Privy Council Appeal No. 1 *of* 1954

Ebenezer Theodore Joshua – – – – – – – *Appellant*

v.

The Queen – – – – – – – – – – *Respondent*

FROM

THE COURT OF APPEAL FOR THE WINDWARD ISLANDS AND LEEWARD ISLANDS

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 7TH DECEMBER, 1954

Present at the Hearing:

LORD OAKSEY
LORD KEITH OF AVONHOLM
MR. L. M. D. DE SILVA

[*Delivered by* LORD OAKSEY]

This is an appeal from a judgment, dated the 7th July, 1953, of the Court of Appeal for the Windward Islands and Leeward Islands (Jackson, C.J., Date and Manning, JJ.), dismissing an appeal from a conviction and judgment, dated the 16th January, 1953, of the Supreme Court of the Windward Islands and Leeward Islands (Cools-Lartigue, J., and a jury), whereby the appellant was convicted of effecting a public mischief and was discharged conditionally upon entering into a recognizance to be of good behaviour and to appear for sentence when called on at any time within two years.

The appellant was indicted on three counts, the first and third charging sedition and the second charging a public mischief. On the first count the jury failed to agree, and were discharged from returning a verdict; on the third count the appellant was acquitted. The second count read as follows:—

"STATEMENT OF OFFENCE.

Effecting a public mischief, contrary to the Common Law.

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."

The common law of England relating to criminal matters prevails in St. Vincent.

The following evidence relevant to the second count was given for the respondent.

In a speech made by the appellant in the Market Square at Kingstown on the 26th November, 1952, and in other speeches made by the appellant on the 12th and 20th November, 1952, he had said *inter alia*—

> "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 am asking about all these number of wrongs going on in our midst; the police taking political sides, heaping up a large arsenal to shoot you and destroy you; the Councillors whom you elected not caring for you and things of that nature."

Evidence was also given that there was no truth in the allegation that the police were storing up arms. Arms were kept primarily for the protection of the colony, because the police were liable to be called out for full military service.

The appellant neither gave evidence nor made a statement, and called no witnesses. His counsel submitted that comment about the conduct of a public officer could not be said to tend to create public mischief. The learned Judge rejected this submission.

In his charge to the jury, the learned Judge after dealing with the facts directed the jury as follows:—

> "The authorities also clearly establish that it is for the Jury to find whether the Accused committed the acts alleged against him. In this case whether he said these words! It is for the Judge to rule whether those acts, if proved, do or do not constitute the effecting of a public mischief. Holding as I do that the words complained of, in the context in which they are found, can only be construed as an attempt to bring the Police into disrepute and to cause a certain section of the community to suspect, disrespect and, in all probability, to hate the Police. I direct you, as a matter of law, that if you find he did utter the words complained of, he is guilty of the offence of effecting a public mischief."

The jury returned a verdict of guilty on the second count by 8 to 1.

The appellant appealed to the Court of Appeal for the Windward Islands and Leeward Islands. His notice of appeal, dated the 24th January, 1953, raised the following points of law: (i) that the indictment was bad for various reasons; (ii) that the learned judge had misdirected the jury about the relevance to the first and third counts of evidence supporting the second count; (iii) that the evidence supporting the second count did not constitute the offence of public mischief; (iv) that the verdict on the second count was unreasonable in view of the verdict on the first and third counts.

The judgment of the Court of Appeal was delivered on the 7th July, 1953. Having set out the indictment and described the course of the trial, the learned Judges held that no complaint could be based on the suggestion that the words which formed the subject of the second count were also part of the words which formed the subject of the first count. In fact, the two counts were founded on different parts of the one speech, and Cools-Lartigue, J., had specifically and clearly directed the jury as to the particulars on the second count. The learned judges quoted the statement of Lord Caldecote, L.J.C., in *R.* v. *Young* (1944), 30 Cr. App. R. 57, 60, 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." They quoted Cools-Lartigue, J.'s direction that the appellant, if he uttered the words alleged, was

guilty of effecting a public mischief, and said it was settled law that the question whether an act might tend to the public mischief was for the judge, and was not an issue of fact on which evidence might be given. It did not matter that there had been no evidence of expense to the community, because the offence could be constituted either by prejudice or by expense to the public. The words "and expense" in the second count were surplusage. The direction of the learned judge was right. Accordingly, the appeal was dismissed.

The following questions have been argued before their Lordships' Board: first whether apart from cases of conspiracy there is any common law offence of effecting a public mischief: secondly whether the Judge's direction was right that the jury must as a matter of law find the appellant guilty if they found that he spoke the words charged: thirdly whether the two offences of sedition and effecting a public mischief can be charged in respect of one speech and fourthly whether the appellant could be found guilty on an indictment charging that he did by false statements agitate and excite certain sections of the public when no evidence was given that any section of the public were agitated or excited by the appellant's speech.

The first question is one of general importance upon which there are conflicting views by Judges of great eminence (e.g. Holt, C.J., *R.* v. *Daniell*, 6 Mod. 99 p. 100, Mansfield, C.J., *R.* v. *Wheatley*, 2 Burr. 1125, p. 1127-8, Goddard, C.J., *R.* v. *Newland* [1954] 1 Q.B. at p. 167-8, and Normand, Lord Justice-General, *Kerr* v. *Hill*, 1936 J.C. 71, and as it is not necessary to the decision of the present appeal their Lordships do not propose to deal with it.

On the second question their Lordships are of opinion that it was for the judge to direct the jury as to the elements of the crime of effecting a public mischief (assuming that such a crime exists) and to direct them on the facts if he thought there was evidence to go to the jury and it was for the jury to find whether the appellant was guilty upon those facts. It was a misdirection to tell the jury as a matter of law that they must convict the appellant if they found he had spoken the words alleged. To do so was in their Lordships' opinion to usurp the function of the jury. It is true that there are some observations of Lord Alverstone, C.J., in the case of *R.* v. *Brailsford* [1905] 2 K.B. at pp. 746-747 which seem to suggest that the question whether the crime of public mischief had been committed is for the judge, but there are other passages in the same judgment which make it clear that the court there recognised that there are cases in which the jury must find whether the prisoner is guilty on the facts proved. It is a general principle of British law that on a trial by jury it is for the judge to direct the jury on the law and in so far as he thinks necessary on the facts, but the jury, whilst they must take the law from the judge, are the sole judges on the facts. (See *R.* v. *West*, 4 Cr. App. R. 179, *R.* v. *Beeby*, 6 Cr. App. R. 138; *R.* v. *Frampton*, 12 Cr. App. R. 202.)

On the third question their Lordships think it is highly undesirable that a prisoner should be tried on counts that he made a seditious speech and also that he effected a public mischief by making the said speech, yet that is what happened in the present case, with the result that the jury found the appellant not guilty of sedition but guilty of effecting a public mischief by making a speech the mischief of which was its allegedly seditious nature.

On the fourth question their Lordships are of opinion that on the indictment as framed there was no evidence to go to the jury.

For these reasons their Lordships will humbly advise Her Majesty that the appeal ought to be allowed and the conviction quashed.

There will be no order as to costs as there are in their Lordships' view no such circumstances as to justify a departure from the ordinary rule in criminal cases.

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In the Privy Council

EBENEZER THEODORE JOSHUA

v.

THE QUEEN

DELIVERED BY LORD OAKSEY

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