No. 22 of 1980

ON APPEAL

FROM THE COURT OF APPEAL OF JAMAICA

BETWEEN:

ERROL GRANT
EVERARD KING
COLLIN REID
IAN ROBINSON
JOEL STAINROD
LA FLAMME SCHOOLER
FREDERICK FRATER
SUSAN HAIK and
CARL MARSH

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DESMOND GRANT

Appellants

- and -

THE DIRECTOR OF PUBLIC PROSECUTIONS

First Respondent

- and -

THE ATTORNEY GENERAL OF JAMAICA

Second Respondent

CASE FOR THE APPELLANTS

- 1. This is an Appeal from the Judgment and Order of the Court of Appeal of Jamaica (Henry, Kerr and Carberry, JJ.A.) dated the 12th day of December, 1979 dismissing the Appellants' Appeal from the Judgment and Order of the Supreme Court of Jamaica (Smith C.J., White and Campbell J.A.) sitting as a Constitutional Court dated the 4th day of May, 1979.
- Vol. 1, Pp. 165-167

RECORD

Vol. 1 Pp. 50-53

- 2. The principal issues that fall for consideration in this Appeal are as follows:
 - (a) Whether or not there would be a contravention of Section 20(1) of the Constitution of Jamaica (which

enshrines the right of a person charged with a criminal offence to a fair hearing within a reasonable time by an independent and impartial court) by allowing the Appellants to be tried by a jury exposed to substantial pre-trial publicity adverse to them.

(b) Whether or not it is incumbent, as a pre-condition of obtaining relief under the said Section 20(1) of the Constitution upon the Appellants to show that their rights thereunder were more likely to be contravened than not.

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- (c) Whether or not the First Respondent, the Director of Public Prosecutions, is entitled himself to prefer an indictment by law and if so whether or not the same contravenes Section 15 of the Constitution (which provides protection from arbitrary arrest or detention).
- 3. That the indictment which forms the sole subject matter of this Appeal in relation to the Appellants
 Frederick Frater, Susan Haik and Carl Marsh and part of the subject matter in relation to Ian Robinson and La Flamme Schooler and was preferred by the Director of Public Prosecutions on the 4th day of July, 1978 reads as follows:

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Vol. 1 P.18,11. 3-25 "The Queen v. Frederick Frater, Susan Haik, Carl Marsh, Ian Robinson and Laflamme Schooler In the Supreme Court of Jamaica In the Circuit Court for the parish of Saint Catherine

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IT IS HEREBY CHARGED on behalf of Our Sovereign Lady the Queen:-

Frederick Frater, Susan Haik, Carl Marsh, Ian Robinson and Laflamme Schooler are charged with the following offence:-

STATEMENT OF OFFENCE

Conspiracy to Murder, contrary to section 5 of the Offences against the Person Act.

PARTICULARS OF OFFENCE

Frederick Frater, Susan Haik, Carl Marsh, Ian Robinson and Laflamme Schooler, on

divers days between November 1977 and the 5th day of January 1978 in the parishes of Kingston and Saint Catherine, conspired together and with other persons unknown to murder Ian Brown, Anthony Daley, Delroy Griffiths, Rudolph Nesbeth and Norman Spencer."

4. That the Indictment which forms the sole subject matter of this Appeal in relation to the Appellants Desmond Grant, Errol Grant, Everard King, Collin Reid and Joel Stainrod and part of the subject matter in relation to Ian Robinson and Laflamme Schooler and was preferred by the Director of Public Prosecutions on 4th July, 1978 reads as follows:

"The Queen v. Desmond Grant, Errol Grant, Everard King, Collin Reid, Ian Robinson, Joel Stainrod, Laflamme Schooler. In the Supreme Court of Jamaica In the Circuit Court for the parish of Saint Catherine Vol. 1 P.19, 1.10-P.20,1.35

IT IS HEREBY CHARGED on behalf of Our Sovereign Lady the Queen that:

Desmond Grant, Errol Grant, Everard King, Ian Robinson, Joel Stainrod, LaFlamme Schooler are charged with the following offence:

STATEMENT OF OFFENCE - COUNT ONE

Murder

PARTICULARS OF OFFENCE

Desmond Grant, Errol Grant, Everard King, Collin Reid, Ian Robinson, Joel Stainrod, LaFlamme Schooler, on the 5th day of January, 1978, in the parish of Saint Catherine, murdered Trevor Clarke.

