

STATE OF ANTIGUA

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 10 of 1977

BETWEEN: DONALD A. HALSTEAD Appellant

and

THE COMMISSIONER OF POLICE
AND Respondents
VICTOR BROWNE

Before: The Hon. Sir Maurice Davis, Q.C. - Chief Justice
The Honourable Mr. Justice St. Bernard
The Honourable Mr. Justice Peterkin

Appearances: Dr. F. Ramsahoye for Appellant,
S. Christian with him.

Attorney-General and T. Hosein for Respondents,
C. Richards with them.

1977, November 17 & 18; Jan. 6

J U D G M E N T

PETERKIN, J.A.:

This is an appeal against the judgment of Berridge J dismissing a motion filed by the Appellant on 23rd August, 1977. The motion was brought under Section 15 of the Constitution of Antigua, and sought, inter alia, the following relief against the Respondents:-

- (a) an order declaring that the rights of the applicant under Section 8 of the Constitution of Antigua have been and are being contravened in criminal proceedings which were instituted against the applicant by the first named Respondent and which are now pending before the second named Respondent in the Magistrate's Court at St. John's Antigua the said proceedings being a preliminary inquiry into a charge that the applicant being a member of the Public

/Utilities.....

Delivered in Grenada in accordance with Section 80 (1) of the West Indies Associated States Supreme Court Act, 1969, (No.26) of the Laws of Antigua.

Utilities Authority of Antigua fraudulently applied for his own use and benefit certain property namely, the sum of \$4,507.79 the property of the said Authority contrary to Section 19 (1) (b) of the Larceny Act, Chapter 44;

- (b) an order that the said proceedings be quashed or discontinued;
- (c) further or in the alternative an order that the said charge be dismissed or an order directing the second-named Respondent to dismiss it;"

Paragraphs 9 to 11 inclusive of the Appellant's affidavit in support of the motion depose to the facts and circumstances.

They read,

- "9. I was present through out the hearing before the second named Respondent when the persons named in paragraph 6 herein gave evidence for the prosecution in support of the charge against me. They each admitted in cross examination that the statements they gave in evidence were the same or substantially the same as they gave before the Commission of Inquiry.
- 10. The only other witnesses who gave evidence for the Prosecution were Alvin Goodwin Assistant Superintendent of Police and Kenneth Fisher, Manager of the Royal Bank of Canada but their evidence did not in any way implicate me in relation to the charge.
- 11. I am advised by Counsel and verily believe that the charge could not be supported without the evidence of the persons who also gave evidence before the Commission of Inquiry and that if the evidence so given by those person is excluded from consideration by virtue of the provisions of Section 14 of the Commissions of Inquiry, Act, Chapter 305 there will be no evidence to support the charge. I am further advised by Counsel that even on the totality of all the evidence led no prima facie case was made out against me."

/Among.....

Among the grounds filed in support of the Appellant's claim to redress were the following:-

- "1. The applicant has been and is being denied a fair hearing of the said charge before the second-named Respondent in accordance with law and the rules and principles of fundamental justice in that the second named Respondent has at the instance of the first-named Respondent received in evidence at the said preliminary inquiry statements which are rendered inadmissible by virtue of Section 14 of the Commissions of Inquiry Act Chapter 305 the said statements being the only evidence given at the hearing which are capable of founding a case against the applicant on the said charge.
2. The applicant has been denied the protection of the law which is guaranteed to him by Section 1 of the Constitution of Antigua and which Section 8 of the said Constitution is designed to enforce by the use against him in the said proceedings of inadmissible evidence on all material aspects of the case.
3. The first named Respondent has requested the second named Respondent to call for a defence by the applicant to a case based on the said inadmissible evidence and the second named Respondent has adjourned the hearing of the said preliminary inquiry to the 15th August, 1977 to consider whether he will do so.
4. The applicant has suffered severe inconvenience, loss and damage in defending a prosecution which is wholly unfounded in law at a hearing which is being conducted in violation of the statutory protection afforded by Section 14 of the said Act and which in the premises is a gross abuse of the judicial process.
- /5. The.....

