

IN THE PRIVY COUNCIL

No. 29 of 1977

O N A P P E A LFROM THE COURT OF APPEAL OF THE COMMONWEALTH
OF THE BAHAMAS

B E T W E E N :

THE ATTORNEY GENERAL

Appellant

- and -

THOMAS D'ARCY RYAN

Respondent

CASE FOR THE APPELLANT

RECORD

- 10 1. This is an appeal by leave of the Court of Appeal from the judgments and order of the Court of Appeal (Hogan P. Duffus and Blair-Kerr JJ.A.) dated 16th March 1977 (i) allowing the appeal of the Respondent herein from an order of the Supreme Court dated 23rd June 1976 (ii) dismissing the cross appeal of the Appellant herein from the said judgment (iii) ordering that at the inception of the proceedings (7th April 1976) the Respondent herein was entitled to be registered as a citizen of the Bahamas subject to his compliance with Article 5(3) of the Constitution.
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- 30 2. The Respondent, a Canadian citizen, by Originating Summons dated 7th April 1976 sought a declaration that upon a true construction of the Constitution of the Commonwealth of the Bahamas, he was entitled to be registered as a citizen of that Commonwealth. He had previously made application for registration, but it had been refused. The application to the Court, raising as it did a question on the Constitution, was heard by two judges (Knowles C.J. and Graham J.) under the Supreme Court (Amendment) Act 1975 and

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the Rules made thereunder. Their Lordships reached differing conclusions. Knowles C.J. would have remitted the registration application to the Minister for consideration according to law. Graham J. would have granted the application sought subject to the Respondent complying with Article 5(3) of the Constitution. By reason of the disagreement the Court, pursuant to the Supreme Court (Special Jurisdiction) Rules 1976 dismissed the application. The Respondent appealed and the Respondent cross-appealed.

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pps.145-152
pps.153-155

3. This appeal raises inter alia the following issues of law :-

- (i) whether the concluding words of section 7 of the Bahamas Nationality Act 1973 (which provides that the Minister (of Home Affairs) may refuse an application for registration as a citizen of the Bahamas "if for any other sufficient reason of public policy he is satisfied that it is not conducive to the public good that the applicant should become a citizen of the Bahamas") are ultra vires the legislature. 20
- (ii) Whether the Minister's decision to refuse the Respondent's application for registration was an administrative act or a judicial or quasi judicial act.
- (iii) Whether the Minister's refusal of the Respondent's application for registration was a nullity. 30
- (iv) Whether the concluding words of section 16 of the Bahamas Nationality Act 1973 ("the decision of the Minister on any such application or order shall not be subject to appeal or review in any Court") prohibit the institution by the Respondent of these proceedings.
- (v) Whether the Court of Appeal had power to make, alternatively, ought to have made the order that, subject to compliance with Article 5(3) of the Constitution, the Respondent was entitled to be registered as a citizen of the Bahamas. 40

4. The relevant statutory provisions are set out in the Appendix to this Case.

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5. The Respondent filed three affidavits, sworn respectively the 7th and 29th April and the 7th May 1976. The Appellant filed two affidavits sworn by Lester McKellar Turnquest, First Assistant Secretary in the Ministry of Home Affairs, on the 23rd April and the 5th May 1976. The facts relating to the Respondent and his application for registration (not, save as appears, in dispute) are :-

pps.3-5, 20-21
and 27-29

pps.14-15 and
22-25

(a) The Respondent was born in Ontario on the 24th September 1925 and is a Canadian citizen.

p.6

(b) He took up residence in the Bahamas in 1947 and states that he has been ordinarily resident there ever since. It appears, however, that he studied accountancy in Canada from 1949 to 1954.

p.4. line 39

p.27 line 10

(c) Save for the study period in Canada he had various employments in the Bahamas from 1947 to 1962. Since 1962 he has been self-employed in the Bahamas. He owns a house and a plot of land there.

p.26

(d) In May 1951, in Nassau, he married a Bahamian lady. Mrs. Ryan is a citizen of the Bahamas by reason of Article 3 (1) of the Constitution.

p.7

p.4 line 21

(e) There are seven children of the marriage, of whom four were born in Canada and three in the Bahamas.

p.26

(f) In February 1966 he was granted a certificate stating that: "he belongs to the Bahama Islands for the purposes of the Immigration Act 1963".

p.11

(g) By a formal application dated 27th June 1974 and submitted on or about 9th July 1974 he sought registration as a citizen of the Commonwealth of the Bahamas.

