IN THE PRIVY COUNCIL 

ON APPEAL

FROM THE COURT OF APPEAL FOR THE WINDWARD ISLANDS AND LEEWARD ISLANDS (ST. VINCENT CIRCUIT)

Between

EBENEZER THEODORE JOSHUA - - - - - Appellant

and

THE QUEEN - - - - - - Respondent

CASE FOR THE APPELLANT

1. This is an appeal from a judgment of the Court of Appeal for the Windward Islands and Leeward Islands (St. Vincent Circuit) dated the 7th July, 1953, dismissing the Appellant's appeal against his conviction in the Supreme Court of the Windward Islands and Leeward Islands, St. Vincent, on the 16th January, 1953, of the alleged offence of effecting a public mischief. Record. pp.34-38 p.27

2. The principal issues to be determined on this appeal are as follows:-

(1) Whether the learned trial judge (Cools-Lartigue, J.) in his summing-up misdirected the jury as to the law relating to the offence of effecting a public mischief

(2) Whether the learned trial judge in his summing-up wrongly applied the law relating to the offence of effecting a public mischief to the facts of the case, and misdirected the jury as to the application of the law to the facts of the case.

(3) Whether the learned trial judge decided certain issues of fact which ought to have been left to the jury.

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(4) Whether the evidence disclosed the commission of the said offence by the Appellant.

pp. 1-2 3. The Appellant was tried on an indictment containing three counts. The first count charged the Appellant with the offence of sedition and was based upon a public speech said to have been made by him on the 26th November, 1952. The second count charged the Appellant with the offence of effecting a public mischief "contrary to the Common Law" and this was based upon certain parts of the same public speech of 26th November, 1952. The third count charged sedition and was based upon another public speech said to have been made on the 4th January, 1953.

4. Under the second count the particulars of offence were stated as follows:-

p.2 ll. 1 et seq

"Particulars of Offence

"Ebenezer Theodore Joshua on the 26th day of November, 1952, at Kingstown in the Colony of Saint Vincent, did by means of certain false statements in a public speech to the effect that the police were scheming politically and storing up a veritable arsenal at headquarters to shoot down the people when they decide to fight for their rights, agitate and excite certain section of the public against the police to the prejudice and expense of the community."

pp. 4-7 5. The evidence given at the trial included oral evidence as to the public speech said to have been made
pp.63-70 by the Appellant on the 26th November, 1952 and a transcript of shorthand notes of the said speech was produced. In support of both the first and second counts the Crown relied substantially (though not entirely) on the same parts of the said speech. The passage mainly relied upon by the prosecution in support of both the said counts was the following:-

pp. 64 ll. 29 et seq.

"My Friends, I have to make some comments tonight on the recent attitude of our Policemen. They have been doing some things recently that are obliged to make me comment against them. I am satisfied and convinced that just as I told Lt.Col Randolph in his Office, the Policemen in this

colony are taking sides and are scheming politically against certain people in this colony. I was also told that Charles and the others are walking about making a lot of threats. For this reason, the Policemen are storing up a veritable arsenal in the Headquarters. They are storing up this arsenal to shoot you down when you decide to fight for your rights. I have on many occasions pointed out the seriousness of making the people of this island bitter against one another and it is again happening in our midst. That is why they are storing up this arsenal and with that, Charles, Slater and all the rest are joining in the plot. They have a veritable arsenal to shoot you down like dogs. I told that to Mr. Randolph. It was quite clear to me when I said that the Police are taking sides and I drew his attention to the fact. The Police Force are taking political sides with these stooges in this island. Who told Policeman Findlay that he could be the Chairman of any political meetings in this island, just as he did the other night? I want to know who told Policeman Findlay that he could ascend on any political rostrum and take sides with any political brute in our midst. When Findlay and the other Policemen come to our political meetings, they are there purely for the object of allowing the proceedings to be conducted in an orderly fashion. They should not be allowed to go up on the political platforms and take part in the political meetings as Chairmen. When these men continue all this dirty work in the Force, suppressing certain honest men for the benefit of all the other political dogs in our midst, they still don't get any reward for it. They are thrown out of the Force in the same ridiculous fashion as if they did not do anything extraordinary, so what is the use of their taking political sides for certain people? You want to tell me that a man is working for the Police and should be allowed to come into a political meeting and go up on the political rostrum and do as he likes? We must not be contented with this state of affairs in our midst.

