

4

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 -

THE CHIEF OF POLICE Respondent

RECORD OF PROCEEDINGS

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
28 MAY 1974
25 RUSSELL SQUARE
LONDON W.C.1

WILSON FREEMAN,
6/8 Westminster Palace
Gardens,
London, SW1P 1RL.
Solicitors for the
Appellant.

CHARLES RUSSELL & CO.,
Hale Court,
Lincoln's Inn,
London, WC2A 3UL.
Solicitors for the
Respondent.

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 -

THE CHIEF OF POLICE Respondent

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

No.	Description of Document	Date	Page
1.	Case Stated for determination of High Court:- <u>In the Magistrate's Court</u> <u>Complainant's Evidence</u>	12th November 1969	1
(a)	Beresford Campbell	12th November 1969	2
(b)	Hezekiah Jacobs	12th November 1969	3
(c)	John Henry Lynch-Wade	12th November 1969	4
(d)	Charles Edgings	12th November 1969	5
(e)	Submission by Defendant's Counsel	12th November 1969	5
(f)	Facts found by the Court	12th November 1969	6
(g)	Question for determination of High Court	12th November 1969	7

(ii)

No.	Description of Document	Date	Page
	<u>IN THE HIGH COURT</u>		
2.	Contentions made on behalf of the Complainant	1st December 1969	8
3.	Contentions made on behalf of the Defendant	5th January 1970	9
4.	Decision	10th March 1970	10
	<u>IN THE COURT OF APPEAL</u>		
5.	Notice and Grounds of Appeal	21st March 1970	21
6(a)	Judgment of K.L. Gordon, C.J. (ag.)	28th July 1970	22
6(b)	Judgment of P.C. Lewis, A.J.	28th July 1970	29
6(c)	Judgment of E.L.St.Bernard, J.A. (ag.)	28th July 1970	47
7.	Order	28th July 1970	48
8.	Notice of Petition for Special Leave to Appeal to Her Majesty in Council	10th August 1970	48
9.	Affidavit of John Henry Lynch-Wade	15th February 1971	50
10.	Affidavit of Ivan Hanley	16th February 1971	52
11.	Notice of Motion	17th February 1971	53
12.	Affidavit of William Valentine Herbert	2nd March 1971	55
13.	Judgment	26th March 1971	56
	<u>IN THE PRIVY COUNCIL</u>		
14.	Order granting Special Leave to Appeal in forma pauperis to Her Majesty in Council	27th October 1971	58

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 -

THE CHIEF OF POLICE Respondent

RECORD OF PROCEEDINGS

10

No.1

In the High
Court

CASE STATED FOR DETERMINATION OF HIGH COURT

THE CHIEF OF POLICE

No. 1

VS

ARTHUR FRANCIS

Case Stated
for
Determination
of High Court

Complaint No. 525/69.

(Using a noisy instrument, to wit, loudspeakers,
and amplifiers during the course of a public
Meeting, without having first obtained written
permission from the Chief of Police).

12th November
1969

20 Mr. Colvin Sobers, Crown Counsel, for the
Complainant.

Dr. W.V. Herbert, Counsel for the Defendant.

In the
Magistrate's
Court

No. 1(a)

Beresford Campbell

Complainant's
Evidence

No. 1(a)

Beresford
Campbell

Examination

Witness sworn states: My name is Beresford Campbell. I am an Inspector of police stationed at Basseterre, and was so stationed on Sunday 29th June, 1969. At about 8.25 p.m. on that day I was on duty in plain clothes at Pall Mall Square, Basseterre. I noticed there were a number of cars. There was a meeting held in North Square Street. I know for a fact that the people who were conducting the meeting belong to a party by the name of The People's Action Movement. There was a truck on which were a number of chairs, microphone, and a light. East of the said truck was a car and on this car was a loud-speaker. This was on North Square Street. There were a number of people in the Square, and afterwards, at about 8.30 p.m., I saw a number of persons. I saw several persons, including the defendant, go on to the platform to the microphone.

10

20

The defendant said, "My name is Arthur Francis. I live at Sandy Point. I know Bradshaw doesn't like me because I opposed him at an election campaign which was held some years ago by Mr. Somersall at Sandy Point; and I will continue to oppose him". He was speaking to the crowd which was assembled in the said Square. I saw and also heard him. He spoke at the microphone and what he said came though the loudspeaker.

30

XX'd by Dr. W. Herbert for defendant: No. questions.

3.

In the
Magistrate's
Court

No. 1(b)

Hezekiah Jacobs

Complainant's
Evidence

No.1(b)

Hezekiah
Jacobs

Examination

10

20

Witness sworn states: My name is Hezekiah
Jacobs. I am a sergeant of police #11; I am
stationed at Sandy Point. I remember Sunday
the 29th of June 1969. At about 8.30 p.m.
on that day I was on duty at Pall Mall Square,
at Basseterre. I noticed that there was a
truck parked on North Square Street facing East,
and in front of it was a car. On the car I
noticed that a loudspeaker was installed, and
on the platform of the truck I noticed a micro-
phone. In the square were about 400 to 500
persons. There was a public meeting going on.
It was being held by members of the People's
Action Movement. Among the persons whom I saw
and heard speak that night was the defendant.
He went on to the platform of the truck, went
before the microphone, and I heard him say,
"This is Arthur Francis of Sandy Point", and
other things which I cannot remember now.

XX'd by Dr. Herbert: No questions.

In the
Magistrate's
Court

No. 1(c)

John Henry Lynch-Wade

Complainant's
Evidence

No. 1(c)

Witness sworn states: My name is John Henry Lynch-Wade. I am chief of Police of the Royal St. Christopher, Nevis and Anguilla Police Force. I recall Sunday the 29th of June, 1969.

John Henry
Lynch-Wade

Examination

In my capacity of Chief of Police, no permission was sought by the defendant, neither did I issue any permission, to him, for the use of any noisy instrument at any public meeting at any place in the State on that date.

10

Cross-
examination

XX'd by Dr. Herbert: Under the Public Meetings and Processions Ordinance I am not the only Chief of Police, no. Yes there is a Chief of Police in Anguilla, for Anguilla.

Re-
examination

Re-examined by Mr. Sobers: I am Chief of Police for the entire State. For this Ordinance there are four Chiefs of Police.

No. 1(d)

Charles Edgings

In the
Magistrate's
Court

Witness sworn states: My name is Charles Edgings. I am Acting Assistant Superintendent of Police. I reside at Basseteere. I am Divisional Officer for St. Christopher, Nevis and Anguilla. I know the defendant. I remember Sunday the 29th of June, 1969. I did not give the defendant any permission in writing to use any noisy instrument at any meeting on that Sunday.

Complainant's
Evidence

No. 1(d)

Charles
Edgings

Examination

XX'd by Dr. Herbert: No questions.

(Close of prosecution's case)

No. 1(e)

No. 1(e)

Submission by Defendant's Counsel

Submission by
Defendant's
Counsel

Dr. Herbert: 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:- 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.

12th November
1969

Mr. Sobers: My respectful submission is that the submission of defence counsel is untenable. Every civilized society is governed by rules, and the Governments of each and every one of those communities have power, and indeed are bound, to legislate for the good of the community. I refer to Section 34 of the Constitution, which reads as follows:

In the
Magistrate's
Court

No. 1(e)

Submission by
Defendant's
Counsel

12th November
1969
(continued)

(Counsel reads). I invite the defendant to show where in the Constitution he is given the unlimited and unfettered right to use noisy instruments. I submit that before this Court can refer this matter to the High Court, the defendant must first show in what way his rights under the Constitution are being infringed.

(Magistrate decides to refer the matter to the High Court, on the question of the alleged curtailment or infringement of the defendant's constitutional rights).