pps.16-19

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- pps.26-27 (h) On the 7th November 1974, in response to an invitation, the Respondent and his wife were interviewed by the then Under-Secretary in the Ministry of Home Affairs. They brought with them their passports. The Under-Secretary, with the Respondent's application filed in his possession, inter alia, recorded on a formal document various details relating to the application. 10
- p.24 line 28 (i) On the 27th and 28th May 1975 the Minister of Home Affairs personally considered the whole of the Respondent's file and application. On 28th May the Minister refused the application. On 16th June Mr.Turnquest wrote to the Respondent advising him of the refusal.
- p.15 line 15 (j) On 16th February 1976 the Ministry received an application from the Respondent seeking the grant of a permanent residence certificate under the Immigration Act 1967 Section 12. The record discloses nothing further about this application. 20
- p.24 line 10 (k) From Mr. Turnquest's second affidavit it appears that, at the interview the Respondent was asked certain questions apart from those indicated by the formal document referred to in (h) above and that the Respondent's answers were recorded. Mr.Turnquest says in his affidavit "no evidence that he was never convicted in (Canada) or any other country was ever produced" by the Respondent. The Respondent deposed that he had "never been convicted of any criminal offence in any country whatsoever". He exhibited a certificate from the Bahamas police dated the 14th June 1974 stating that he had never been convicted of any criminal offence in the Bahamas. 30
- p.20 line 27 40
- p.22

On the 7th April 1976 the Respondent commenced these proceedings.

6. Knowles C.J. in the Supreme Court found as facts: that the Respondent was entitled to apply for registration: that he applied: that he was interviewed: that his file was considered by the Minister: that the Minister refused the application; and that the refusal was communicated to the Respondent. His Lordship also found that the formal document recorded "substantially" the questions which were asked and answered; and that (contrary to the statement in Paragraph 9 of the Respondent's 29th April 1974 affidavit) some of the questions which should have been put to the Respondent at the interview in accordance with section 7 of the BNA were in fact put to the Respondent and answered.

7. Turning to the law, his Lordship first disposed of three submissions made by the Respondent. The application had, he held, been properly processed; the decision had been properly communicated to the Respondent; and, he could not infer that the Minister had acted in bad faith. Then, as to Article 5(2) of the Constitution, the entitlement, on application, to be registered as a citizen was subject to exceptions or qualifications (Article 5(4)); the exceptions or qualifications were those set out in the Bahamas Nationality Act 1973 ("the BNA") section 7. This section conferred a discretion on the Minister and, including the general words with which the proviso to that section concluded, its contents were prescribed by Parliament within the definition of "prescribed" in Article 137(1) of the Constitution. He was unable to hold that the concluding, general words ("if for any other sufficient reason of public policy (the Minister) is satisfied....") were ultra vires having regard to Article 5(4) of the Constitution. Nor was Section 16 of the BNA ultra vires having regard to that Article. Section 16 had two component parts; as to the first part, the Minister need give no reason for refusing an application nor could he be compelled to give one; as to the second part, it did not entirely exclude judicial review. The Court could, on proper grounds, declare a decision to be a nullity.

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p.74 line 42

p.77 line 43

p.90 line 30

p.88 line 20

p.93 line 18

p.96 line 11

pps.98-101

p.201 line 30

pps.110 line
17- 112 line 33

One such ground was a breach of the rules of natural justice. Those rules required that a fair hearing be given. The fact that a decision, as here, involved a large measure of public policy did not affect this requirement. Applying these principles to the facts as found, his Lordship, while conceding that he did not know what principles of public policy were involved (this being a matter for the Minister) and assuming that the refusal was based upon public policy rather than on any of the specific matters covered in (a) to (e) of the proviso to BNA Section 7, could find no evidence that any matters unfavourable to the Respondent were put to him so as to enable him to give an answer. In these circumstances and resolving any uncertainty in favour of the Respondent, the purported decision of the Minister must be treated as a nullity. The function of the Minister, in the instant case, was at least quasi judicial, and probably judicial, not administrative. The Appellant's argument that the proceedings were barred by Section 2(2) of the Public Authorities Protection Act did not avail him. The Minister's decision was a nullity. Therefore he had not commenced to act, and therefore time had not commenced to run.

8. The Respondent had asked for a declaration that he (was entitled to be) registered as a citizen. In his Lordship's view the Court had no power to make such an order. The discretion was given to the Minister not the Court. Relying on the wide powers given by the Supreme Court Act Section 37 his Lordship would remit the application to the Minister to be determined according to law.

9. Graham J. started his judgment by reviewing the facts disclosed in the affidavits and emphasised that there was no evidence in the affidavits nor any suggestion made at the hearing that any matter of national security or public policy was considered by the Minister as a ground for refusal of the application. Then, after citing certain relevant provisions of the Constitution and of the BNA, he outlined the arguments for the Respondent and the Appellant respectively.

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10 He said that Article 5(2), (3) and (4)
of the Constitution provided a right of
registration for persons possessing Bahamian
status under the provisions of the Immigration
Act 1967 subject: (a) to any qualification or
exceptions properly enacted by Parliament under
Article 4; and, (b) in the case of persons
holding another citizenship, renunciation
thereof and in certain cases the taking of the
Oath of Allegiance, and the making of a
Declaration. He regarded the proviso to
Section 7 of the BNA as purporting to result
in making a far reaching alteration to Article
5(2), (3) and (4) of the Constitution and making
those provisions something more like a privilege
to be bestowed by the Minister. Graham J.
rejected any such conclusion.

p.115 line 16
p.115 line 22

20 There were, said Graham J., three
possibilities as to how the Minister made
his decision of refusal :-

- (i) That he made it on one or more
grounds in the proviso;
- (ii) that he made it on some ground or
grounds outside the proviso;
- (iii) that he made it on no grounds at
all.

