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IN THE PRIVY COUNCIL

No. 9 of 1972

O N A P P E A L

FROM THE COURT OF APPEAL FOR ST. CHRISTOPHER NEVIS
AND ANGUILLA

B E T W E E N :

ARTHUR FRANCIS Appellant

- and -

CHIEF OF POLICE Respondent

CASE FOR THE APPELLANT

Record

10 1. This is an appeal by Special Leave in forma pauperis from the Judgment of the Court of Appeal of St. Christopher, Nevis and Anguilla (Gordon, C.J. (Ag.), Lewis J.A. and St. Bernard J.A. (Ag.)) dated the 28th day of July 1970, which dismissed the Appellant's appeal from a Judgment of the High Court (Renwick, J.)
20 dated the 10th day of March 1970, which held, upon a reference to it by a Magistrate under Section 16(3) of the St. Christopher, Nevis and Anguilla Constitution Order 1967 (hereinafter called the Constitution), that Section 5 of the Public Meetings & Processions Act 1969 (hereinafter called the Act) was not contrary to Sections 10 and 11 of the said Constitution.

pp.22-48

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2. The Appellant was charged before the Magistrate of District A in the State of St. Christopher Nevis Anguilla with using a noisy instrument to wit a loud-speaker and amplifier during the course of a public meeting at Basseterre on the 29th June 1969 without having first obtained the permission in writing of the Chief of Police contrary to Section 5 of the Act, which
30 provides :-

"5. (1) Any person who in any public place or at any public meeting uses any noisy instrument for the purpose of announcing or summoning any public meeting or public procession or during the course of any public meeting or public procession, in any case without having first obtained the permission

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in writing of the Chief of Police so to do, shall be guilty of an offence against this Act and shall be liable on summary conviction to a fine not exceeding one hundred dollars.

(2) The Chief of Police may in his discretion grant permission to any person to use a noisy instrument for the purpose of any public meeting or public procession upon such terms and conditions and subject to such restrictions as he may think fit." 10

3. At the trial, the Magistrate found the following facts :-

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ls.17-36

"That on Sunday the 29th of June, 1969 at about 8.30 p.m., the defendant (and others) addressed a gathering of persons in a public place known as Pall Mall Square, in Basseterre, at a public meeting being held by members of the People's Action Movement, a Political Party in Basseterre. The defendant addressed the crowd, estimated by one witness at about four hundred to five hundred persons, from the platform of a truck parked in North Square Street, and through a microphone, the loudspeaker for which was mounted on a nearby car. 20

The topic touched upon by the defendant, included a reference to the Premier of this State, Mr. Bradshaw, and the matter of an election campaign.

No police permission was sought by the defendant, and none given to him, for the use of the loudspeaker and microphone at the public meeting that Sunday." 30

4. Counsel for the Appellant admitted the facts, but made the following submission :-

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ls.15-32

"The defendant admits the facts deposed to by the witnesses for the prosecution, and he does not intend to give any evidence. His defence is that the law under which he is charged is unconstitutional. I submit as follows :- 40

I submit that the Public Meetings and Processions Ordinance is unconstitutional, in that it purports to give to the Chief of Police an absolute, unfettered discretion to grant or

refuse permission for the use of a loudspeaker; the effect of which is to curtail for fundamental rights of freedom of speech and of assembly, laid down in Sections 10 and 11 of the Constitution.

The Constitution specifically states that where a bona-fide claim of infringement of right arises, the question must be referred to the High Court, as the guardian of the Constitution, and which said Court has the duty to rule on the matter."

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5. The Magistrate, in compliance with Counsel's request and pursuant to Section 16(3) of the Constitution, referred the following questions to the High Court for determination :-

"Whether the legislation, by requiring police permission for the use of a microphone or other similar instruments at a public meeting, offends Sections 10 and 11 of the Constitution. In other words, given a situation where police approval has already been obtained to hold a public meeting, should a speaker for that meeting be put to the further requirement of having to seek police permission for the use of a microphone also?"

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ls. 8-32

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Does the legislation in question have a restricting or qualifying effect on the free exercise of the freedoms guaranteed by the Constitution, such as freedom of speech and of assembly?

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Does the said legislation get around, however unintentionally, these guarantees, or inhibit these rights? Does the freedom to speak lawfully at a lawful assembly of persons cover only the use of one's mere voice, but not a speaking instrument used for better - or even adequate - communication to the crowd?

This is a nub of the issue raised by the defendant, as understood by the Magistrate. This is the constitutional point on which the ruling of the High Court is sought."

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6. It was conceded on appeal that Section 11 of the Constitution does not arise on the facts of this case, but Section 10, which is relevant, provides as follows:-

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"S.10 (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, including freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence. 10

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision -

(a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health;

(b) that is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts or regulating telephony, telegraphy, posts, wireless broadcasting or television; or 20 30

(c) that imposes restrictions upon public officers,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society."

pp.10-20

7. In a Judgment, dated the 10th day of March 1970, Renwick J. held that Section 5 of the Act does not contravene the provisions of Sections 10 and 11 of the Constitution. 40

pp,22-48

8. Being dissatisfied with the said Judgment, the Appellant appealed to the Court of Appeal, but the said Court, in separate Judgments delivered on the 28th day

of July 1970, dismissed the appeal with costs.

9. On the 27th day of October 1971, an Order was made granting the Appellant Special Leave to appeal in forma pauperis to Her Majesty in Council.

pp.58-59

10. The Appellant respectfully submits that the Court of Appeal were wrong in holding that Section 5 of the Act does not contravene Section 10 of the Constitution and submits that this appeal should be allowed for the following amongst other

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REASONS

- (1) Because permission to hold a public meeting in accordance with Section 3 of the Act automatically includes permission to use a loudspeaker.
- (2) Because freedom to use a loudspeaker at a public meeting - especially at a public meeting attended by some 400 to 500 persons as in this case - is a necessary adjunct to the right of free expression and communication with others given under Section 10 of the Constitution.
- (3) Because Section 5(1) of the Act hinders the enjoyment of such freedom of expression by restricting the use of loudspeakers.
- (4) Because Section 5(2) of the Act further restricts that right by granting the Chief of Police absolute and unfettered discretion to refuse the use of a loudspeaker.
- (5) Because it was not shown that the restriction imposed by Section 5 falls within any of the exceptions in Section 10(2) of the Constitution, and Lewis J.A. erred in holding that the onus of proving that the exceptions do not apply is on the Appellant.
- (6) Because the Court of Appeal erred in not following the decision of Glasgow J. in Chief of Police v. Powell (No. 107 of 1969) and Chief of Police v. Thomas (No.108 of 1969) which held that Section 3A of the Public Meetings & Processions (Amendment)

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Ordinance, No. 4 of 1967, was
unconstitutional.

- (7) Because the judgments of the Courts
below are wrong.

EUGENE COTRAN

No. 9 of 1972

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