Desmond Grant, Errol Grant, Everard King, Collin Reid, Ian Robinson, Joel Stainrod, LaFlamme Schooler are further charged with the following offence:

STATEMENT OF OFFENCE - COUNT TWO

Murder

PARTICULARS OF OFFENCE

Desmond Grant, Errol Grant, Everard King,

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Collin Reid, Ian Robinson, Joel Stainrod, LaFlamme Schooler, on the 5th day of January, 1978 in the parish of Saint Catherine, murdered Winston Hamilton.

Desmond Grant, Errol Grant, Everard King, Collin Reid, Ian Robinson, Joel Stainrod, LaFlamme Schooler are further charged with the following offence:

STATEMENT OF OFFENCE - COUNT THREE

Murder

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PARTICULARS OF OFFENCE

Desmond Grant, Errol Grant, Everard King, Collin Reid, Ian Robinson, Joel Stainrod, LaFlamme Schooler, on the 5th day of January, 1978 in the parish of Saint Catherine, murdered Glenroy Richards.

Desmond Grant, Errol Grant, Everard King, Collin Reid, Ian Robinson, Joel Stainrod, LaFlamme Schooler are further charged with the following offence:

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STATEMENT OF OFFENCE - COUNT FOUR

Murder

PARTICULARS OF OFFENCE

Desmond Grant, Errol Grant, Everard King, Collin Reid, Ian Robinson, Joel Stainrod, LaFlamme Schooler, on the 5th day of January, 1978, in the parish of Saint Catherine, murdered Norman Thompson.

Desmond Grant, Errol Grant, Everard King, Collin Reid, Ian Robinson, Joel Stainrod, LaFlamme Schooler, are further charged with the following offence:

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STATEMENT OF OFFENCE - COUNT FIVE

Murder

PARTICULARS OF OFFENCE

Desmond Grant, Errol Grant, Everard King,

Collin Reid, Ian Robinson, Joel Stainrod, LaFlamme Schooler, on the 5th day of January 1978 in the Parish of Saint Catherine, murdered Howard Martin."

5. The most relevant statutory provisions to this Appeal are as follows:-

CONSTITUTION OF JAMAICA

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Section 15 - Protection from arbitrary arrest or detention

- 10 No person shall be deprived of his personal liberty save as may in any of the following cases be authorised by law -
 - (f) Upon reasonable suspicion of his having committed or of being about to commit a criminal offence.

(4) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that person.

Section 20 - Provisions to secure protection of law

(1) Whenever any person is charged with a criminal offence he shall, unless the charge is withdrawn, be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

Section 25 - Enforcement of protective provisions

- (1) Subject to the provisions of subsection (4) of this section, if any person alleges that any of the provisions of sections 14 to 24 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the Supreme Court for redress.
- (2) The Supreme Court shall have original jurisdiction to hear and determine any application made by such person in pursuance of subsection (1) of this section and may make such 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 the said sections 14 to 24 (inclusive) to the protection of which the person concerned is entitled.

Provided that the Supreme Court shall not exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.

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- (3) Any person aggrieved by any determination of the Supreme Court under this section may appeal therefrom to the Court of Appeal.
- (4) Parliament may make provision, or may authorise the making of provision, with respect to the practice and procedure of any court for the purpose of this section and may confer upon that court such powers, or may authorise the conferment thereon of such powers, in addition to those conferred by this section as may appear to be necessary or desirable for the purpose of enabling that court more effectively to exercise the jurisdiction conferred upon it by this section.