30 A refusal under (ii) or (iii) is nowhere
authorised and would be a nullity. As to
(i), the contents of the proviso by their very
nature cast upon the Minister a duty to investi-
gate and in so doing to give the Plaintiff an
opportunity of answering, correcting or contra-
dicting any ground that might be considered
against him. As no such opportunity had been
given to the Respondent, the decision of the
Minister was a nullity, nor was the jurisdiction
of the Supreme Court ousted by the preclusive
formula in Section 16 of the BNA.

p.117 line 8

p.117 line 10

p.129 lines
1-5

40 Graham J. held that the Minister's
decision was a nullity on the further ground
that he had not acted in pursuance of matters
placed at his discretion by law. He made
reference to a combination of three factors :-

p.131 line 46
- 132 line 23

- (i) No evidence had been adduced for the

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Respondent to support a finding either directly or inferentially that the Minister based his refusal on any of the matters placed at his discretion in the proviso to section 7 of the BNA.

(ii) Such evidence as was before the Court went to show that none of the grounds for refusal set out in the proviso existed. 10

(iii) The Court had been asked by Counsel for the Appellant that the Appellant was not asking the Court to infer that any of the matters dealt with in the proviso applied to the Plaintiff.

Graham J. then considered and rejected the submission that the Respondent's action was barred by Section 2 of the Public Authorities Act (Chapter 86 of the Laws of the Bahamas) and turned to consider whether, having regard to Article 54 of the Constitution (which deals with the "entrenched" provisions of the Constitution) section 7 or at least its proviso and Section 16 of the BNA were invalid and ultra vires the legislature. He concluded that it was not open to the Court to construe Section 7 of the BNA in any way which would alter the right to registration contained in Article 5(2) of the Constitution. The proviso to Section 7 was, in effect, a modification or alteration of Article 5(2) and one which had not been enacted in compliance with one at least of the relevant requirements of Article 54 and thus was invalid and ultra vires the legislature. 20 30

p.133-143
line 2

p.152 line
40-153

In all the circumstances, Graham J. came to the view that the discretion of the Court should be exercised to grant a declaration that the Plaintiff was entitled to be registered as a citizen of the Commonwealth of the Bahamas subject to his compliance with the requirements of Article 5(3) of the Constitution. 40

10. Knowles C.J. pronounced final judgment in the following terms "the result of the two judgments is this. I would remit the matter to the Minister, to consider the Plaintiff's application, according to law.

My learned Brother Mr. Justice Graham would grant a declaration that the Plaintiff is entitled to be registered as a citizen of the Commonwealth of the Bahamas, subject to his compliance with the requirements of Article 5(3) of the Constitution.

10 Since my learned Brother and I have not been able to agree upon the judgment which should be made in this action the application is dismissed, pursuant to Rule 4 of the Supreme Court (Special Jurisdiction) Rules, 1976."

11. The Respondent appealed against the said final judgment and the Appellant cross-appealed. pps.145-154

12. Hogan P. delivered judgment on the 16th March 1977. After an extensive review of the statutory provisions, the facts and the relevant authorities, the learned President said "in the circumstances of this case the rule of natural justice embodied in 'audi alteram partem' required that the Appellant be informed of the acts or omissions which in the opinion of the Minister, would, unless refuted, preclude his registration." The Respondent had not been so informed nor given any opportunity of dealing with the considerations upon which the Minister's refusal rested. Accordingly, the Appellant was not treated fairly and the failure to observe the principles of natural justice in this respect vitiated the decision of the Minister which must, on this account, be treated as a nullity. pps.155-207 p.155-187

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Hogan P. then proceeded to consider the submission, which found favour with Graham J., that the proviso to Section 7 of the BNA was ultra vires, and, in so doing, confined himself to the question insofar as it related to the final words "if for any other sufficient reason of public policy he is satisfied that it is not conducive to the public good that the Applicant should become a citizen of the Bahamas". He expressed his conclusion thus "suffice it to say that in my view, sub articles 5(2) and (4) contemplated the exercise of a legislative function laying down the exceptions or qualifications which appear to the legislating authority to be appropriate, followed by what is in essence a judicial or quasi judicial decision p.187 lines 20 - 42 p.188 lines 21-38 p.190 lines 20-48

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determining whether an individual application falls within or without such exceptions or qualifications. The Constitution did not contemplate that the formulation of the qualification or exception and the determination whether an individual fell within it should be encompassed by a single executive act shrouded in silence and revealed only in its results.