10

No. 1(f)

Facts found
by the Court

12th November
1969

No. 1(f)

Facts found by the Court

From the evidence given for the prosecution, and admitted by Defence Counsel on behalf of the defendant, the Magistrate found the following facts:- 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 a 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.

30

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.

The Magistrate therefore finds that a prima facie case has been made out against the defendant. After submissions by Dr. W.V. Herbert, Defence

Counsel, and reply thereto by Mr. Colvin Sobers, Crown Counsel and counsel for the Complainant, the Magistrate decided that the case ought to be referred to the High Court on the question raised by defence counsel, and gave a ruling to that effect.

In the
Magistrate's
Court

No. 1(f)

Facts found
by the Court

12th November
1969
(continued)

No. 1(g)

Question for Determination of High Court

10 Whether the legislation, by requiring police permission for the use of a microphone or other similar instruments at a public meeting, offends against Sections 10 and 11 of the Constitution. In order 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?

No. 1(g)

Question for
Determination
of High Court

12th November
1969

20 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?

Does the said legislation get around, however unintentionally, these guarantees, or inhibit these rights? Does 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?

30 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.

(sd.) Clement A. Arrindell,
Magistrate.

12th November, 1969.

In the High Court

No. 2

CONTENTIONS MADE ON BEHALF OF THE COMPLAINANT

No. 2

Contentions made on behalf of the Complainant

STATE OF SAINT CHRISTOPHER, NEVIS AND ANGUILLA

IN THE HIGH COURT OF JUSTICE

(CRIMINAL)

1st December 1969

Chief of Police

vs

Arthur Francis

Complaint No. 525/69

Contentions upon the question referred to the High Court on the above Cause, are as follows:- 10

1. That section 5 (1) of the Public Meetings and Processions Act, 1969 No. 4 of 1969 does not contravene or offend against sections 10 and 11 of the Saint Christopher, Nevis and Anguilla Constitution.

2. That sections 10 and 11 of the said Constitution must be considered in the light of section 1 which sets out also the entitlement to enjoyment of fundamental rights and freedoms subject to respect for the rights and freedom of others and for the public interest and that section 5 (1) of the Public Meetings and Processions Act, 1969, No. 4 of 1969 fulfills the conditions and principles of fundamental rights and freedoms as required by the Constitution. 20

3. That section 5 (1) of the Public Meetings and Processions Act, 1969, No. 4 of 1969 is an embodiment and/or codification of the Common Law for the Prevention and Control of Offences relating to nuisances and other breaches of the peace with specific reference to the enforcement of the reciprocal rights and duties for maintaining public order in the public interest and that section 34 affords the authority for such Legislation. 30

4. That the raising of the question as to the

contravention of sections 10 and 11 of the Saint Christopher, Nevis and Anguilla Constitution is frivolous and/or vexatious and should not have been referred to the High Court.

In the High Court

No. 2

(Sd.) H.M. Squires

Contentions made on behalf of the Complainant

(H.M. Squires)
Director of Public Prosecutions.
1st December, 1969.

1st December 1969
(continued)

No. 3

No. 3

10

CONTENTIONS MADE ON BEHALF OF THE DEFENDANT

Contentions made on behalf of the Defendant

STATE OF SAINT CHRISTOPHER NEVIS AND ANGUILLA
IN THE HIGH COURT OF JUSTICE

(CRIMINAL)

5th January 1970

Chief of Police

vs

Arthur Francis

Complaint No. 525/69

Contentions upon the question referred to the High Court in the above case, are as follows:-

20

1. That Section 5 (1) of the Public Meetings and Processions Act 1969 No. 4 of 1969 contravenes against sections 10 and 11 of the St. Christopher Nevis and Anguilla Constitution.

2. That the unfettered discretion of the Chief of Police to grant or refuse permission for the use of noisy instruments at a public meeting indicates that the legislation is an unreasonable restriction of the freedoms laid down in sections 10 and 11 of the said Constitution.

30

Dated the 5th day of January, 1970.

(Sgd.) William V. Herbert

Solicitor for Arthur Francis.

No. 4

No. 4

Decision

DECISION

10th March
1970

IN THE HIGH COURT OF JUSTICE

SAINTE CHRISTOPHER CIRCUIT

A.D. 1970

In the matter of a
reference to the High
Court under section 16
(3) of the Saint
Christopher, Nevis
and Anguilla
Constitution Order,
1967 made by the
Magistrate District "A"
in case No. 525 of
1969 -

10

The Chief of Police
Complainant &

Arthur Francis
Defendant.

20

DECISION

(Delivered 10th March, 1970)

On the 25th day of July, 1969, a
complaint was made before the Magistrate,
District "A" by the Chief of Police against
the defendant Arthur Francis that the
said Arthur Francis on the 29th day of

In the High
Court

—
No. 4

Decision

10th March
1970
(continued)

10 June, 1969 as Basseterre, in the Parish of St. George in the Magisterial District "A" in the State of St. Christopher Nevis and Anguilla at a public meeting held at North Square Street in the Town of Basseterre did use noisy instruments, to wit, loudspeakers and amplifiers during the course of the said public meeting, without having first obtained the permission in writing of the Chief of Police, contrary to section 5 (1) of the Public Meetings and Processions Act, 1969 (hereinafter referred to as "the Act") of the State of St. Christopher Nevis and Anguilla.

At the trial of the defendant the Magistrate found the following facts:-

20 "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.

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.

30 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".

Counsel for the Defendant admitted the facts deposed to by the witnesses for the prosecution but submitted that the law under which the defendant was charged was unconstitutional, and requested that the question of the alleged curtailment or infringement of the defendant's constitutional rights be submitted to the High Court.

40 The Magistrate, pursuant to section 16 (3) of the Saint Christopher, Nevis and Anguilla Constitution Order 1967 (S.I. 1967 No. 228) (hereinafter referred to as "the Constitution") referred the following questions for determination by the High Court namely:-

In the High
Court

No. 4

Decision

10th March
1970
(continued)

"Whether the legislation, by requiring police permission for the use of a microphone or other similar instrument at a public meeting, offends against 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 requirements of having to seek police permission for the use of a microphone also?"

10

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?

Does the said legislation get around, however unintentionally, these guarantees, or inhibit these rights? Does 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?"

20

The magistrate then goes on to state - "This is the nub of the issue raised by the defendant as understood by the Magistrate. This is the constitutional point on which this ruling of the High Court is sought".

The contentions of the Director of Public Prosecutions filed on behalf of the Complainant were as follows:-

30

"1. That section 5 (1) of the Public Meetings and Processions Act, 1969 No. 4 of 1969 does not contravene or offend against sections 10 and 11 of the Saint Christopher, Nevis and Anguilla Constitution.

2. That sections 10 and 11 of the said Constitution must be considered in the light of section 1 which sets out also the entitlement to enjoyment of fundamental rights and freedoms subject to respect for the rights and freedoms of others and for the public interest and that section 5 (1) of the Public Meetings and Processions Act, 1969, No. 4 of 1969 fulfils the conditions and principles of fundamental rights and freedoms as required by the Constitution.

40

3. That section 5 (1) of the Public Meetings and Processions Act, 1969, No. 4 of 1969 is an embodiment and/or codification of the Common Law for the Prevention and Control of Offences relating to nuisances and other breaches of the peace with specific reference to the enforcement of the reciprocal rights and duties for maintaining public order in the public interest and that section 34 affords the authority for such Legislation.

In the High Court

No. 4

Decision

10th March 1970

(continued)

10 4. That the raising of the questions as to the contravention of sections 10 and 11 of the Saint Christopher, Nevis and Anguilla Constitution is frivolous and/or vexatious and should not have been referred to the High Court".

The contentions filed on behalf of the defendant were as follows:-

20 "1. That section 5 (1) of the Public Meetings and Processions Act 1969 No. 4 of 1969 contravenes against sections 10 and 11 of the St. Christopher Nevis and Anguilla Constitution.