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Section 26 - Interpretation of Chapter III

(8) Nothing contained in any law in force immediately before the appointed day shall be held to be inconsistent with any of the provisions of this Chapter; and nothing to be done under the authority of any such law shall be held to be done in contravention of any of these provisions."

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Section 94

(3) The Director of Prosecutions shall have

power in any case in which he considers it desirable so to do -

(a) to institute and undertake criminal proceedings against any person before any court other than a court martial in respect of any offence against the law of Jamaica.

CRIMINAL JUSTICE (ADMINISTRATION) ACT

PART I: CRIMINAL PROCEDURE

2. - (1) All indictments preferred at the Circuit Courts shall commence in the appropriate form as set forth in rule 2 of the Schedule to the Indictments Act.

(2)

- No indictment for any offence shall be preferred unless the prosecutor or other person preferring such indictment has been bound by recognizance to prosecute or give evidence against the person accused of such offence, or unless the person accused has been committed to or detained in custody, or has been bound by recognizance to appear to answer to an indictment to be preferred against him for such offence, or unless such indictment for such offence be preferred by the direction of, or with the consent in writing of a Judge of any of the Courts of this Island, or by the direction or with the consent of the Director of Public Prosecutions, or of the Deputy Director of Public Prosecutions, or of any person authorized in that behalf by the Director of Public Prosecutions.
- 6. The history of proceedings leading to the institution of the instant Appeal are summarized in paragraph 8 hereof but it is convenient to notice the facts that gave rise to the same at this stage. These facts may be summarized as follows.

In the early hours of Thursday, the 5th January, 1978 an incident occurred in which five persons were killed, at Green Bay (an army firing range) in the parish of Saint Catherine during an anti-crime operation by the Military Intelligence Unit of the Jamaica Defence Force. No criminal proceedings were brought against any person immediately thereafter but an inquisition was held by a Coroner sitting with a jury into the deaths. The jury of the inquest returned

As to indictments to be preferred at the Circuit Courts.

Directions to be observed in preferring indictments.

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Pp. 21-31

findings of murder, that the deceased died of gun-shot wounds but that they (the jury) were unable to determine by whom. The Coroner accepted these finds as an 'open verdict' that the deaths were due to actions of persons criminally responsible but who were persons unknown.

Pp. 18-21

On the 4th July, 1978 the two indictments set out in paragraphs 3 and 4 hereof were preferred by the Director of Public Prosecutions himself, relying on Section 2 of the Criminal Justice (Administration) The Appellants were arrested and charged on the 7th July, 1978 and bail was granted on certain terms and conditions.

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The Appellants' case was raised in the Circuit Court, Spanish Town on the 18th September, 1980 when the Appellants successfully applied for a change of venue to Mandeville.

Vol. II Pp. 1-54 Not reproduced

7. Meanwhile the Appellants were the subject of substantial and prejudicial pretrial publicity in the public media in general and in particular in the columns of the Daily Gleaner and Star newspapers published by the Gleaner Company Ltd. The Appellants! Attorneys' letters to the Editor of the Gleaner failed to alter or moderate the flow of hostile pretrial publicity or even to secure a reply. On the 28th August, 1978 the Appellants' Attorneys wrote to the Director of Public Prosecutions inviting him to take appropriate action to initiate proceedings for contempt of court. The Director of Public Prosecutions replied on the 29th November, 1978 asserting that he "could not associate /himself/ with the proceedings contemplated [as there was] a difference of views between [himself] and the \overline{A} ppellants in relation to the effect it may have on the trials of the 'Green Bay' cases'. The Appellants therefore sought and obtained Leave to bring contempt proceedings in their own name and those proceedings are now pending in the Supreme Court.

