be judgment for the Plaintiff for $5,000.00 and costs to be taxed."

3. GROUNDS OF APPEAL

The Judge was wrong in law:-

(i) in rejecting the submission that the Emergency Powers Regulation 1967 No. 16 of 1967 were valid and constitutional;

(ii) in rejecting the submission that the Indemnity Act, 1968 No. 1 of 1968 is a healing statute which validated the Emergency Powers Regulations 1967 No. 16 of 1967 (if found to be invalid) and actions taken thereunder;

(iii) when he held that the Indemnity Act 1968 No. 1 of 1968 contravenes Section 3 of the St. Christopher, Nevis and Anguilla Constitution Order 1967 and is therefore unconstiutional;

(iv) the learned trial Judge misdirected himself on the question of precedent and the law applicable thereto;

(v) the Judge was wrong in law in failing to give due consideration or no consideration at all to the doctrine "omnia praesumuntur legitime facta donec probetur in contrarium"

/and its .....

and its effect on any damages and or compensation awarded to the Plaintiff/Respondent;

4. The Defendant/Appellant moves the Honourable Court

(A) to set aside that part of the judgement which:-

(i) deems the Emergency Powers Regulations 1967 No. 16 of 1967 invalid and unconstitutional;

(ii) seeks to declare the Indemnity Act 1968 No. 1 of 1968 unconstitutional -

(B) TO MAKE A DECLARATION that

(a) The Emergency Powers Regulations 1967 No. 16 of 1967 are valid and constitutional;

(b) the Indemnity Act 1968, No. 1 of 1968 is valid and constitutional;

(c) the detention of the Plaintiff/Respondent was lawful;

AND

(C) Order that judgement be entered for the Defendant/Appellant here and in the Court with costs to be taxed in both cases.

(5) The persons directly affected are:-

/ Name .....

Name	Address
(i) John Joseph Reynolds	The Bay Road Basseterre St. Kitts
(ii) The Attorney General of the State of St. Christopher, Nevis and Anguilla	Attorney-General's Chambers, Government Headquarters St. Kitts

Dated this 25th day of November, 1976.

(Sgd.) Henry L. Browne

Solicitor for Defendant/Appellant.

IN THE HIGH COURT OF JUSTICE

STATE OF SAINT CHRISTOPHER NEVIS ANGUILLA

SAINT CHRISTOPHER CIRCUIT

CIVIL APPEAL NO. 2 of 1976

BETWEEN:-

THE ATTORNEY-GENERAL OF THE STATE OF SAINT CHRISTOPHER NEVIS ANGUILLA — Defendant/Appellant

AND

JOHN JOSEPH REYNOLDS — Plaintiff/Respondent

I, VERNOL THOMAS BAILIFF of the Saint Christopher, Nevis and Anguilla Supreme Court make oath and say as follows:-

THAT the Notice of Appeal in the above Appeal filed herein on the 25th day of November, 1976, was duly served by me this deponent upon the Plaintiff/Respondent herein on the 26th day of November, 1976 by leaving one (1) copy of the said Notice of Appeal with the said Plaintiff/Respondent and who accepted the said Notice of Appeal on his own behalf.

SWORN at the Registrar's Office Basseterre, Saint Christopher, this 26th day of November, 1976
BEFORE ME
(Sgd.) B. Rawlins
A Commissioner for Oaths. St. Kitts
Nov. 26 1976

(Sgd.) Vernol Thomas
Bailiff Higher Court
26/11/76

IN THE COURT OF APPEAL

SAINT CHRISTOPHER NEVIS ANGUILLA

SAINT CHRISTOPHER CIRCUIT

CIVIL APPEAL NO. 2 of 1976

BETWEEN:

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

AND

JOHN JOSEPH REYNOLDS — PLAINTIFF/Respondent

NOTICE OF RESPONDENT
of intention to contend that decision of The High Court of Justice (the Court below) be varied.

TAKE NOTICE that upon hearing of the above appeal the Plaintiff/Respondent herein intends to contend that the decision of the High Court dated the 15th day of October, 1976, should be varied as follows:-

1. By substituting such higher figure as may be just for the sum of $5,000 awarded to the Plaintiff/Respondent by way of damages or compensation in the said decision of the High Court.