"Thus to telescope the process, by purporting to authorise a Minister to determine and to determine by an ad hoc decision made in the privacy of his own mind what exceptions or qualifications are in the interests of public policy or national security and, by the same act, to decide whether they applied to a particular application, seems to me a departure from the provisions of the Constitution and in conflict with it. Consequently it is made void by Article 2 of the Constitution." 10

p.191 line
33 - 205
line 13

Hogan P. next considered the submission that, apart from the failure to give the Appellant an adequate opportunity to deal with the impediments, if any, to his registration, the decision of the Minister was wrong for other reasons. The learned President expressed his conclusion in these words "on the facts disclosed to this Court no reasonable Minister acting with a due sense of his responsibilities under the legislation would, at the inception of these proceedings, have been justified in refusing the Appellant's application for registration as a citizen." 20 30

p.206 lines
1-8

As to the relief sought by the Respondent, Hogan P. said no attempt had been made to contravert the Respondent's assertion that he did not fall within any of the exceptions specified in (a) to (e) of the proviso to Section 7 of the BNA; the Minister had chosen to bring forward by affidavit a number of facts; it seemed reasonable to conclude that these were the facts on which he sought to base his action and which that action should be assessed and judged; in these circumstances and on the facts as disclosed, registration could be refused only by acting perversely and the Court should not purport to create an opportunity for that; consequently the proper course was to make a declaration that the Appellant was entitled, at the inception of the proceedings, to registration upon compliance 40

with sub-article 5(3) of the Constitution.

RECORD
p.207 lines
2-23

13. Duffus J.A. started his judgment by reviewing in his turn the relevant statutory provisions. He adopted the facts stated by Hogan P. Duffus J.A. agreed with Knowles C.J. that Clauses (a) (b) (c) (d) and (e) of the proviso to Section 7 of the BNA were intra vires the legislature but said that the general "sweeping up" clause was a different matter. His view was that this portion of the proviso in Section 7 was "ultra vires". It was not an exception or qualification prescribed by or under an Act of Parliament. The Constitution did not give the Minister an absolute discretion to admit or refuse citizenship as he thought fit.

pps.208-236

pps.208-218

p.226 lines
15-21

p.226 lines
28-43

As to whether the decision of the Minister was a nullity, Duffus J.A. expressed the view that the rules of natural justice did apply; the Appellant had been deprived of his right to citizenship for some unknown reason, unknown to the Appellant and also to the Court, and he had not been given the opportunity of being heard in defence of his undoubted right; accordingly, he agreed with the learned Judges of the Supreme Court that for this reason the proceedings before the Minister were a nullity. As to whether the Minister's decision was a nullity on the further ground that the Minister had acted under that part of the proviso which was ultra vires the Constitution and therefore illegal, the Applicant had established that none of the exceptions (a) to (e) of the proviso to Section 7 of the BNA applied to him; the Appellant had made no attempt to show that any of those exceptions did apply to the Appellant; it must therefore follow that the Minister acted under the provisions of general clause which was ultra vires the legislature and that accordingly his refusal was a nullity on this ground also.

p.231 lines
14-23

pps.235 line 37
- 236 line 8

Duffus J.A. said that he was also satisfied that in the circumstances of this case the Applicant was at the commencement of the proceedings entitled to registration upon compliance with Article 5(3) of the Constitution and he agreed with the Order proposed by Hogan P.

RECORD

p.250 lines
16-21

14. Blair-Kerr J.A. once more reviewed the relevant statutory provisions. He rejected the contention that the proviso to Section 7 of the BNA was void because Parliament, in enacting that proviso, might have failed to comply with the provisions of Article 54 (the Entrenched Provision). He also rejected the submission that (a) to (e) of the proviso to Section 7 were ultra vires. In his view, however, the concluding words of the proviso were ultra vires because they did not "prescribe" as required by Article 5(4); they did nothing more but repeat, in somewhat different language, what Article 5(4) of the Constitution said might be prescribed. 10

p.271 line 22
- 272 line 41

As to whether or not the Minister's decision was a nullity, Blair-Kerr J.A. said that the Courts were not in a position to say with certainty on what ground the Minister refused the Respondent's application. Whatever the reason was, it could only lawfully have been one which fell in the scope of paras. (a) to (e) of the proviso to Section 7 of the BNA; he did not think it correct to say that no reasons had been given; the First Secretary in the Ministry had stated that there was no evidence that the Appellant had never been convicted in Canada or any other country and secondly he had stated that the Appellant "gave answers to the matters with which (the Under-Secretary) was concerned, as he should have been in order to comply with" the BNA and the Constitution. As to the first of these two reasons, the Respondent was not under any duty to satisfy the Minister that he had not been convicted in any part of the world; if the Minister's decision had turned on the fact that the Appellant had failed to produce such evidence, the Minister erred in law and his decision would be a nullity. As to the second reason, no tribunal could reasonably have concluded from any of the Appellant's answers given at the interview that he fell within any of the categories mentioned in paragraphs (a) to (e) of the proviso; further, if the Respondent's application had been refused as result of applying the concluding words of the proviso to any answer given by him the decision would again be bad in law and therefore a nullity. If the concluding words of the proviso were to be disregarded and the Court of Appeal were 20 30 40 50

correct in concluding that no tribunal could reasonably have deduced from any of the Appellant's answers given at the interview that he fell within any of the categories mentioned in paras. (a) to (e) of the proviso, the Minister's decision not to register the Appellant must have been founded on information other than that disclosed in the record of the interview; the Respondent should have been given an opportunity of answering, correcting or contradicting any such information; he was not given such an opportunity; there was, therefore, a breach of the rules of natural justice and accordingly on that ground the Minister's decision was a nullity.