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On the 27th January, 1979 the Appellants applied by Originating Notice of Motion to the Supreme Court (Smith CJ., White and Campbell JJ.) seeking redress 40 for breach of their constitutional rights:-

Pp. 4-10

(a) that their constitutional rights under Section 20 of the Constitution to secure a 'fair hearing' before an 'independent and impartial court established by law! had been, was being and was likely to

be contravened;

(b) that the process that had brought them before the court was illegal, challenging the right of the Director of Public Prosecutions to himself prefer an indictment in the manner described above. Consequently they claimed that there had been a breach of Section 15 of the Constitution, which provides for protection from arbitrary arrest or detention.

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(c) that the effect of the Coroner's jury verdict had been to deprive them of the benefit of the presumption of innocence, a right enshrined in Section 20(5) of the Constitution.

The Appellants sought relief in the form of declarations and consequential orders that the said indictments be directed to be withdrawn, struck out or quashed, and that they be unconditionally discharged.

On the 29th January, 1979 the Appellants successfully applied to Rowe J. at the Circuit Court at Manchester that the trials on the said indictments be stayed pending the hearing of the said Originating Notice of Motion.

Vol. I Pp. 37-38

The Originating Notice of Motion came on for hearing before the Full Court of the Supreme Court on 18th April, 1979 sitting as the Constitutional Court under Section 25 of the Constitution (Smith C.J., White and Campbell J.J.). evidence relied on by the Appellants consisted of

Vol. I P. 62, 1. 22

(a) an affidavit sworn by all the Appellants in which they recited the history of the matter including the intimidation against them when they appeared in Court on 9th October, 1978 and exhibited 37 press articles and 2 records which adversely commented on them;

Vol. I Pp.11-17

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a supplementary affidavit of the Appellants (b) exhibiting further press articles;

Vol. I Pp. 34-37

Pp. 1-54

(c) some 50 affidavits from various persons all over Jamaica expressing the view that it would be impossible for the Appellants to get a fair trial anywhere in Jamaica; one of these is that of Mr. David Aris:

Vol.II Pp. 60-70

Pp. 42-43

(d) an affidavit from a Mr. Carl Stone, an expert in opinion surveys, showing 92% of literate

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people had been exposed to the publicity, and

Vol. I Pp. 46-49 Vol. I P. 48, 11. 30-40

57% had formed opinions thereon.

- Vol. I. Pp. 50-53
- 11. Smith C.J. delivered an oral Judgment on 4th May, 1979 on behalf of the Court: he therein held
- P. 50, 11, 28-37

(a) that the protection of Chapter 3 of the Constitution only extended to State bodies;

P. 50, 1. 37 - P. 51, 1. 8

(b) that Section 20(5) of the Constitution had not been infringed;

P. 51, 11. 23-33 P. 51, 11. 42-52

- (c) that the indictments were properly preferred and observed that there had been massive pretrial publicity grossly prejudicial to the Appellants but nonetheless dismissed the Originating Application.
- 12. Each member of the Court delivered reasons for Judgment on the 27th July, 1979 for refusing the Appellants' application.
 - The Court held that the protection (a) afforded in the Constitution of Jamaica, 20 and particularly Chapter III is against contravention of the rights or freedoms of citizens by the State or by some other public authority endowed by law with coercive powers, and that therefore there has been no proof that the rights of the appellants as private citizens in this respect have been infringed (per Smith C.J. at pp. 71-75, per White J. at pp. 119-125 and per Campbell J. at 30 pp. 149-150).
 - (b) The Court found that the presumption of innocence to which the Appellants have a right under Section 20(5) should not be regarded as evidence and that it has not been shown that that right is capable of infringement in the way that has been contended (per Smith C.J. at pp.75-76 and per Campbell J. at p.150).
 - (c) The Court held that there was authority 40 in the Criminal Justice (Administration)
 Act for the preferment of the abovementioned indictments and that the

Appellants' contention that the indictments which were preferred by the Director of Public Prosecutions himself were so preferred without any legal or other authority was unfounded (per Smith C.J. at pp. 77-88, per White J. at pp. 89-101 and per Campbell at pp. 126-143).