AND that judgment be entered for the Plaintiff/Respondent

/in accordance ....

in accordance with such variation.

AND TAKE NOTICE that the grounds on which the Plaintiff/Respondent intends to rely are as follows:-

1. That the sum of $5,000 awarded to the Plaintiff/Respondent by way of damages or compensation is insufficient and unreasonable having regard to the evidence and in particular having regard to

   (a) the period of his detention;

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

   (c) the place and manner of his detention.

AND FURTHER TAKE NOTICE that the Plaintiff/Respondent will apply to the Court of Appeal for an order that the Defendant/Appellant pay to the Plaintiff/Respondent the costs occasioned by this notice to be taxed.

Dated this 16th day of December, 1976.

(Sgd.) Frederick E. Kelsick
Solicitor for the Plaintiff/Respondent

To: Henry L. Browne, Esq.,
Solicitor for the Defendant/Appellant

and to The Registrar, Court of Appeal

IN THE COURT OF APPEAL

SAINT CHRISTOPHER NEVIS ANGUILLA:

CIVIL APPEAL NO. 2 of 1976

BETWEEN: THE ATTORNEY-GENERAL - Appellant

Vs.

JOHN JOSEPH REYNOLDS - Respondent

Before: The Hon. Mr. Justice St. Bernard - Acting Chief Justice
The Honourable Mr. Justice Peterkin
The Honourable Mr. Justice Nedd - Acting

Appearances: Attorney-General for Appellant,
H. Browne and K. Liburd with him.

F. Kelsick for Respondent.

1977, July 18, 19, 20 & 21
1977, November 28

J U D G M E N T

PETERKIN, J.A.:

This is an appeal against the judgment of Glasgow, J. in which he awarded the Respondent the sum of $5,000.00 damages for false imprisonment.

The grounds of appeal are that the trial judge was wrong in law:-

(i) in rejecting the submission that the Emergency Powers Regulation 1967 No. 16 of 1967 were valid and constitutional;

/(ii) in

(ii) in rejecting the submission that the Indemnity Act, 1968 No. 1 of 1968 is a healing statute which validated the Emergency Powers Regulations 1967 No. 16 of 1967 (if found to be invalid) and actions taken thereunder;

(iii) when he held that the Indemnity Act 1968 No. 1 of 1968 contravenes Section 3 of the St. Christopher, Nevis and Anguilla Constitution Order 1967 and is therefore unconstitutional;

(iv) the learned trial judge misdirected himself on the question of precendent and the law applicable thereto;

(v) the Judge was wrong in law in failing to give due consideration or no consideration at all to the doctrine "omina praesumuntur legitime facta donac probetur contrarium" and its effect on any damages and or compensation awarded to the Plaintiff/ Respondent;

The facts as found by the trial judge are that on 30th May 1967, the Governor of St. Christopher, Nevis and Anguilla

/issued

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. Regulation 3 of these Regulations reads,

"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 impending 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

and shall be detained in such place as may be authorised by the Governor ....."

On the 10th June, 1967, the Governor's Deputy acting under this regulation ordered the detention of the Respondent. His order read,

"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,

10 and that by reason thereof it is necessary to exercise control over him;

NOW, THEREFORE, in pursuance of the power conferred on me by Regulation 3 of the Emergency Powers Regulations, 1967, and all other powers thereunto enabling me,

I DO HEREBY ORDER AND DIRECT that the said

JOHN REYNOLDS

be detained.

Ordered by me this 10th day of June, 1967.

20 (sgd.) B. F. Dias
Governor's Deputy".

/At

At about 7.50 a.m. on the 11th June, 1967, Inspector Delsol and other Police Officers went to the Respondent's home in Basseterre. They read the order to him and arrested him. They took him to H.M. Prisons in Basseterre where he was detained until his release on 10th August, 1967. The conditions under which he was imprisoned may be described as being rather primitive. At the time of his imprisonment he was 57 years. He had been a member of the Leeward Islands Police Force from 1935 to 1959, and a member of the St. Christopher, Nevis and Anguilla Police Force from 1960 to 1964 when he retired with the rank of Inspector of Police. He was described as a dependable and knowledgeable officer. He was married at the time of his detention, and was a member of a political party known as the Peoples Action Movement. Sometime after the commencement of his detention the Respondent was handed a further document in purported compliance with the provisions of 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 language that he understands, of the

/reasons

reasons for his arrest or detention. The reason given for the Respondent's 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.