2. That the unfettered discretion of the Chief of Police to grant or refuse permission for the use of noisy instruments at a public meeting indicates that the legislation is an unreasonable restriction of the freedoms laid down in sections 10 and 11 of the said Constitution".

Sections 10 and 11 of the Constitution provide as follows:-

30 "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 (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence.

40 (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,

In the High
Court

No. 4

Decision

10th March
1970
(continued)

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

10

- (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.

11.- (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his interests.

20

(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 morality or public health;
- (b) that is reasonably required for the purpose of protecting the rights or freedoms of other persons; or
- (c) that imposes restrictions upon public officers,

30

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."

40

Section 5 of the Act provides as follows:-

In the High
Court

—
No. 4

Decision

10th March
1970
(continued)

10 "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 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."

The Act defines the expression "public meeting" in section 2 thereof in the following terms:-

20 "'Public meeting' means any meeting, gathering, or assembly of persons, whether held in a public place or not, for the purpose of the discussion of matters of public interest or for the purpose of the expression of views on such matters; but shall not include any assembly of persons on private premises to which the public in general have no right of entry, nor bona fide religious services."

30 It will be noticed that the definition of the expression "public meeting" is very wide indeed. In addition nowhere in the Act is the expression "public interest" defined. From this it would seem to follow that the permission of the Chief of Police may have to be sought and obtained in writing for the use of a public address system on occasions that presumably were not intended by the Legislature.

40 Be that as it may, I am not concerned with the wisdom or desirability or fairness of section 5 of the Act but only with its validity. To quote Lord Guest in his dissenting advice in *Akar v. Attorney-General of Sierra Leone* (1969) 3 All E.R. 384 at page 394 -

"Although the courts are the guardians of the Constitution I believe in interpreting the

In the High
Court

No. 4

Decision

10th March
1970

(continued)

Constitution the ground has to be trod warily and with great circumspection. The courts cannot go behind the scenes and enquire what were the motives or policy behind a particular piece of legislation. They can only as a matter of construction decide whether the Act is or is not within the powers of the Constitution. This question must be decided on the terms of the Act in conjunction with the provisions of the Constitution." 10

The Court must be watchful to see that the constitutional rights of the individual are not eroded by "silent approaches and slight deviations from legal modes of procedure". In support of this I will repeat the words of Lord Oakley, in delivering the opinion of the Board in Pillat v. Mudanayake (1955) 2 All E.R. at p.837 which words were quoted by Sir Donald Jackson a former Chief Justice of the predecessor of this Court in Inland Revenue Commissioner and Attorney-General v. Lilleyman and Others (1964) 7 W.I.R. 496 at page 505: 20

".... there may be circumstances in which legislation, though framed so as not to offend directly against constitutional limitation of the power of the legislature, may indirectly achieve the same result, and that in such circumstances the legislation would be ultra vires. The principle that a legislature cannot do indirectly what it cannot do directly has always been recognised by their Lordships' Board, and a legislature must, of course be assumed to intend the necessary effects of its statutes. But the maxim omnia praesumuntur rite esse acta is at least as applicable to the Act of a legislature as to any other acts, and the court will not be astute to attribute to any legislature motives or purposes or objects which are beyond its power". 30

The question for decision in this case is the same as in most cases where the validity of the legislation is challenged and is what is the pith and substance as it has been called or what is the true character of such legislation (Pillai v. Mudanayake supra). 40

Section 10 of the Constitution prescribes and protects the fundamental right of freedom of

expression. This is a right that has for quite some time been recognised and jealously guarded. It does not permit a person to say whatsoever he chooses when, where or in any manner he chooses. Indeed obscene, profane, abusive, slanderous or insulting speech is forbidden and the punishment for using such language does not raise any Constitutional problem.

In the High
Court

No. 4

Decision

10th March
1970
(continued)

10 I am unaware of any right which a person has to the uncontrolled use of a noisy instrument as defined in the Act and in the circumstances in which the Act seeks to control the use of such instruments. I consequently hold that the provision which requires that the prior written approval of the Chief of Police be obtained before any noisy instrument as defined in the Act is used at a public meeting is not an infringement of the right of freedom of expression guaranteed by section 10 of the Constitution.

20 Further section 10 (2) of the Constitution, by allowing the control of broadcasting within the limits therein prescribed hinders the ability of a speech to be heard by large numbers in this age of transistor radios far more effectively than the requirement for the permission as is set out in section 5 of the Act.

30 Professor O. Hood Phillips in his book entitled Constitutional Laws and Administrative Law, 4th Edition under the caption Rights of Assembly and Association states:-

"The rights of association and assembly consist in the liberty of two or more persons to associate or meet together, provided they do not thereby infringe any particular rule of common law or statute. Those who take part in an association or assembly will infringe the law if either their object is unlawful or they pursue or threaten to pursue their object by unlawful means."

40 It will be seen, therefore, that a distinction must be drawn between the right of association and of assembly on the one hand and the objects to be pursued in association or in assembly and the means to be employed to attain those objects on the other hand.

In the High Court

Sir Hugh Wooding C.J. in Callymore v. Attorney-General (1967) 12 W.I.R.5 at page 9 stated the position in this way:-

No. 4

Decision

10th March 1970 (continued)

"My first observation is that individual freedom in any community is never absolute. No person in an ordered society can be free to be antisocial. For the protection of his own freedom everyone must pay due regard to the conflicting rights and freedoms of others. If not, freedom will become lawless and end in anarchy. Consequently, it is and has in every ordered society always been the function of the law so to regulate the conduct of human affairs as to balance the competing rights and freedoms of those who comprise the society. Hence, although at common law, as is now under the Constitution every person was free to associate with his fellows, a clear distinction was at all times drawn between the freedom to associate, the objects to be pursued in association and the means to be employed to attain those objects And while the legislature has from time to time intervened when it has found intervention necessary or expedient to redress any imbalance between the competing rights and freedoms, the distinction between association on the one hand and objects and means on the other has nonetheless remained unaffected."

10

20

What the learned Chief Justice said about the right to associate is similarly applicable to the right of assembly. From this it follows that the question to be determined is whether the Act by requiring that permission in writing of the Chief of Police be obtained before using any noisy instrument at a public meeting is an abridgement of the freedoms guaranteed by section 11 of the Constitution. In my view once the distinction is drawn between the freedom to associate and to assembly, the objects to be pursued in association and at the assembly, and the means to be employed to attain those objects it will be seen that the question must be answered in the negative.

30

40

If I may quote a further passage from the judgment of Sir Hugh Wooding and which was quoted by Lord Donovan in the Privy Council in Callymore and Another v. Attorney-General of Trinidad and

Tobago (1969) 2 All E.R. 1207 at page 1211:

In the High
Court

No. 4

Decision

10th March
1970
(continued)

10

"In my judgment, then, freedom of association means no more than freedom to enter into consensual arrangements to promote the common interest objects of the association group. The objects may be any of many. They may be religious or social, political or philosophical, economic or professional, educational or cultural, sporting or charitable, but the freedom to associate confers neither right nor licence for a course of conduct or for the commission of acts which in the view of Parliament are inimical to the peace, order and good government of the country".

Counsel for the defendant submitted, inter alia, that section 5 of the Act was unconstitutional since:

20

(a) it did not lay down the tenets that the Chief of Police must be guided by when exercising his discretion;

(b) there was no provision for judicial review of the acts of the Chief of Police acting in his discretion; and

(c) there was in any case no form of appeal against the decision of the Chief of Police.

30

In support of this contention Counsel referred to the case of Gopalan v. Madras, A.I.R. (1950) S.C. 27. Unfortunately a copy of this case is not available to the Court and Counsel did not have one, so that I cannot say what that case decided.