- 13. It is respectfully submitted that the Supreme Court was wrong in dismissing the Appellants' application on the abovementioned grounds and rejecting the Appellants' arguments set out in the said Judgments; the Appellants repeat the matters raised in their Notice of Appeal and Supplementary Grounds of Appeal.
 - 14. By Notice of Appeal and Amended Notice of Appeal both dated the 7th May 1979 the Appellants gave notice of appeal against the Judgment of the Supreme Court. The original Grounds of Appeal read as follows:-
 - 1. That the Supreme Court erred in determining and holding that the Applicants/Appellants were not deprived of their liberty in breach of Section 15 of the Constitution and/or of due process in respect of Section 20 subsection (1) thereof by the preferment of Indictments by the Director of Public Prosecutions without constitutional or legal authority and/or in breach of Natural Justice:

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- AND that therefore the Supreme Court erred in refusing to grant the Reliefs claimed of a Declaration of infringement of Constitutional rights, with consequential Orders for termination of the prosecution and/or for the striking out of the Indictments aforementioned and/or for the unconditional discharge of the Applicants/Appellants.
- 2. Further and/or in the alternative that the Supreme Court erred in determining and holding that the Applicants/Appellants claim for a Declaration and for similar and consequential orders as in (1) above under Section 25 of the Constitution for the breach of Section 20 subsection (1) of the Constitution by reason of massive pre-trial publicity and prejudice precluding a 'fair hearing', failed in that the relevant Constitutional protections of Section 20 subsection (1) extend only to breaches of the said Protections by the State itself,

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- and that there was no contravention/ or breach by the said State itself of the aforesaid Section 22 subsection (1)
- 3. Further and/or in the alternative that the Supreme Court erred in determining and holding that the presumption of innocence was not evidence (presumptio iuris) in favour of an accused person, and that therefore there was no breach of Section 20 subsection (5) of the 10 Constitution, and therefore no entitlement of Constitutional redress by reason of the aforesaid massive pre-trial publicity and prejudice referred to in (2) above as eroding the said presumption of innocence.

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- Pp. 151-159
- Pp. 151-153
- Pp. 153-154
- P. 154, 11, 23-24 Pp. 145-157
- P.157,11. 13-23
- Pp. 157-159
- Vol. I P. 170, 1.4 Vol. I. Pp. 160-164 Vol. II P.p. 71-96 Vol. I. P. 170 1.7
- The Appellants served Supplementary Grounds of Appeal dated 4th October, 1979; as already stated it is respectfully submitted that these grounds are grounds upon which the Appellants' Appeal to the Court of Appeal ought to have been allowed and the Appellants adopt and rely on the same as part of their case herein. In the same complaint is made firstly that because of the uncontraverted prejudicial pre-trial publicity accepted as a finding of fact the substantive relief sought should have been granted. Secondly it is contended that an infringement of the Appellants' rights under Section 20(1) of the Constitution should have been found. Thirdly it is submitted that under Section 26 of the Constitution it ought to have been held that there was a contravention of Section 20 thereof. Fourthly the Appellants claim that errors were made in the interpretation of Chapter III of the Constitution. Fifthly submission is made that a verdict of murder by a coroner's jury is inconsistent with the entrenched presumption of innocence in the Constitution. Finally the Appellants contend that the Criminal Justice Administration Act was misconstrued by the Court below and submit that the indictment was improperly preferred.
- 16. The Appellants' said Appeal came on for hearing on the 9th October, 1979 before the Court of Appeal (Henry, Kerr and Carberry JJ.A.); three affidavits sworn by Sybil Hibbert were admitted in evidence; they exhibited numerous more articles prejudicial to the Appellants' trial. The hearing of the Appeal concluded after 22 days of argument on 12th December, 1979.