There is also on the record the following evidence which stands uncontroverted:-

"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 was represented by Mr. Joseph Archibald who was then the Senior Crown Counsel. Mr. Kelsick was representing Boon and Dickenson, Mr. Kawaja was representing myself. Mr. Henville was representing Henry S. Charles. That's as far as I can recall. Mr. Dickenson was one in the cell with me.

/Shefton Warner

Shefton 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 said "so I can make my recommendation". Mr. Archibald replied "I will speak to the authorities". 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."

Three aspects of the matter fall to be considered, namely the Emergency Powers Regulations, 1967, (S.R.& O. No. 16), the Indemnity Act, 1968, and the detention of the Respondent.

It is submitted on behalf of the Appellant 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 we have been invited to overrule them. The

/validity

validity of the Emergency Powers Regulations, 1967, was first considered by this Court (A.M. Lewis, C.J., K.L. Gordon and P.C. Lewis, JJ.A.) in Charles V. Phillips and Sealey. It was held therein that Regulation 3 (which is the relevant regulation in this appeal) of the Emergency Powers Regulations, 1967, offended against section 3 of the Constitution and had not been shown to have been authorised within the provisions of section 14, and that accordingly, the detention order was invalid, and the detention of the applicant, as a consequence, unlawful. Charles v. Phillips and Sealey was followed in Herbert v. Phillips and Sealey.

It is contended for in the instant case that the Order of 1959 is 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) which read,

/"(1) The

"(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."

/Counsel

Counsel cited among others the case of Kanda v Government of Malaya, 1962 A.C. 322.

The question to be determined as I see it is whether or not this Court is bound by its own previous decisions. It may well be that I find myself attracted to the argument of learned Counsel, and that I have certain misgivings in respect of some of the findings in Charles v. Phillips and Sealey and Herbert v. Phillips and Sealey, but the answer to the question in my view is to be found in the statement of Scarman L.J. in the case of Tiverton Estates Ltd. v. Wearwell Ltd., 1974, 1 AER 209, at pages 228 and 229. He said this,

"The Court of Appeal occupies a central, but save for a few exceptions, an intermediate position in our legal system. To a large extent, the consistency and certainty of the law depend on it. It sits almost always in divisions of three: more judges can sit to hear a case, but their decision enjoys no greater authority than a court composed of three. If, therefore,

/throwing

throwing aside the restraints of Young v. Bristol Aeroplane C. Ltd., one division of the court should refuse to follow another because it believed the other's decision to be wrong, there would be a risk of confusion and doubt arising where there should be consistency and certainty. The appropriate forum for the correction of the Court of Appeal's errors is the House of Lords, where the decision will at least have the merit of being final and binding - subject only to the House's power to review its own decisions. The House of Lords, as the court of last resort, needs this power of review: it does not follow that an intermediate appellate court needs it; and, for the reasons I have given, I believe the Court of Appeal is better without it, save in the exceptional circumstances specified in Young v. Bristol Aeroplane Co. Ltd."

I think that these words, suitably adapted, apply with equal force to the powers of this Court. I am of the opinion that this Court is bound by its previous decisions save and except as in the circumstances specifically set out in the

/case

case of Young v. Bristol Aeroplane Co. Ltd., none of which apply in the instant case. 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.

The Indemnity Act was passed in January, 1968, and has been referred to as a healing statute. The teeth of the Act are to be found in sections 3 and 5. Section 6 deems the Act to have come into force on 30th May, 1967. Sections 3 and 5 are as follows:-

"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

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:

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.

/(2) For

(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

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."

The Act therefore purports not only to deem legal and constitutional the detention of the Respondent during the State of Emergency as therein defined but also prohibits his taking any action whatsoever before any Court to determine the legality of his detention. It would mean in effect 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 states:-

"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

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.

(2) The High Court shall have original jurisdiction -

(a) to hear and determine any application made by any person in pursuance of subsection (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 subsection (3) of this section

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

adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.