In case No. 107 of 1969, The Chief of Police v. Michael Powell and case No. 108 of 1967, The Chief of Police v. Warren Thomas (cases dealing with the constitutionality of the Public Meetings and Processions (Amendment) Ordinance, 1967 (No. 4 of 1967) Glasgow J. had this to say:-

40

"If I had been satisfied that the law in question makes provisions that is reasonably required in any of the interests of public order, defence, public safety, public morality or public health, I would still have been constrained to hold that because of this

In the High
Court

No. 4

Decision

10th March
1970
(continued)

unfettered discretion given to the Chief of Police by section 3 A, and the failure to limit the operation of the section in point of time, the impugned provision of the law has been shown not to be reasonably justifiable in a democratic society."

I do not understand from the passage just cited the learned Judge to be saying that wherever a statute gives an unfettered discretion to a public officer that statute is unconstitutional, but rather that where a statute authorises the imposition of restrictions on the fundamental rights and freedoms, then the fact that the imposition is in the unfettered discretion of a public officer may render the law unconstitutional as it could not be shown in those circumstances that the law was reasonably justifiable in a democratic society.

10

Since in my view section 5 of the Act does not authorise infringement of the fundamental rights and freedoms guaranteed by sections 10 and 11 of the Constitution the discretionary powers conferred by Section 5 of the Act on the Chief of Police are irrelevant.

20

I specifically leave undecided the question of judicial review of the exercise of the discretionary powers so conferred.

I therefore hold that section 5 of the Act does not contravene the provisions of sections 10 and 11 of the Constitution.

J.D.B. Renwick

30

Puisne Judge (Acting)

NOTICE AND GROUNDS OF APPEAL

In the Court
of Appeal

No. 5

STATE OF SAINT CHRISTOPHER NEVIS AND ANGUILLA

IN THE COURT OF APPEAL

Notices and
Grounds of
Appeal

NOTICE OF APPEAL OR APPLICATION FOR LEAVE TO APPEAL

21st March
1970

10 AGAINST A DECISION of the High Court in the matter
of a reference to the said court under section 16
(3) of the St. Christopher Nevis and Anguilla
Constitution Order 1967 made by the Magistrate
district "A" in case No. 525 of 1969.

THE CHIEF OF POLICE - Complainant

and

ARTHUR FRANCIS - Defendant

Criminal Appeal No. 1 of 1970.

TO THE REGISTRAR OF THE COURT OF APPEAL

Name of appellant - Arthur Francis

Offence of which charged:

20 That the said Arthur Francis on the 29th day
of June 1969 at Basseterre, in the Parish of St.
George, in the Magisterial District "A" in the State
of St. Christopher Nevis and Anguilla at a public
meeting held at North Square Street in the Town of
Basseterre, did use noisy instruments to wit loud-
speakers and amplifiers during the course of the
said public meeting without having first obtained
the permission in writing of the Chief of Police,
contrary to section 5 (1) of the Public Meetings
and Processions Act 1969 of the State of St.
Christopher Nevis and Anguilla.

30 I the above-named Appellant hereby give you notice
that I desire to appeal to the Court of Appeal
against the decision of the High Court dated 10th
March 1970, on the grounds hereinafter set forth
on page 2 of this notice

Dated this 21st day of March 1970.

(sd) Arthur Francis
Appellant.

In the Court
of Appeal

No. 5

Notices and
Grounds of
Appeal

21st March
1970
(continued)

GROUND'S OF APPEAL OR APPLICATION

1. That the learned Judge erred in deciding that Section 5 of the Public Meetings and Processions Act 1969 did not contravene sections 10 and 11 of the Constitution.

2. That the learned Judge erred in that he considered the discretionary powers conferred on the Chief of Police by the said Public Meetings and Processions Act to be irrelevant.

3. That the learned Judge erred in refusing to decide upon the question of the Judicial Review of the above discretionary powers referred to in (2) above. 10

4. That the learned Judge erred in not deciding that section 5 of the Public Meetings and Processions Act 1969 was contrary to the Constitution.

5. That the decision is erroneous in Law.

(Sd.) Arthur Francis

21/3/70.

No. 6 (a)

Judgment of
K.L. Gordon,
C.J. (Ag.)

28th July 1970

No. 6 (a)

20

JUDGMENT OF K.L. GORDON, C.J. (AG.)

IN THE COURT OF APPEAL

ST. CHRISTOPHER, NEVIS AND ANGUILLA

Criminal Appeal No. 1 of 1970

Between: ARTHUR FRANCIS Appellant/Defendant
and

CHIEF OF POLICE Respondent/Complainant

Before: The Honourable the acting Chief Justice
The Honourable Mr. Justice P. Cecil Lewis
The Honourable Mr. Justice St. Bernard
(Acting)

30

Dr. W.H. Herbert for the Appellant
 E. Walwyn, Attorney General with H.Squires for the
 Respondent

In the Court
 of Appeal

1970 June 18, July 28

No. 6 (a)

Judgment of
 K.L. Gordon,
 C.J. (Ag.)

JUDGMENT

GORDON, C.J.(Ag.)

28th July 1970
 (continued)

10 The appellant in these proceedings was charged
 with using a noisy instrument to wit a loudspeaker
 and amplifier during the course of a public meeting
 which he held at Basseterre on the night of the 29th
 June 1969 without first obtaining the permission in
 writing of the Chief of Police contrary to section 5
 of the Public Meetings and Processions Act 1969 of
 St. Christopher, Nevis and Anguilla (hereinafter
 referred to in this judgment as the Act).

20 Having heard the evidence in the matter the
 learned trial magistrate pursuant to section 16(3)
 of the St. Christopher, Nevis and Anguilla Constitu-
 tion Order 1967 (hereinafter referred to as the
 Constitution) referred certain questions arising out
 of the undisputed evidence, in the matter to the
 High Court for determination.

30 The brief facts found by the trial magistrate
 were that at a public meeting held under the
 auspices of the People's Action Movement - a political
 party - at Pall Mall Square, Basseterre at 8.30 p.m.
 on the 29th June 1969, the appellant addressed a
 crowd of about 500 persons through a microphone,
 the loudspeaker of which was mounted on a nearby car.
 No police permission was sought and none given for
 the use of the loudspeaker at that meeting in
 accordance with section 5 of the Act.

The following questions were referred by the
 Magistrate to the High Court:-

40 "Whether the legislation, by requiring
 police permission for the use of a microphone
 or other similar instrument at a public meeting,
 offends against 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

In the Court
of Appeal

No. 6 (a)

Judgment of
K.L. Gordon,
C.J. (Ag.)

28th July 1970
(continued)

that meeting be put to the further requirement of having to seek police permission for the use of a microphone also?

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?

Does the said legislation get around, however unintentionally, these guarantees, or inhibit these rights? Does free dom 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?

10

This is the 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."

After hearing argument Renwick J. in a written judgment resolved the question thus:-

20

"Since in my view section 5 of the Act does not authorise infringement of the fundamental rights and freedoms guaranteed by sections 10 and 11 of the Constitution the discretionary powers conferred by section 5 of the Act on the Chief of Police are irrelevant.

I specifically leave undecided the question of judicial review of the exercise of the discretionary powers so conferred.

30

I therefore hold that section 5 of the Act does not contravene the provisions of sections 10 and 11 of the Constitution."

Being dissatisfied with these answers the appellant has appealed to this Court. The following grounds of appeal were urged before this Court:

- (1) That the learned judge erred in deciding that section 5 of the Public Meetings and Processions Act 1969 did not contravene sections 10 and 11 of the Constitution.

40

(2) That the learned judge erred in that he considered the discretionary powers conferred on the Chief of Police by the said Public Meetings and Processions Acts to be irrelevant.