RECORD 17. The Court of Appeal (Henry, Kerr and Carberry JJ.A.) delivered an interim Judgment on the 12th P.165-167 December, 1979 dismissing the Appellants' Appeal. Therein the learned Judge of Appeal held, it is submitted erroneously, (i) that no constitutional rights were then P. 165, 1.39being contravened; P.166, 1.5 (ii) that presumption of innocence was not P. 166, 11. evidence in favour of an accused person; 9 - 15(iii) that the Director of Public Prosecutions P.166, 11. was entitled to prefer an indictment 16-20 without a preliminary inquiry. The conclusion was reached however, it is submitted P. 166, 11. correctly, that the Attorney-General, the Second 21 - 35Respondent herein, was a proper party to the proceedings. 18. A more detailed Judgment giving the reasons of all members of the Court of Appeal was delivered Pp. 170-241 on the 18th April, 1980 by Carberry J.A. The history Pp. 170-174 of the proceedings was dealt with at first and the Notice of Motion summarized. The learned Judge of Appeal then went on to review the law of contempt Pp. 174-184 of court as it applies in Jamaica. He then turned to various periods of time into which he considered the total period of relevant time could conveniently be split up. So far as the pre-inquest period was Pp. 184-185 concerned he held that there was no adverse publicity Pp. 184-190 but after that period he held, it is submitted correctly, that the Appellants had established that up to the time of the filing of the Motion there was a likelihood that the adverse publicity would have a prejudicial effect Pp. 190, 11. on the minds of potential jurors. 37 - 4119. The learned Judge of Appeal then turned to P.191 the remedy at common law for contempt of court; the remedies available were extensively set out. The Pp. 191-194 remedy under the Jamaica Constitution was then discussed and the constitutional provisions reviewed: Pp. 194-199 the Court posed two questions for itself. These were (a) whether the Constitution provided new remedies P. 199, 11. and (b) whether constitutional remedies were available 36 - 47

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P. 201, 11.

P. 205, 11.

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against other than state infringements. The Court

constitutional remedies were additional remedies

and in an appropriate case such remedies might be

concluded, it is submitted correctly, that

available against other than state bodies.

RECORD Pp. 207-220 20. The learned Judge of Appeal then discussed the particular role of the Attorney-General and Director of Public Prosecutions in contempt cases and their particular duties under the Constitution of Jamaica in the light of what was termed "the American Experience". 21. The learned Judge of Appeal then reiterated his earlier view: P. 221, 11. "We are not satisfied that the likelihood 2-8 is that the minds of potential jurors would be so indelibly prejudiced that the means and P.165,11. available to a trial court would be 27-39 ineffective to ensure a fair hearing by an impartial'tribunal." In the premises the Appellants submit that the Court of Appeal misdirected itself. It is respectfully submitted that once the Court of Appeal is satisfied that there is likelihood of the Appellants not being afforded a fair hearing by an impartial tribunal, namely, that it is unlikely that a jury unaffected by the adverse publicity can be obtained, it is incumbent upon the Court of Appeal to find that there has been contravention of Section 20(1) of the Constitution. P. 221, 22. The learned Judge of Appeal then held, it is 11.11-19 submitted wrongly, that the Appellants had not discharged the burden of proof required of them to show that their rights are "likely to be contravened". The Appellants respectfully submit that it is incumbent on them only to show that there is likelihood that the minds of potential jurors have been prejudiced by adverse publicity and this they have done, as held by the Courts below. Pp. 221-240 The learned Judge of Appeal then proceeded 23. to deal with what he called 'the Indictment Point'. Pp. 221-225 After reviewing the current statutory provisions, Pp. 225-226 the history of the preferring of indictments in England and Jamaica was reviewed in considerable detail. A Pp. 226-227 conclusion was reached that the Director of Public Prosecutions is entitled to prefer indictments and

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24. The Appellants respectfully submit that the Court of Appeal was wrong in finding that the Director of Public Prosecutions is authorized to prefer indictments ex-officio i. e. to prefer them himself. It is further respectfully submitted that on

earlier decisions to this effect were followed.

a proper reading of Section 2(2) of the Criminal Justice (Administration) Act, the Director of Public Prosecutions may only direct someone to prefer indictments or consent to his doing so.