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. In my opinion, therefore, the Indemnity Act is unconstitutional, null and void.

I turn now to the question of the Respondent's detention.

The Respondent was arrested on 11th June, 1967, and detained until his release on 10th August, 1967. Sometime in July there was a hearing in connection with his detention and that of others presided over by Mr. Hewlett. At the closing stages, Mr. Hewlett pointed out to Senior Crown Counsel that he had led no evidence against the Respondent and two others, whereupon he had replied, "I have no evidence against them." I should

/have

have thought that the Respondent would have been released at this stage. The fact is, however, that he was not. During the hearing of this appeal an attempt has been made to show from the evidence that the Respondent was aware of the reasons for his arrest. I do not agree. He stated that he did not know the reasons, and no evidence was led to show this. From the evidence at the trial, it is clear that what the Respondent was giving was his version of what he thought were the other side's reason for arresting him, not what they were in fact.

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. Wherever the burden of proof may lie it is clear from the evidence in this case that the detention of the Respondent has not been shown to have been reasonably justifiable. Further to this, the requirement to have his detention reviewed by an independent and impartial tribunal as laid down in section 15 of the Constitution was not, on the

/evidence

evidence, fulfilled.

In my view 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.

Accordingly, for the reasons given, I would dismiss this appeal.

There is on the record a cross-appeal brought by notice of the Respondent of his intention to contend that the decision of the High Court should be varied by substituting such higher figure as may be just for the sum of $5,000 awarded to him by way of damages. The grounds contended for are that the sum of $5,000 awarded is insufficient and unreasonable having regard to the evidence and in particular,

(a) the period of his detention,

(b) the physical inconvenience and discomfort suffered by him, and

(c) the place and manner of his detention.

The Respondent was detained from 11th June to 10th August,

/1967

1967 a period of about two months. He was detained in circumstances of inconvenience and indignity. He was for instance obliged to defecate in a gutter where he could have been seen by men and women from adjoining premises. He shared a room with four others, and he was made to bathe in the same room as prisoners which had neither door nor roof. When he appeared at the hearing before Mr. Hewlett, despite the fact that it was there stated by Senior Crown Counsel that there was no evidence against him, he was further detained for a period of several weeks. Taking everything into account, I am of the view that the sum awarded is wholly inadequate, and that the damages should be aggravated. I would allow the cross-appeal, vary the amount, and award to the Respondent the sum of $18,000.00 to include a small sum as exemplary damages.

(Sd) N. A. Peterkin
(N. A. Peterkin)
JUSTICE OF APPEAL

/I agree

I agree.

(Sd) R. A. Nedd
(R. A. Nedd)
(Ag.) JUSTICE OF APPEAL

ST. BERNARD J.A.

I have had the opportunity of reading beforehand the judgment of Peterkin J.A. and I agree with his reasons for dismissing the appeal. I also agree that the cross appeal should be allowed and that the damages be increased to $18,000.

(Sd) E. L. St. Bernard
(E. L. St. Bernard)
(Ag.) CHIEF JUSTICE

IN THE COURT OF APPEAL

SAINT CHRISTOPHER NEVIS ANGUILLA:

CIVIL APPEAL NO. 2 of 1976

BETWEEN: THE ATTORNEY-GENERAL - Appellant

Vs.

JOHN JOSEPH REYNOLDS - Respondent

ORDER GRANTING LEAVE TO APPEAL AND STAY OF EXECUTION

dated the 30th November, 1977

UPON THE APPLICATION of the Defendant/Appellant AND UPON HEARING Counsel for the Defendant/Appellant and the Plaintiff/Respondent

IT IS ORDERED that leave be granted to the Defendant/Appellant to appeal to Her Majesty in Council.

IT IS FURTHER ORDERED that execution on the judgment herein dated the 28th day of November, 1977 be stayed pending the hearing and determination of the said appeal.

/The condition

The condition of this Order is that the appeal shall be filed by the 28th day of February, 1978 otherwise the said appeal shall stand dismissed and the stay of execution be removed.

Dated the 8th day of December, 1977.

By Order of the Court.

(Sd) R. J. Eleazar.
Ag. Registrar.