In the Court
of Appeal

No. 6 (a)

In support of his appeal Counsel for the appellant urged that permission to hold a public meeting in accordance with section 3 of the Act automatically included permission to use a loudspeaker. He contended that if this was not the case, any further requirement under section 5 as to the need for permission to use a loudspeaker would be a hindrance to one's freedom of expression and one's freedom to communicate ideas and information. Any law tending to hinder such enjoyment would be prima facie bad unless it could be shown from its scope to fall within the exceptions laid down in section 10(2) of the Constitution. As this legislation he submitted had not been shown to be reasonably justifiable, it was unconstitutional. He further urged that the unfettered discretion given to the police under the provisions of section was an added reason for the section being unconstitutional.

Judgment of
K.L. Gordon,
C.J. (Ag.)

28th July 1970
(continued)

Section 5 of the Act and sections 10 and 11 of the Constitution read as follows:-

"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 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. (1) Except with his own consent, no person shall be hindered in the enjoyment of

In the Court
of Appeal

No. 6 (a)

Judgment of
K.L. Gordon,
C.J. (Ag.)

28th July 1970
(continued)

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.

(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 -

10

(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

(c) that imposes restrictions upon public officers,

30

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.

11. (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his interests.

40

(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 rights or freedoms of other persons; or
- (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."

The language of section 5 of the Act makes it quite clear that in order to use a 'noisy instrument' which by section 2 includes a loudspeaker, at a public meeting, a permit must first be obtained from the Chief of Police so to do.

The question however which falls to be decided here is whether the necessity for obtaining such a permit constitutes a derogation from the freedoms which sections 10 and 11 of the Constitution seek to preserve for the individual.

By the provisos of section 10(2) of the Constitution provision is there made for impositions of reasonable restrictions on the exercise of the freedoms conferred by the section on the individual. This being the case a loss of freedom as a consequence of section 5 of the Act can only be established if it can be shown that the act complained of does not fall within the scope of the provisos. The freedoms contemplated by section 10 can therefore only be enjoyed by individuals in so far as their enjoyment does not constitute a nuisance to others. If in fact it does then the exercise of that freedom is to that extent restricted by the Constitution.

Counsel for the appellant conceded that there is nothing unconstitutional in the Legislature

In the Court
of Appeal

No. 6 (a)

Judgment of
K.L. Gordon,
C.J. (Ag.)

28th July 1970
(continued)

10

20

30

40

In the Court
of Appeal

No. 6 (a)

Judgment of
K.L. Gordon,
C.J. (Ag.)

28th July 1970
(continued)

regulating the use of loudspeakers, but what he contended was wrong, was that section 5(2) of the Act gave an unfettered discretion to the Chief of Police without providing for any judicial review of that discretion once exercised. I do not agree with this contention for the reason that there can be no presumption that because an unfettered discretion is placed in the hands of any person, or authority that that discretion will be exercised arbitrarily.

10

Mindful of the facts (a) that the use of loudspeakers at any time and in any place could quite well constitute a nuisance; (b) that the Chief of Police as the Senior Officer entrusted with the enforcement of law and order should best be able to assess the extent to which freedoms of some individuals may be enjoyed without causing disturbance to others and (c) that the discretionary power given in this case is limited in its application and duration; I can see nothing wrong or unconstitutional in the legislative authority placing a discretionary power in that responsible functionary, the Chief of Police, to decide in what circumstances loudspeakers may be used. Clothed with such a discretionary power it must be assumed that the officer will exercise his discretion with reason and justice, and in keeping with the responsibilities of his office. To urge otherwise, particularly as in the instant case where no application for a permit to use a loudspeaker at the particular public meeting was ever made, is merely speculative argument and consequently untenable.

20

30

Assuming the argument of Counsel for the appellant that the freedom to use a loudspeaker at a public meeting is a necessary adjunct to the right of free expression and of communication with others is correct; this circumstance in itself cannot give the necessary licence to anyone to use a loudspeaker at any time and in any place. All the rights and freedoms to which persons in a democratic society are entitled must be limited to the extent that they do not interfere with rights and freedoms of others. Liberty therefore has to be limited in order to be effectively possessed.

40

The dictum of Wooding C.J. in Collymore vs. Attorney General (1967) (12 W.I.R.) 1 p. 9: is in point in this regard and it reads thus -

"My first observation is that individual freedom in any community is never absolute. No person in an ordered society can be free to be antisocial. For the protection of his own freedom everyone must pay due regard to the conflicting rights and freedoms of others. If not, freedom will become lawless and end in anarchy. Consequently, it is and has in every ordered society always been the function of the law so to regulate the conduct of human affairs as to balance the competing rights and freedoms of those who comprise the society."

10

20

It follows on this that having regard to section 5 the appellant has failed to establish that he has a right to use a loudspeaker at a public meeting and consequently to establish that as a result he has suffered a loss of any fundamental right reserved to him by the Constitution. In my view section 5 of the Act does not in any way contravene the Constitution.

For the above reasons I would dismiss this appeal with costs.

(Sgd.) K.L. Gordon

Chief Justice (Acting)

No. 6 (b)

JUDGMENT OF P.C. LEWIS, J.A.

CECIL LEWIS, J.A.

30

The appellant was charged before the magistrate of district "A" in the State of Saint Christopher/Nevis/Anguilla with using noisy instruments in Basseterre, to wit, loudspeakers and amplifiers during the course of a public meeting on June 29th, 1969, without having first obtained the permission in writing of the Chief of Police contrary to section 5(1) of the Public Meetings and Processions Act 1969 (hereinafter referred to as 'the Act').

At the trial of the appellant the magistrate found the following facts:-

In the Court
of Appeal

No. 6 (a)

Judgment of
K.L. Gordon,
C.J. (Ag.)

28th July 1970
(continued)

No. 6 (b)

Judgment of
P.C. Lewis,
J.A.

28th July 1970

In the Court
of Appeal

No. 6 (b)

Judgment of
P.C. Lewis,
J.A.

28th July 1970
(continued)

"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 Basseteere, 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 loud-speaker for which was mounted on a nearby car.

10

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."

20

Counsel for the appellant admitted the facts adduced by the witnesses for the prosecution, but submitted that the law under which the appellant was charged was unconstitutional in that it hindered the appellant in the enjoyment of his freedom of expression and his freedom of assembly and association enshrined in sections 10 and 11 respectively of the Saint Christopher/Nevis/Anguilla (Constitution) Order, 1967 (S.I. 1967 No. 228) (hereinafter referred to as 'the Constitution') and he requested that the question of the alleged contravention of the appellant's rights above-mentioned be referred to the High Court. The magistrate, in compliance with this request and pursuant to section 16(3) of the Constitution referred the following questions to the High Court for determination, viz:

30

"Whether the legislation, by requiring police permission for the use of a microphone or other similar instrument at a public meeting, offends against 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?

40

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?

In the Court
of Appeal

No. 6 (b)

Does the said legislation get around, however unintentionally, these guarantees, or inhibit these rights? Does 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?

Judgment of
P.C. Lewis,
J.A.

28th July 1970
(continued)

This is the 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."

It may perhaps be appropriate at this stage to say that where a question is referred by a magistrate to the High Court under section 16(3) of the Constitution he should do so concisely and without the use of argument or narrative.

Counsel for the appellant conceded at the beginning of his argument that the right of assembly (referred to in s.11 of the Constitution) did not arise on the facts of this case, and he accordingly confined his submissions to s.10 which, he said, was the section he was alleging had been contravened. Section 10 of the Constitution reads as follows:-

"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, free dom 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.

(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 -

In the Court
of Appeal

No. 6 (b)

Judgment of
P.C. Lewis,
J.A.

28th July 1970
(continued)

- (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
- (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."

In the long title to the Act, it is stated that its purpose is "to repeal the Public Meetings and Processions Ordinance (Cap. 302) and replace it with provisions calculated to facilitate police arrangements for the preservation of order at public meetings and processions". The particular section of the Act which is being impugned is section 5 and this reads as follows:-

"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 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

10

20

30

40

terms and conditions and subject to such restrictions as he may think fit."