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> The public must not be treated like that. The Police must stop taking sides and when invited to any political meeting, they must act as Policemen. These men we have to deal with are dogs and they can never serve the people as they should. I have noticed certain things the Policemen are doing in our midst, and I am taking very serious notice of it."

As regards the charge of effecting a public mischief the Crown appears to have relied also upon the following passage in the speech:-

p. 69 ll. 29 et seq

> "I cannot understand the attitude of the Police here. I cannot understand the attitude of the Police who have now decided to take sides. How can the Officers allow the Policemen to play these political games that they are now indulging in. Findlay has no right in these political games. It is a lot of wickedness going on here. But there are a lot of things you have to put up with in the fight for freedom."

p.10, ll. 32,33. pp.10-11 p.11 pp.11-12 pp.12-26 p.27

6. At the close of the case for the Crown the Appellant elected not to give evidence on oath and made no statement from the dock. On his behalf Counsel submitted that the charge of effecting a public mischief had not been made out. The said submission was apparently over-ruled and after addresses from the Counsel for the Appellant and the Crown, the learned judge summed up the evidence to the jury. On the first count the jury failed to agree and stood 6 to 3 and thereupon the jury were discharged on that count. On the second count the jury found the Appellant guilty by a majority of 8 to 1. On the third count the jury returned a unanimous verdict of Not Guilty. The jury recommended leniency in respect of the finding of guilty of effecting a public mischief. The Appellant was discharged conditionally under the Probation of Offenders Ordinance, 1939

p.27 ll. 15 et seq

7. The learned trial judge in his summing up with regard to the charge of effecting a public mischief made the following statement as regards the law:-

p.25, ll. 26 et seq

> "It has been held that all offences of a public nature tending to the prejudice of the community justify a charge of causing a public mischief. All offences of a public nature, that is, all such acts or attempts as tend to

the prejudice of the community, are indictable".

8. The said statement appears to be based upon a dictum to the same effect by Lawrence J. in R. v. Higgins, 2 East, 5 approved by the Court of Criminal Appeal in R. v. Manley [1933] 1 K.B 529.

9. The Appellant submits that the said dictum was unnecessary to support the decision in R. v. Higgins, and is too wide as a statement of the law and wrong. It is submitted that the observations upon R. v. Manley by Lord Goddard C.J. in R. v Newland & Ors., [1953] 3 W.L.R.826 are right. The Appellant relies in particular upon the following passage as a correct statement of the law:-

> "With all respect to a case which, as we have said, is binding on us we believe that the right approach to what may be compendiously called public mischief cases is to regard them as part of the law of conspiracy, and to hold the actions of an individual not committed in combination with others as indictable only if they constitute what has been held in the past to be common law or statutory offences".

(R. v. Newland & Ors. (above) per Lord Goddard, C.J. at page 832).

10. The summing-up to the jury also contained the following passage:-

> "It seems to me therefore that accusing the police of 'scheming politically and storing up a veritable arsenal at head-quarters to shoot down the people when they decide to fight for their rights' a fortiori tends to be prejudicial to a section of the community, namely the police, and thereby tends to the public mischief."

p.25, ll. 40 et seq

The learned judge then directed the jury as a matter of law that if they found that the Appellant did utter the words complained of he was guilty of the offence of effecting a public mischief. The Appellant submits that in the said

p.26, l. 10.

passage the learned judge entirely ignored the fact that (as appears from the Particulars of Offence set out in paragraph 4 above) what was alleged against the Appellant in the second count was that he made certain "false statements concerning the police, that the question as to whether the statements made in the speech were false was one of the questions to be decided by the jury and that the learned judge failed to leave it to the jury and in effect decided it himself against the Appellant.

11. In an earlier passage in the summing up the learned trial judge made the following observations:-

p.15 ll.1 et seq

> "Complaint has been made of the activities of the Police in that the Accused is persistently watched by them. Well, why not? If the Accused always acts within the law, he has nothing to fear from being watched by the Police.
>
> "It has also been suggested that the Superintendent of Police, Colonel Jenkins, is guilty of discrimination, because the speeches made by the Accused are the only ones of which shorthand notes are taken. The Colonel states in his evidence that shorthand records have also been made of speeches made by other Members of the Legislative Council. It is true that P.C. Findlay did admit not being instructed to take shorthand notes of a meeting held by another member of the Legislative Council. You will, of course, consider these criticisms by Counsel for the Accused, but I repeat that there is no reason for the Accused to bother about the activities of the Police once he acts within the law."