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Blair-Kerr J. rejected the submissions that the Court's jurisdiction to make the declaration sought by the Respondent was ousted by Section 16 of the BNA and that the action was barred by Section 2 of the Public Authorities Protection Act Cap 86. He concluded by agreeing that the Court of Appeal should make the declaration which was sought by the Respondent.

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p.275 lines
17-23

15. The Appellant submits that the judgment of the Court of Appeal was wrong and should be reversed.

16. As to the finding that Clauses (a) to (e) of the proviso to Section 7 of the BNA were not ultra vires the legislature, the Appellant submits that the Court of Appeal were right. The Court of Appeal's error on this aspect of the case was in holding that the concluding words of the proviso were ultra vires. These concluding words were not less "prescribed" i.e. "provided by or under an Act of Parliament" than the remainder of the proviso to Section 7; the concluding words are no less necessary than (a) to (e) for the effective control of Bahamas citizenship. Clauses (a) to (e) are concerned with matters peculiar to an individual applicant, while the concluding words cover matters of broad public policy e.g. population levels, which might require exclusion from citizenship of one or many applicants however worthy they might be as individuals; such matters are not amenable to refutation by an Applicant nor would any good purpose be served by giving an Applicant an opportunity to refute them.

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RECORD

17. Such broad considerations of public policy are, it is submitted, properly to be considered by the Minister alone and are inappropriate for a judicial or quasi judicial hearing. The Minister's decision based on such consideration is administrative rather than judicial; it is essentially a discretionary decision and one which is excluded and properly excluded from "appeal or review in any Court" by virtue of Section 17 of the BNA. 10

18. If it be correct to deduce that the Minister did not base his decision on any of the matters referred to in clauses (a) to (e) of the proviso to Section 7, then it must have been based on a reason of public policy leading him to the conclusion that for the Respondent to become a citizen of the Bahamas would not be conducive to the public good. The onus is on the Respondent to show that the Minister's decision was a nullity. If the Appellant is right in submitting that the concluding words of the proviso to Section 7 are intra vires, then it cannot safely or properly be inferred that the Minister either took into account matters which he should not have done or that the decision was one which no Minister could reasonably have come to. 20

18. a) The Appellant submits that Article 5 of the Constitution is to be contrasted with Articles 3, 4, 6 and 8. These Articles bestow citizenship by operation of law on those who qualify, however unworthy they may be as individuals and however strong any broader considerations of public policy which would militate against the bestowment upon them of citizenship might be. Article 5 on the other hand gives no vested right; Article 5(2) imposes the condition precedent (fulfilled in the instant case) of application in due time; Article 5(3) imposes the further condition precedent of renunciation by an Applicant of any other citizenship to which he may be entitled (a condition which has not been and which may or may not be fulfilled in the instant case). Thus, it was inappropriate for the Supreme Court or the Court of Appeal to make a Declaration as to the Respondent's alleged right. 30 40

19. It is further submitted that the declaration

made was inappropriate and wrong on the following further grounds :-

RECORD

10 (i) If it be assumed that the Minister acted contrary to the rules of natural justice in that he made his decision on one of the grounds (a) to (e) of the proviso to Section 7, without giving the Respondent a chance to deal with the material on which such decision was based, then it would be wrong for the Respondent to be registered as a citizen without a proper determination. There may be substantial grounds for excluding the Respondent from citizenship; the Respondent may be able to refute such grounds or he may not. In these circumstances it would be wrong that a decision which is

20 ex-hypothesi a nullity should have effect as a decision in the Respondent's favour.

30 (ii) The Minister possibly based his decision on the concluding words of the proviso to Section 7, and may not have given the Respondent an opportunity to refute any such additional material as may have been before him relevant to clauses (a) to (e) because it was superfluous to do so; if his decision were held to be a nullity on the basis that the concluding words of the proviso were ultra vires, then, once again, it would be wrong for the Minister's decision, ex hypothesi a nullity, to take effect as a decision in the Respondent's favour.

40 20. The Appellant submits that the only proper course, if the Respondent otherwise succeeds in this appeal, is to remit the matter to the Minister for determination according to law (as Knowles C.J. would have done).

21. By reason of the foregoing the Appellant submits that this appeal should be allowed for the following (among other)

RECORD

R E A S O N S

- (i) BECAUSE no part of the proviso to Section 7 of the BNA is ultra vires the legislature.
- (ii) BECAUSE the Minister's decision was not reached in contravention of the rules of natural justice and was not otherwise a nullity.
- (iii) BECAUSE the Minister's decision is not subject to appeal or review in any Court.
- (iv) BECAUSE the matter should have been remitted to the Minister for determination according to law.

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CHRISTOPHER FRENCH, Q.C.

GERALD DAVIES

APPENDIX

THE CONSTITUTION OF THE COMMONWEALTH OF THE BAHAMAS

(The Schedule to the Bahamas Independence Order, 1973

S.I. No. 1080 of 1973)

(Came into Operation, 10th July, 1973)

CHAPTER I - THE CONSTITUTION

10 2. This Constitution is the supreme law of the Commonwealth of The Bahamas and, subject to the provisions of this Constitution, if any other law is inconsistent with this Constitution, this Constitution, shall prevail and the other law shall, to the extent of the inconsistency, be void.