In the Court
of Appeal

No. 6 (b)

Judgment of
P.C. Lewis,
J.A.

28th July 1970
(continued)

10 Bearing in mind the declared purpose of the Act, a question which must necessarily arise for decision is whether s.5 thereof "makes provision that is reasonably required in the interests of.... public order", (to use the language of s.10(2)(a) of the Constitution), for this is, in my opinion, the obvious ground on which the validity of the said s.5 may be supported.

20 When the appellant's reference came before the High Court Renwick, J. held that s.5 of the Act did not contravene the provisions of sections 10 and 11 of the Constitution. The appellant appealed to this Court against the decision of Renwick, J. and the substantial point which was argued on his behalf was that a law which granted an absolute and unfettered discretion to an executive officer such, as was said, was granted by section 5(2) of the Act, is ipso facto unconstitutional. In support of this submission, counsel for the appellant referred to the case of Gopalan v. State of Madras, A.I.R. 1950, S.C. 27, and the decision of Glasgow, J. in the case of The Chief of Police v. Michael Powell (No. 107/1969) and the case of The Chief of Police v. Warren Thomas (No. 108/1969).

30 The Attorney General contended that the discretion given by s.5(2) of the Act does not make the subsection unconstitutional because the Chief of Police is merely required to carry out a statutory function thereunder which although of a discretionary nature is not, strictly speaking, absolutely unfettered in that if he exceeds his powers he would be answerable for his actions at law. In support of this submission he quoted the following passage from 30 Halsbury, 3rd Edition, p.686, para. 1324:

40 "Excessive exercise of statutory powers. It is the duty of persons upon whom statutory powers are conferred to keep strictly within those powers. If such persons act in excess of their powers, they are, to the extent to which they exceed their powers, deprived of any protection conferred upon them by the statute in question, and will be subject to the ordinary remedies existing at common law. An injunction may be granted to restrain an act in excess of

In the Court
of Appeal

No. 6 (b)

Judgment of
P.C. Lewis,
J.A.

28th July 1970
(continued)

statutory powers, and a person injured by such an act may be entitled to recover damages from the persons purporting to exercise the power."

He further submitted that the Act was regulatory in purpose and was enacted in the interest of public order pursuant to section 10(2) of the Constitution which permits laws to be passed in the interest of public order, that the Act makes provision which is reasonably required in this particular interest as envisaged in paragraph (a) of Section 10(2) of the Constitution. 10

It was also submitted that s.5 of the Act takes away no fundamental right from the citizen but merely regulates the use of loudspeakers at public meetings, which was said to be part of the normal duties of the police in preserving public order. The use of loudspeakers, it was said, may offend against the rights and freedoms of others and in this connection the Attorney General referred to s.1 of the Constitution which provides, inter alia, that the fundamental rights and freedoms specified therein while they are protected by the Constitution are nevertheless subject to the limitation that their enjoyment should not prejudice the rights and freedoms of others or the public interest. Bearing these considerations in mind, it was submitted that the use of loudspeakers at public meetings could validly be regulated and that the law by which this was done would not, in this case, constitute any hindrance to the right of freedom of speech. 20 30

Gopalan's case is reported in Basu's Cases on the Constitution of India (1950-51), at pages 74/135. This was a case in which the petitioner Gopalan applied under Art. 32(1) of the Constitution of India for a writ of habeas corpus against his detention in the Madras gaol. He had been under detention since December, 1947, and while he was still in detention under one of the orders of the Madras State Government he was served with an order on 1st March, 1950, made under s.3(1) of the Preventive Detention Act (IV of 1950). He challenged the legality of the order and contended that the Act under which it was made contravened Articles 13, 19, 21, and was not in accordance with Article 22, of the Constitution of India. Articles 19 to 21 appear in the Constitution of India under the caption "Right to Freedom". Section 3 of the 40

Preventive Detention Act (IV of 1950) empowered the Central Government or the State Government to detain any person if it is "satisfied" that it is necessary to do so with a view to preventing him from acting in any manner prejudicial to (among other things) the security of the State or the maintenance of public order.

In the Court
of Appeal

No. 6 (b)

Judgment of
P.C. Lewis,
J.A.

28th July 1970
(continued)

10 The question which arose for decision in this case was whether the Preventive Detention Act was ultra vires, being in contravention of Articles 19 to 21 of the Constitution of India. In none of the four majority or two minority judgments delivered in this case have I been able to find any statement supporting the contention of counsel for the appellant that a law which confers an unfettered discretion on an executive officer is necessarily unconstitutional. Indeed, the only reference to discretion in Gopalan's case arose in connection with the question whether s.3 of the Preventive
20 Detention Act created a delegation of legislative power to an executive officer, or whether it conferred a discretion on such officer. Kania, C.J., at page 86 of the report in Basu's Cases on the Constitution of India (1950-51) said this -

"Section 3 of the impugned Act is no delegation of legislative power to make laws. It only confers discretion on the officer to enforce the law made by the legislature."

30 Das, J., dealing with the argument that in s.3 of the said Act Parliament had not legislated at all but had delegated its legislative power to the executive authorities said, at page 116 of Basu's Cases (ibid) -

40 "I do not think there is any substance in this contention. In the first place this is not an objection as to procedure but to substantive law which is not open to the Court's scrutiny. In the next place this contention overlooks the basic distinction between the delegation of power to make the law and the conferring of an authority and discretion as to its execution to be exercised under and in pursuance of the law."

The judgments of Kania, C.J. and Das, J. which specifically dealt with a situation where a discretion was conferred on an executive officer

In the Court
of Appeal

No. 6 (b)

Judgment of
P.C. Lewis,
J.A.

28th July 1970
(continued)

certainly do not support the broad proposition advanced by counsel for the appellant.

The other authority relied upon by counsel for the appellant was the decision of Glasgow, J. in Powell's case and in Thomas's case. These cases were heard together in the High Court of Saint Christopher, Nevis and Anguilla on a reference to that Court under s.16(3) of the Constitution, and in them the constitutionality of the Public Meetings and Processions (Amendment) Ordinance, No. 4 of 1967 came under review. Glasgow, J. held that this Ordinance was unconstitutional in that it contravened sections 10 and 11 of the Constitution. 10

The passage in the judgment of Glasgow, J. on which counsel for the appellant relied reads:-

"In my opinion, provision in a law prohibiting the organizing, holding or speaking at any meeting, gathering or assembly of persons in any "public place" as defined in the Ordinance, without having first obtained permission in writing for such purpose from the Chief of Police (which permission the Chief of Police may grant or withhold in his discretion) constitutes a hindrance of persons in the State in the enjoyment of their freedoms of expression and assembly. The question therefore arises: Has it been shown that the law in question makes provision that is reasonably required in the interest of public order? In this connexion it is to be noted that section 3A does not state what considerations the Chief of Police must bear in mind in deciding whether to grant or withhold his permission. In other words, there are no criteria to guide him. The wording of section 3A makes it impossible to say that the discretion given to the Chief of Police is not a purely arbitrary one. 20 30

Moreover, section 3A (a) requires the permission in writing of the Chief of Police for all meetings, gatherings or assemblies of persons - whatever their nature - in every "public place" in the State, whether indoors or in the open spaces, on privately owned property or on public property, bona fide religious meetings, gatherings or assemblies 40

of persons being alone excepted. I am satisfied that such permission, if reasonably required in some cases in the interest of public order is not reasonably required in such interest in a great number of other cases falling within the scope of the section. In the Indian case Romesh Thapar v. Madras (A.I.R. Sc 124), Fazl Ali, J. observed at page 129:-

In the Court
of Appeal

No. 6 (b)

Judgment of
P.C. Lewis,
J.A.