5. The second named Respondent failed in his judicial duty to bring the proceedings to an end by dismissing the charge upon the close of the case for the Prosecution and by maintaining the charge over the head of the applicant until the 15th August, 1977 or such further time as he may choose to adjourn it leaving the applicant in doubt whether the said prosecution will continue at the adjourned hearing."

Section 8 (1) of the Constitution of Antigua reads,

"8 (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 14 of Cap. 305 reads,

"14. No statement made by any person who is called as a witness before any Commission of Inquiry, or any Commissioners appointed in pursuance of this Act, in answer to any question put by or before such commission or commissioners, shall, except in cases of indictments for perjury, be admissible in evidence in any proceeding, civil or criminal".

It was contended for on behalf of the Appellant in the Court below that in view of Section 14 the evidence taken by the Magistrate at the Preliminary Inquiry was inadmissible and an infringement of the fundamental rights of the Appellant as provided by Section 8.

The learned trial Judge concluded,

- (a) That, having regard to Suit No. 31 of 1977 the Appellant was estopped from litigating the matter.

/(b) That.....

(b) That Section 8 of the Constitution, under which the Appellant contends that his rights have been infringed, does not apply to preliminary inquiries.

(c) That the statements to which Section 14 of Cap. 305 relates are documented statements, statements which have been reduced to writing.

In regard to his conclusion at (a) above, it has been argued by Counsel for Respondents that the same question was raised before Bishop J in Suit No. 31/77 and that the doctrine of estoppel would apply, the motion in this case having been filed after the delivery of that Judgment. It may well be that the argument advanced by Counsel is quite sound in principle. The trial judge did express the view in his judgment in the former matter that Section 8 did not apply to preliminary inquiries. But the issues in the instant motion are not quite the same as in the former, and I do not think that the Appellant should be shut out on this ground. The earlier motion dealt with the aspect of "reasonable delay". The instant motion deals with the aspect of "fair hearing".

As to the finding at (b) above, I do not agree. I regard a preliminary inquiry as part and parcel of the trial of an indictable offence. It may well, and quite often does, result in the discharge of the person accused. The same rules apply to the taking of evidence at the preliminary stage of the hearing into the charge brought against the accused person as in the final stages in order to ensure that he gets a fair hearing. It is precisely this which Section 8 (1) says he shall be afforded, and it is not difficult to call to mind instances in which his

/rights.....

rights under the section could be infringed at the preliminary stage. In my opinion the rights afforded by section 8 to a person charged with a criminal offence apply to all stages of the hearing into that charge, and are enforceable by Section 15 in the event of an infringement.

The issue at (c) turns on what is the true construction of Section 14 of Cap. 305, and whether there was any infringement at all. The Magistrate ruled that the evidence complained about was admissible. His ruling appears at page 38 etc. of the record, and at page 42 reads, in part,

"I do not believe that the omission of the words "against him" add anything to defence counsel's argument. When construing a statute common sense is still an important asset.

In my view the words of section 14 of the Act should be construed as providing an immunity to an individual witness against him as a result of HIS evidence and therefore they should be modified and construed as if the words "against him" are in the section.*

It is also my view that this submission is ill-founded and the evidence admissible."

Counsel for the Appellant referred the Court to a number of cases, both Commonwealth and English. The gist of his submission was that the Antigua Section gives a blanket protection. Indeed, he went so far as to submit that whether or not the person testifying has appeared before the Commission of Inquiry provided he was saying the same thing as other witnesses said before the Commission the evidence would be inadmissible, and that once there had been an Inquiry there could be no prosecution arising therefrom.

/There.....