25. The learned Judge of Appeal adopted the findings of the Chief Justice as to the presumption of innocence: it is respectfully submitted he fell into error thereby.

P. 240, 11. 38-48

26. The Appellants respectfully continue to rely on the dictum of White J. in Coffin v. United States (1895) 156 U.S. 432 (at p. 460) where he states:

"The fact that the presumption of innocence is recognized as a presumption of law, and is characterized by the civilians as a presumptio (sic) juris, demonstrates that it is evidence in favour of the accused. For, in all systems of law, legal presumptions are treated as evidence giving rise to resulting proof, to the full extent of their legal efficacy.

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Concluding then, that the presumption of innocence is evidence in favour of the accused, introduced by the law in his behalf, let us consider what is 'reasonable doubt.' It is, of necessity, the condition of mind produced by the proof resulting from the evidence in the cause. It is the result of the proof, not the proof itself, whereas the presumption of innocence is one of the instruments of proof, going to bring about the proof from which reasonable doubt arises; thus one is a cause, the other an effect."

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27. On the 28th day of May, 1980 the Appellants were granted Final Leave to Appeal by the Court of Appeal of Jamaica to Her Majesty in Council.

P. 242

28. The Appellants respectfully submit that this Appeal should be allowed, that the Judgment of the Court of Appeal should be reviewed and that the Declarations and Orders sought in the Appellants' Originating Notice of Motion be granted for the following among other

REASONS

- 1. BECAUSE the Court of Appeal and the Supreme Court failed to find that the Appellants' rights under the Constitution of Jamaica had been breached.
- BECAUSE the Appellants are unlikely to be afforded

a fair hearing by an impartial and independent tribunal established by law as required by Section 20(1) of the Constitution of Jamaica for the reasons canvassed in the Court of Appeal.

3. BECAUSE the Court of Appeal was wrong in finding that the Appellants had failed to discharge the burden of proof in establishing that their rights under Section 20 of the Constitution are likely to be contravened.

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- 4. BECAUSE the Court of Appeal and Supreme Court failed to consider Section 2(2) of the Criminal Justice (Administration) Act in its proper context, and in so doing was wrong in allowing the Director of Public Prosecutions to prefer the aforementioned indictments himself.
- 5. BECAUSE the Court of Appeal failed to hold that a Preliminary Inquiry should have been held and that committal should have been secured in the normal way.

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- 6. BECAUSE the Court of Appeal erred in finding that the Appellants' right to protection from arbitrary arrest and detention enshrined in Section 15(4) of the Constitution of Jamaica had not been impugned.
- 7. BECAUSE the Court of Appeal and the Supreme Court failed to find that the Appellants' right to the presumption of innocence under Section 20(5) of the Constitution had not been contravened.

NIGEL MURRAY

IN THE PRIVY COUNCIL

ON APPEAL

FROM THE COURT OF APPEAL OF JAMAICA

BETWEEN:

DESMOND GRANT ERROL GRANT EVERARD KING COLLIN REID IAN ROBINSON JOEL STAINROD LAFLAMME SCHOOLER FREDERICK FRATER SUSAN HAIK and CARL MARSH

Appellants

- and -

THE DIRECTOR OF PUBLIC

PROSECUTIONS

First Respondent

- and -

THE ATTORNEY-GENERAL OF JAMAICA

Second Respondent

CASE FOR THE APPELLANTS

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Solicitors for the Appellants.