28th July 1970
(continued)

10

"Where a law purports to authorise the imposition of restrictions on a fundamental right in language wide enough to cover restrictions both within and without the limits of constitutionally permissible legislative action affecting such rights, it is not possible to uphold it even so far as it may be applied within the constitutional limits, as it is not severable. So long as the possibility of its being applied for purposes not sanctioned by the constitution cannot be ruled out, it must be held to be wholly unconstitutional and void."

20

For the foregoing reasons I hold that it has not been shown that the law in question makes provision that is reasonably required in the interest of public order, or in the interests of defence, public safety, public morality or public health.

30

If I had been satisfied that the law in question makes provision that is reasonably required in any of the interests of public order, defence, public safety, public morality or public health, I would still have been constrained to hold that because of the unfettered discretion given to the Chief of Police by section 3A, and the failure to limit the operation of the section in point of time, the impugned provision of the law has been shown not to be reasonably justifiable in a democratic society."

40

Glasgow, J. was however dealing with a situation which was substantially different from that in the instant case, and his decision in my view cannot be regarded as having any relevance to the issues raised in this case. In Powell's case and in Thomas's case these appellants were charged under

In the Court
of Appeal

No. 6 (b)

Judgment of
P.C. Lewis,
J.A.

28th July 1970
(continued)

section 3A of the Public Meetings and Processions (Amendment) Ordinance, No. 4 of 1967 which reads as follows:-

"3A. Notwithstanding anything contained in section 3 of this Ordinance, no person, except a person acting bona fide in pursuance of the provisions of subsection (4) of that section, shall -

- (a) organize, hold or speak at any meeting, gathering or assembly of persons; 10
- (b) organize or take part in any procession or march;
- (c) use any loudspeaker or other noisy instrument for the purpose of announcing or summoning any meeting, gathering or assembly of persons, procession or march,

in any public place in the Territory or any part thereof or in any public place in any parish, district, city or town in the Territory without having first obtained permission in writing for such purpose from the Chief of Police (which permission it shall be discretionary in the Chief of Police to grant or withhold)."

20

The charge which was laid under paragraph (a) alleged that they spoke at a meeting in a public place without first having obtained permission in writing for such purpose from the Chief of Police, which permission the Chief of Police could grant or withhold at his discretion.

30

It will at once be seen that the section under which the charge was laid almost completely negatives the right of freedom of expression, in that it makes the very exercise of this right dependent upon the written permission of the Chief of Police. There is thus a direct abridgement of the right itself. The situation under the Act is entirely different. Even assuming that the use of a loudspeaker at a public meeting may be regarded as an adjunct to the exercise of the right in question, it cannot reasonably be contended that its use is a sine qua non to the exercise of the right of freedom of expression. A loudspeaker may serve to

40

10 facilitate the exercise of the right by making it possible for a speaker to reach a larger audience than would otherwise be possible by the use of the human voice unassisted by any artificial aids, but that is the only advantage which the use of a loudspeaker can give. Since the use of a loudspeaker is not essential to the exercise of this right, a law which gives power to regulate the use of this instrument, and which, incidentally, may prohibit its use in circumstances which in the opinion of the person exercising the power may be necessary cannot, in my view, be regarded as hindering the enjoyment of the right of freedom of expression, for the right in question remains in essence unaffected. It can be, and in this case, it was, in fact, exercised. It is only where it is desired to exercise the right in conjunction with the use of a loudspeaker that any question may arise. But such a question can never in my view cast doubt on the right to exercise the freedom under discussion, but must always be ancillary thereto.

30 A case in which the exercise of a discretion by an executive officer came under consideration by the Supreme Court of Canada was that of Roncarelli v. Duplessis (1959) 16 D.L.R. (2d) 689. The facts of this case as taken from the headnote were, that the plaintiff, who was the proprietor of a high-class restaurant, which had enjoyed the benefit of a renewable liquor licence for over 30 years had his licence peremptorily cancelled by the manager of the Quebec Liquor Commission on December 4th, 1946, because, as a member of Jehovah's Witnesses, he had been furnishing bail in almost 400 cases of arrest of members of this sect on charges of infringements of the municipal byelaws governing the distribution of literature, peddling, and interference with traffic. The plaintiff had always conducted his restaurant in conformity with the law and it had never been used as a centre of activity for the Jehovah Witnesses. He had ceased to be a bondsman for the Witnesses on November 12th, 40 1946, when the authorities began to insist on cash for bail. Shortly thereafter the Witnesses began to distribute a pamphlet considered by the authorities to be seditious and some of these pamphlets were seized on premises leased by the plaintiff to the Witnesses. There was no evidence that the plaintiff himself was involved in the activities of the Witnesses on these premises, or that he knew that the pamphlets were kept or distributed there.

In the Court
of Appeal

No. 6 (b)

Judgment of
P.C. Lewis,
J.A.

28th July 1970
(continued)

In the Court
of Appeal

No. 6 (b)

Judgment of
P.C. Lewis,
J.A.

28th July 1970
(continued)

Under the Alcoholic Liquor Act of the Province of Quebec, R.S.Q. 1941, Chapter 255, the Commission (consisting of one person, the manager) had discretionary power to issue or cancel licences which expired on April 30th following the date of issue, subject to earlier cancellation or to the fixing of an earlier expiry date, but they were renewable. When investigations into the distribution of the objectionable pamphlets disclosed that the plaintiff had been a bondsman and that he was the same person who enjoyed the "privilege" of a liquor licence, the manager of the Commission got in touch with the defendant, who was the Premier and Attorney General of Quebec, and it was at the latter's direction or instigation that the Plaintiff's liquor licence was cancelled, and, moreover, the defendant announced publicly that the plaintiff would be barred "forever" from obtaining a licence. The evidence showed that this was done to punish the plaintiff for acting as a bondsman for the Witnesses, and to warn others about the possible loss of provincial privileges. In an action against the defendant in his personal capacity, it was held on appeal by a majority of the Court that the defendant was liable in damages to the plaintiff.

10

20

In the course of his Judgment Rand, J. said at page 705 as follows:

"In public regulation of this sort there is no such thing as absolute and untrammelled "discretion", that is that action can be taken on any ground or for any reason that can be suggested to the mind of the administrator; no legislative Act can, without express language, be taken to contemplate an unlimited arbitrary power, exercisable for any purpose, however capricious or irrelevant, regardless of the nature or purpose of the statute. Fraud and corruption in the Commission may not be mentioned in such statutes but they are always implied as exceptions. "Discretion" necessarily implies good faith in discharging public duty; there is always a perspective within which a statute is intended to operate; and any clear departure from its lines or objects is just as objectionable as fraud or corruption.

30

40

Could an applicant be refused a permit because he had been born in another Province, or because of the colour of his hair? The ordinary language of the Legislature cannot be so distorted.

In the Court
of Appeal

No. 6 (b)

To deny or revoke a permit because a citizen exercises an unchallengeable right totally irrelevant to the sale of liquor in a restaurant is equally beyond the scope of the discretion conferred."

Judgment of
P.C. Lewis,
J.A.

28th July 1970
(continued)

10

It should be noted here that what is being criticised by the learned judge is the manner in which the discretionary power in this case was exercised, and not the mere grant of discretionary power itself, and although there were differences of opinion among the judges of the Supreme Court of Canada as to the right of the appellant to receive damages, in none of the judgment was it said that the grant of a discretion to the Commission to issue or cancel licences was in itself unconstitutional.