CHAPTER II - CITIZENSHIP

3. (1) Every person who, having been born in the former Colony of the Bahama Islands, is on 9th July 1973 a citizen of the United Kingdom and Colonies shall become a citizen of The Bahamas on 10th July 1973.

20 (2) Every person who, having been born outside the former Colony of the Bahama Islands, is on 9th July 1973 a citizen of the United Kingdom and Colonies shall, if his father becomes or would but for his death have become a citizen of The Bahamas in accordance with the provisions of the preceding paragraph, become a citizen of The Bahamas on 10th July 1973.

30 (3) Every person who on 9th July 1973 is a citizen of the United Kingdom and Colonies having become such a citizen under the British Nationality Act 1948 by virtue of his having been registered in the former Colony of the Bahama Islands under that Act shall become a citizen of The Bahamas on 10th July 1973:

Provided that this paragraph shall not apply to any citizen of the United Kingdom and Colonies -

(a) who was not ordinarily resident in that Colony on 31st December 1972, or

- (b) who became registered in that Colony on or after 1st January 1973, or
- (c) who on 9th July 1973 possesses the citizenship or nationality of some other country.

4. Every person who on 9th July 1973 is a citizen of the United Kingdom and Colonies -

- (a) having become such a citizen under the British Nationality Act 1948 by virtue of his having been naturalised in the former Colony of the Bahama Islands before that Act came into force; or 10
- (b) having become such a citizen by virtue of his having been naturalised in the former Colony of the Bahama Islands under that Act,

shall become a citizen of The Bahamas on 9th July 1974, unless, prior to that date, he has in such manner as may be prescribed declared that he does not desire to become a citizen of The Bahamas: 20

Provided that this section shall not apply to a citizen of the United Kingdom and Colonies who on 9th July 1973 possesses the citizenship or nationality of some other country.

5. (1) Any woman who, on 9th July 1973, is or has been married to a person -

- (a) who becomes a citizen of The Bahamas by virtue of Article 3 of this Constitution; or
- (b) who, having died before 10th July 1973, would but for his death, have become a citizen of The Bahamas by virtue of that Article, 30

shall be entitled, upon making application and upon taking the oath of allegiance or such declaration in such manner as may be prescribed, to be registered as a citizen of The Bahamas:

Provided that the right to be registered as a citizen of The Bahamas under this paragraph shall be subject to such exceptions or qualifications as 40

may be prescribed in the interests of national security or public policy.

(2) Any person who, on 9th July 1973, possesses Bahamian Status under the provisions of the Immigration Act 1967 (a) and is ordinarily resident in the Bahama Islands, shall be entitled, upon making application before 10th July 1974, to be registered as a citizen of The Bahamas.

10 (3) Notwithstanding anything contained in paragraph (2) of this Article, a person who has attained the age of eighteen years or who is a woman who is or has been married shall not, if he is a citizen of some country other than The Bahamas, be entitled to be registered as a citizen of The Bahamas under the provisions of that paragraph unless he renounces his citizenship of that other country, takes the oath of allegiance and makes and registers such declaration as may be prescribed:

20 Provided that where a person cannot renounce his citizenship of the other country under the law of that country he may instead make such declaration concerning that citizenship as may be prescribed.

(4) Any application for registration under paragraph (2) of this Article shall be subject to such exceptions or qualifications as may be prescribed in the interests of national security or public policy.

30 (5) Any woman who on 9th July 1973 is or has been married to a person who subsequently becomes a citizen of The Bahamas by registration under paragraph (2) of this Article shall be entitled, upon making application and upon taking the oath of allegiance or such declaration as may be prescribed, to be registered as a citizen of The Bahamas:

40 Provided that the right to be registered as a citizen of The Bahamas under this paragraph shall be subject to such exceptions or qualifications as may be prescribed in the interests of national security or public policy.

(6) Any application for registration under this Article shall be made in such manner as may be prescribed as respects that application:

Provided that such an application may not be made by a person who has not attained the age of eighteen years and is not a woman who is or has been married, but shall be made on behalf of that person by a parent or guardian of that person.

6. Every person born in The Bahamas after 9th July 1973 shall become a citizen of The Bahamas at the date of his birth if at that date either of his parents is a citizen of The Bahamas.

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7. (1) A person born in The Bahamas after 9th July 1973 neither of those parents is a citizen of The Bahamas shall be entitled, upon making application on his attaining the age of eighteen years or within twelve months thereafter in such manner as may be prescribed, to be registered as a citizen of The Bahamas:

Provided that if he is a citizen of some country other than The Bahamas he shall not be entitled to be registered as a citizen of The Bahamas under this Article unless he renounces his citizenship of that other country, takes the oath of allegiance and makes and registers such declaration of his intentions concerning residence as may be prescribed.

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(2) Any application for registration under this Article shall be subject to such exceptions or qualifications as may be prescribed in the interests of national security or public policy.