The Appellant submits that the learned judge thereby assumed that the question as to whether any statements made by the Appellant concerning the police were "false" must necessarily be answered against the Appellant and that he in effect removed this question from the consideration of the jury and himself decided it.

12. In another passage of the summing-up the learned trial judge directed the jury as follows:-

p.26 ll.13 et seq

> "Learned Counsel has submitted that what the Accused said meant that if the people used violence in fighting for their rights they would

be shot by the Police. I fear I cannot agree with that interpretation."

In the Appellant's submission the question as to the proper interpretation to be put upon the words said to have been used by the Appellant was essentially one for the jury. The learned judge by stating that he feared he could not agree with the interpretation suggested by Counsel for the Appellant in effect prevented the jury from deciding the question and decided it himself against the Appellant.

13. The Appellant submits that on any view of the law the evidence did not disclose the offence of effecting a public mischief and that the speech said to have been made by him on the 26th November, 1952, amounted to no more than the legitimate exercise of the Appellant's liberty to comment publicly upon matters of general public interest and that, the jury not having convicted him on the charge of sedition based upon the same speech, the case against him on the second count ought to have been dismissed.

14. The Appellant's grounds of appeal to the Court of Appeal included the following:-

"3. The evidence in support of count (2) does not constitute the offence known to the Common Law as Public Mischief." P.29 ll. 18-20

15. In the learned trial judge's Report on the case prepared for the use of the Court of Appeal reference was made by him to R. v. Young, 30 Cr. App. R. 57 P.34 l. 20

16. The Court of Appeal (Jackson C.J., Date and Manning J.J.) dismissing the appeal made the following observation as to the law relating to public mischief:-

"The law relating to the offence of public mischief was exhaustively reviewed in the recent case of Robert-Young, 30 Cr. App. R. 57. At page 60 Caldecote, L.C.J. in delivering the judgment of the Court cited with approval these words of Lawrence, J. at page 21 in Higgins,(1801) 2 East 4: P.37 ll. 27 et seq

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'Secondly, all offences of a public nature, that is, all such acts or attempts as tend to the prejudice of the community are indictable'.

"The Lord Chief Justice proceeded: 'Those words have been treated as a good authority for saying that offences which tend to the prejudice or which cause expense to the public justify charges under the common law of misdemeanour of causing a public mischief. It is obvious that this is a class of offence which can be extended very widely, and indeed almost indefinitely, if the language of Lawrence, J., is applied, or if the statements which are to be found in modern text-books are applicable'".

17. The Appellant is a distinguished member of the community in Saint Vincent, a member of the Legislative Council, a member of the Executive Council and a political leader. He submits that by his said conviction he has suffered a substantial and grave injustice.

pp. 39-41 18. Special Leave to Appeal to Her Majesty in Council was granted on the 22nd December, 1953.

19. The Appellant respectfully submits that this appeal should be allowed with costs and his conviction quashed for the following amongst other

R E A S O N S

(1) Because the learned trial judge misdirected the jury as to the law relating to the offence of effecting a public mischief.

(2) Because the dictum of Lawrence, J., in R. v. Higgins, 2 East 5, relied upon by the learned trial judge, is wrong.

(3) Because R. v. Manley [1933] 1 K.B. 529 and R.v Young 30 Cr. App. R.57 were wrongly decided

(4) Because the dictum of Lord Goddard, C.J. in R. v Newland & Ors. [1953] 3 W.L.R. 826 to the effect that public mischief cases are properly to be regarded as part of the law of conspiracy, is right.

(5) Because the learned trial judge wrongly applied the law relating to the offence of public mischief to the facts of the case.

(6) Because the learned trial judge misdirected the jury when he directed them that if the Appellant did utter the words complained of he was guilty of effecting a public mischief.

(7) Because the learned trial judge himself decided certain issues of fact, viz. (i) as to whether the alleged statements about the police were false and (ii) as to the proper interpretation of words alleged to have been used by the Appellant, which he ought to have left to be decided by the jury.

(8) Because the evidence in the case did not disclose the commission of the offence of effecting a public mischief

(9) Because the Court of Appeal failed to correct the errors of the learned trial judge.

(10) Because the judgment of the Court of Appeal is wrong.

RALPH MILLNER

IN THE PRIVY COUNCIL No. 1 of 1954.

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EBENEZER THEODORE JOSHUA
Appellant

and

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CASE FOR THE APPELLANT

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