There are numerous instances given by the author of Maxwell on Interpretation of Statutes, 11th Edition, pages 221 to 229, in which words have been added, or even interpolated, in construing statutes, and where there has been modification of language to meet intention. This is often necessary if a particular enactment is not to become insensible and inoperative, the principle being that enactments must be construed so as to give a sensible meaning to them if possible. I am of the view that the purpose of section 14 of Cap. 305 is to afford protection to witnesses who have testified at Commissions of Inquiry, and that the words of the section should be construed as providing an immunity to an individual witness against him as a result of his evidence and therefore they should be modified and construed as if the words "against him" were included in the section. If it were otherwise then the whole purpose of the Inquiry would be stultified.

I would hold that the Magistrate's decision to admit the evidence was the correct one, and that consequently there has been no infringement of the Appellant's rights under Section 8 of the Constitution.

There is just one other aspect of the matter which I think calls for an expression of view. Counsel for Respondents has submitted that even if the evidence ought not to have been admitted that the Appellant would still have no right of redress under Section 8. I am inclined to agree. In my opinion the procedure by motion under Section 15 of the Constitution does not contemplate encroachment by the Judges on functions entrusted by the law to

/others.....

others unless it be to correct decisions of law which are apparent on the face of the record. It may be invoked for instance to secure compliance with the rules of natural justice. In my view it cannot be resorted to unless the errors are errors of substance which are evident without prolonged legal argument. Such is not the case here. In relation to preliminary inquiries, if it were otherwise, it would permit every accused person appearing before a Magistrate to challenge every ruling against him as to the admissibility of evidence on the ground that he had been deprived of a fair hearing. This in my view could not have been in the contemplation of the Constitution.

For the reasons stated I would dismiss this appeal.

(N.A. Peterkin)
JUSTICE OF APPEAL

DAVIS, C.J.:

I agree with the conclusions reached in the judgment of Peterkin J.A. and will add only a few words on the interpretation of section 14 of Chapter 305 of the laws of Antigua, as this is the main issue in the appeal. This section is set out in full in the judgment of Peterkin J.A.

Counsel for the appellant has contended for a strict interpretation of section 14 which he says must result in the witnesses who gave evidence before the Commission of Inquiry being unable to testify before a Court of law in any criminal charges which have been brought against the appellant, and further that even a

/witness.....

witness who did not testify before the Commission of Inquiry would be precluded from giving evidence if his testimony would be substantially that given by the witnesses before the Commission. I do not agree, as this would lead to an absurd result and one which could not have been intended by the Legislature. I am reminded of a well-known rule of construction that whenever the strict interpretation of a statute gave rise to an absurd situation the Court could and should use its good sense to remedy it by reading words in, if necessary, so as in effect to do what Parliament would have done had they had the situation in mind. Such an interpretation should be adopted as would promote the general purpose underlying the statutory provision. In my view, the general purpose of the instant provision is for the protection of witnesses who give evidence before a Commission of Inquiry. It enables them to be completely frank and open in giving their evidence or in answering any questions which may be put to them by the Commissioners and this in turn tend to assist the Commission in its inquiry. Of Course, they must speak the truth or run the risk of being prosecuted for perjury. Applying the rule of construction mentioned above, it will be seen that by reading in the words "against him" a sensible interpretation could be put on section 14.

During the argument, I asked both counsel whether the witnesses who gave evidence before the Commission and who may be allowed to give evidence at the trial of the accused could be cross-examined as to what they had said before the Commission in the event that their testimony at the trial differed substantially from what they

/had.....

had said before the Commission. Both counsel answered, "No". I am inclined to disagree as this would not ensure a fair trial to the accused. I would hold that the witnesses who testified before the Commission are competent to give evidence at the trial of the appellant and that they could be cross-examined in the usual manner.

If I am right in the view which I have taken, then I fail to see how it can be said that the appellant's constitutional right to a fair hearing has been or is being infringed. I too would dismiss the appeal.

(Sir Maurice Davis)
CHIEF JUSTICE

I agree.

(E.L. St. Bernard)
JUSTICE OF APPEAL