8. A person born outside The Bahamas after 9th July 1973 shall become a citizen of The Bahamas at the date of his birth if at that date his father is a citizen of The Bahamas otherwise than by virtue of this Article or Article 3(2) of this Constitution.

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9. (1) Notwithstanding anything contained in Article 8 of this Constitution, a person born legitimately outside The Bahamas after 9th July 1973 whose mother is a citizen of The Bahamas shall be entitled, upon making application on his attaining the age of eighteen years and before he attains the age of twenty-one years, in such manner as may be prescribed, to be registered as a citizen of The Bahamas:

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Provided that if he is a citizen of some country other than The Bahamas he shall not be entitled to be registered as a citizen of The Bahamas under this Article unless he renounces his citizenship of that other country, takes the oath of allegiance and makes and registers such declaration of his intentions concerning residence as may be prescribed.

10 (2) Where a person cannot renounce his citizenship of some other country under the law of that country, he may instead make such declaration concerning that citizenship as may be prescribed.

(3) Any application for registration under this Article shall be subject to such exception or qualifications as may be prescribed in the interests of national security or public policy.

20 10. Any woman who, after 9th July 1973, marries a person who is or becomes a citizen of The Bahamas shall be entitled, provided she is still so married, upon making application in such manner as may be prescribed and upon taking the oath of allegiance or such declaration as may be prescribed, to be registered as a citizen of The Bahamas:

30 Provided that the right to be registered as a citizen of The Bahamas under this Article shall be subject to such exceptions or qualifications as may be prescribed in the interests of national security or public policy.

11. (1) If the Governor-General is satisfied that any citizen of The Bahamas has at any time after 9th July 1973 acquired by registration, naturalisation or other voluntary and formal act (other than marriage) the citizenship of any other country, the Governor-General may by order deprive that person of his citizenship.

40 (2) If the Governor-General is satisfied that any citizen of The Bahamas has at any time after 9th July 1973 voluntarily claimed and exercised in any other country any rights available to him under the law of that country, being rights accorded exclusively to its citizens, the Governor-General may by order deprive that person of his citizenship.

12. Any citizen of The Bahamas who has attained the age of twenty-one years and who -

- (a) is also a citizen or national of any other country; or
- (b) intends to become a citizen or national of any other country, shall be entitled to renounce his citizenship of The Bahamas by a declaration made and registered in such manner as may be prescribed:

Provided that -

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- (a) in the case of a person who is not a citizen or national of any other country at the date of registration of his declaration or renunciation, if he does not become such a citizen or national within six months from the date of registration he shall be, and shall be deemed to have remained, a citizen of The Bahamas notwithstanding the making and registration of his declaration of renunciation; and

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- (b) the right of any person to renounce his citizenship of The Bahamas during any period when The Bahamas is engaged in any war shall be subject to such exceptions or qualifications as may be prescribed in the interests of national security or public policy.

13. Parliament may make provision -

- (a) for the acquisition or citizenship of The Bahamas by persons who do not become citizens of The Bahamas by virtue of the provisions of this Chapter; 30
- (b) for depriving of his citizenship of the Bahamas any person who is a citizen of The Bahamas otherwise than by virtue of paragraphs (1) or (2) of Article 3 or Articles 6 or 8 of this Constitution; or
- (c) for the certification of citizenship of The Bahamas for persons who have acquired that citizenship and who desire such certification. 40

14. (1) Any reference in this Chapter to the father of a person shall, in relation to any person born out of wedlock other than a person legitimated before 10th July 1973, be construed as a reference to the mother of that person.

10 (2) For the purposes of this Chapter, a person born aboard a registered ship or aircraft, or aboard an unregistered ship or aircraft of the government of any country, shall be deemed to have been born in the place in which the ship or aircraft was registered or, as the case may be, in that country.

20 (3) Any reference in this Chapter to the national status of the father of a person at the time of that person's birth, shall, in relation to a person born after the death of the father, be construed as a reference to the national status of the father at the time of the father's death; and where that death occurred before 10th July 1973 and the birth occurred after 9th July 1973 the national status that the father would have had if he had died on 10th July 1973 shall be deemed to be his national status at the time of his death.

CHAPTER V

30 54. (1) Subject to the provisions of this Article, Parliament may, by an Act of Parliament passed by both Houses, alter any of the provisions of this Constitution or (in so far as it forms part of the law of The Bahamas) any of the provisions of The Bahamas Independence Act, 1973.

(2) In so far as it alters -

(a) Articles 32, 33, 34, 35, 41, 42, 43, 47, 48, 49, 79, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 128, 129, 130, 131, 132, 133, 134, 135 or 136 of this Constitution; or

40 (b) Articles 127 or 137 of this Constitution in their application to any of the provisions specified in sub-paragraph (a) of this paragraph,

a Bill for an Act of Parliament under this Article

shall not be passed by Parliament unless :-

- (i) at the final voting thereon in each House it is supported by the votes of not less than two-thirds of all the members of each House, and
 - (ii) the Bill, after its passage through both Houses, has been submitted to the electors qualified to vote for the election of members of the House of Assembly and, on a vote in such manner as Parliament may prescribe the majority of the electors voting have approved the Bill. 10
- (3) In so far as it alters -
- (a) this Article;
 - (b) Articles 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 38, 39, 40, 45, 46, 51, 52, 60, 61, 62, 65, 66, 67, 68, 69, 70, 71, 72, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104 or 105 of this Constitution; 20
or
 - (c) Articles 106, 127 or 137 of this Constitution in their application to any of the provisions specified in subparagraphs (a) or (b) of this paragraph; or
 - (d) any of the provisions of The Bahamas Independence Act 1973, a Bill for an Act of Parliament under this Article shall not be passed by Parliament unless:- 30
 - (i) at the final voting thereon in each House it is supported by the votes of not less than three-quarters of all the members of each House, and
 - (ii) the Bill, after its passage through both Houses has been submitted to the electors qualified to vote for the election of members of the House of Assembly and, on a vote taken in such manner as Parliament may 40

prescribe the majority of the electors voting have approved the Bill.

(4) In this Article -

(a) reference to any of the provisions of this Constitution or the Bahamas Independence Act 1973 include references to any law that amends or replaces that provision; and

10 (b) references to the alteration of any of the provisions of this Constitution or The Bahamas Independence Act 1973 include references to the amendment, modification or re-enactment with or without amendment or modification, of that provision, the suspension or repeal of that provision and the making of a different provision in lieu of that provision.

20 (5) No Act of Parliament shall be construed as altering this Constitution unless it is stated in the Act that it is an Act for that purpose.

CHAPTER X

137. (1) In this Constitution, unless it is otherwise provided or required by the context -

.....

'prescribed' means provided by or under an Act of Parliament

.....

THE BAHAMAS NATIONALITY ACT NO.18 OF 1973

(commencement 10th July, 1973)

Preamble.....

PART I - PRELIMINARY

S.2. In this Act, unless the context otherwise requires -

.....

'Minister' means the Minister responsible for Nationality and Citizenship.

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PART II - ACQUISITION OF CITIZENSHIP

S.4.

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S.5. (1) Subject to the provisions of this section, the Minister may at his discretion cause any person of full age and capacity who is a Commonwealth citizen or a British protected person to be registered as a citizen of The Bahamas if that person makes application for such registration to the Minister in the prescribed manner and satisfies the Minister that he is qualified to be so registered under the provisions of the Second Schedule.

(2) A person qualified to be registered under this section shall not be so registered unless he first renounces any other citizenship which he may possess and, if he is not a Commonwealth citizen, takes the oath of allegiance:

Provided that where any such person cannot renounce his citizenship of some other country under the law of that country he may instead make such declaration concerning that citizenship as may be prescribed.

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S.6.

S.7. Any person claiming to be entitled to be registered as a citizen of The Bahamas under the provisions of Article 5, 7, 9 or 10 of the Constitution may make application to the Minister in the prescribed manner and, in any such case if it appears to the Minister that the applicant is

entitled to such registration and that all relevant provisions of the Constitution have been complied with, he shall cause the applicant to be registered as a citizen of The Bahamas:

Provided that, in any case to which those provisions of the Constitution apply, the Minister may refuse the application for registration if he is satisfied that the applicant -

- (a) has within the period of five years immediately preceding the date of such application been sentenced upon his conviction of a criminal offence in any country to death or to imprisonment for a term of not less than twelve months and has not received a free pardon in respect of that offence; or 10
- (b) is not of good behaviour; or
- (c) has engaged in activities whether within or outside of The Bahamas which are prejudicial to the safety of The Bahamas or to the maintenance of law and public order in The Bahamas; or 20
- (d) has been adjudged or otherwise declared bankrupt under the law in force in any country and has not been discharged; or
- (e) not being the dependent of a citizen of The Bahamas has not sufficient means to maintain himself and is likely to become a public charge, or if for any other sufficient reason of public policy he is satisfied that it is not conducive to the public good that the applicant should become a citizen of The Bahamas. 30

S.8.

S.9. The Minister may at his discretion, if application is made to him for naturalisation in the prescribed manner by an alien of full age and capacity who satisfies him that he is qualified under the provisions of the Second Schedule, grant to him a certificate of 40

naturalisation; and a person to whom such a certificate is granted shall on taking the oath of allegiance in the form prescribed in the Third Schedule, be a citizen of The Bahamas by naturalisation as from the date on which the certificate was granted:

10 Provided that no certificate of naturalisation shall be granted under this section to any person unless he first renounces any other citizenship that he may possess or, in the case of a person who cannot renounce his citizenship of some other country under the laws of that country, he makes instead such declaration concerning that citizenship as may be prescribed.

No.29 of 1977

IN THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL OF THE
COMMONWEALTH OF THE BAHAMAS

B E T W E E N :

THE ATTORNEY GENERAL Appellant

- and -

THOMAS D'ARCY RYAN Respondent

CASE FOR THE APPELLANT

CHARLES RUSSELL & CO.,
Hale Court,
Lincoln's Inn,
London, WC2A 3UL

Solicitors for the Appellant