20

In Thomas M. Franck's Comparative Constitutional Process, Cases and Materials, the author, when dealing with the question of the right to equal protection under the law in circumstances where a public authority is vested with a discretion which is liable to abuse by arbitrary exercise contrary to its intendment said, at p.577 -

"On the other hand, there is ample authority in the American decisions for the view that the necessarily large powers vested in a legislature must include the power of entrusting to an administrative body a plenary but not arbitrary discretion to be exercised so as to carry out the purpose of an enactment. In Engel v. O'Malley, 219 U.S. 128 a New York statute prohibiting individuals or partnerships to engage in the business of receiving deposits of money without a licence from the controller "who may approve or disapprove the application for a licence in his discretion" was sustained as constitutional. In answer to the argument that the controller might refuse a licence on his arbitrary whim, Holmes J. said: "We should suppose that in each case the controller was expected to act for cause. But the nature and extent of the remedy, if any, for a breach of duty on his part, we think it unnecessary to

30

40

In the Court
of Appeal

No. 6 (b)

Judgment of
P.C. Lewis,
J.A.

28th July 1970
(continued)

consider; for the power of the state to make the pursuit of a calling dependent upon obtaining a licence is well established where safety seems to require it."

In New York, ex. rel. Lieberman v. Van De Carr, 199 U.S. 552 a provision in the Sanitary Code of the City of New York vested discretion in Local Health Boards to grant or withhold licences for carrying on milk business in the City. Upholding the constitutionality of the provision, Day, J. observed after referring to certain prior decisions:

10

"These cases leave in no doubt the proposition that the conferring of discretionary power upon administrative boards to grant or withhold permission to carry on a trade or business which is the proper subject of regulation within the police power of the state is not violative of rights secured by the 14th Amendment. There is no presumption that the power will be arbitrarily exercised, and when it is shown to be thus exercised against the individual, under sanction of state authority, this court has not hesitated to interfere for his protection, when the case has come before it in such manner as to authorize the interference of a Federal Court."

20

It appears therefore that in cases where a discretionary power is granted to an executive authority the mere fact that the power may possibly be arbitrarily exercised is no ground for declaring the law granting such power unconstitutional, for there is no presumption that the power will in fact be so exercised. Indeed it should be assumed that the recipient of the power will, in exercising it, act in good faith, and, as Rand J. said in Roncarelli's case (supra):

30

"Good faith.....means carrying out the statute according to its intent and for its purpose; it means good faith in acting with a rational appreciation of that intent and purpose and not with an improper intent and for an alien purpose; it does not mean for the purposes of punishing a person for exercising an unchallengeable right; it does

40

not mean arbitrarily and illegally attempting to divest a citizen of an incident of his civil status."

In the Court
of Appeal

No. 6 (b)

Martland, J. in Roncarelli v. Duplessis (supra), in dealing with s. 35(1) of the Alcoholic Liquor Act which stated, inter alia, that "the Commission may cancel any permit at its discretion" commented as follows at p. 741 (ibid):

Judgment of
P.C. Lewis,
J.A.

28th July 1970
(continued)

10

"It is contended by the respondent, and with considerable force, that this provision gives to the Commission an unqualified administrative discretion as to the cancellation of a permit issued pursuant to that Act. Such a discretion, it is contended, is not subject to any review in the Courts.

20

The appellant contends that the Commission's statutory discretion is not absolute and is subject to legal restraint. He cites the statement of the law by Lord Halsbury in Sharp v. Wakefield (1891) A.C. 173 at p. 179: "An extensive power is confided to the justices in their capacity as justices to be exercised judicially: and 'discretion' means when it is said that something is to be done within the discretion of the authorities that that something is to be done according to the rules of reason and justice, not according to private opinion; Rooke's Case, 5 Rep. 100a; according to law, and not humour. It is to be, not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man competent to the discharge of his office ought to confine himself."

30

40

That was a case dealing with the discretionary powers of the licensing Justices to refuse renewal of a licence for the sale of intoxicating liquors. This statement of the law was approved by Lord Greene M.R. in Minister of National Revenue v. Wrights' Canadian Ropes Ltd. [1947], 1 D.L.R. 721 at p. 730, A.C. 109 at p. 122."

One of the reasons given by counsel for the appellant for saying that the discretion of the Chief of Police being unfettered was therefore liable to abuse, was the absence of any provision

In the Court
of Appeal

No. 6 (b)

Judgment of
P.C. Lewis,
J.A.

28th July 1970
(continued)

for judicial review in s.5 of the ordinance. The statement of Day, J. in New York ex rel. Lieberman v. Van De Carr (supra) to the effect that when it is shown that a power has been arbitrarily exercised against an individual "under sanction of state authority this Court has not hesitated to interfere for his protection, when the case has come before it in such manner as to authorise the interference of the Federal Court", and the remarks of Martland, J. In Roncarelli v. Duplessis (supra) fail to give any support to the argument adduced by counsel for the appellant that an improper exercise of a discretionary power is not subject to legal restraint. No doubt it may be difficult to prove the mis-use of a discretionary power unless the person exercising the power states the reasons for his action, but this does not detract from the validity of the principle here stated.

10

Under s.10(1) of the Constitution a person may, with his own consent, be deprived of the freedom therein specified. Under s.10(2) derogations from this freedom are permissible, not only by laws, but also by acts done under the authority of such laws. The derogations would only be valid if the laws, or the things done thereunder, satisfy a two-fold test, viz: (a) the laws must make provision that is reasonably required for certain purposes prescribed in the subsection, and (b) the provision or the thing done thereunder must be "shown not to be reasonably justifiable in a democratic society". The relevant prescribed purpose in this connection would be a provision in the interests of public order, and if it can be shown that s.5 of the Act is such a provision then it would not be held to be inconsistent with, or in contravention of s.10 of the Constitution.

20

30

Counsel for the appellant made it abundantly clear that he was not claiming for the appellant an absolute and unrestricted right to use noisy instruments at public meetings. He conceded that the police would have the right to regulate the use of loudspeakers, that the use of a loudspeaker may sometimes be a nuisance, and that regulation was necessary in an ordered society, but he stated that his objection was to the method of control envisaged by s.5 of the Act. Since it is conceded that some form of control might properly be imposed on the use of noisy instruments in

40

connection with public meetings, then it seems to me that all that need further be considered is whether s.5 of the Act contains restrictions which may be regarded as being reasonable. In the case of State of Madras v. Row (1952) S.C.R. 597 (reported in Basu's Cases on the Constitution of India (1952-54) at p. 169, Sastri, C.J., when discussing the test of reasonableness said at page 172 as follows:

In the Court
of Appeal

No. 6 (b)

Judgment of
P.C. Lewis,
J.A.

10

"This Court had occasion in Dr. Khare's case (1950-51) C.C. 32 to define the scope of the judicial review under clause (5) of Article 19 where the phrase "imposing reasonable restrictions on the exercise of the right" also occurs, and four out of the five Judges participating in the decision expressed the view (the other Judge leaving the question open) that both the substantive and the procedural aspects of the impugned restrictive law should be examined from the point of view of reasonableness; that is to say, the Court should consider not only factors such as the duration and the extent of the restrictions, but also the circumstances under which and the manner in which their imposition has been authorised. It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict. In evaluating such elusive factors and forming their own conception of what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the judges participating in the decision should play an important part, and the limit to their interference with legislative judgment in such cases can only be dictated by their sense of responsibility and self-restraint and the sobering reflection that the Constitution

20

30

40

28th July 1970
(continued)

In the Court
of Appeal

No. 6 (b)

Judgment of
P.C. Lewis,
J.A.

28th July 1970
(continued)

is meant not only for people of their way of thinking but for all, and that the majority of the elected representatives of the people have, in authorising the imposition of the restrictions, considered them to be reasonable."

Applying these considerations to the circumstances of this case, I have come to the conclusion that s.5 of the Act satisfies the first test mentioned above. The section is designed not to prohibit, but to regulate the use of noisy instruments at public meetings. These instruments are, by their very nature, susceptible of easy misuse, and their misuse can readily constitute a nuisance and so become objectionable to public order and prejudicial to the rights and freedoms of other persons. In my view s.5 seeks to prevent the occurrence of such events. It thus makes "provision that is reasonably required in the interest of public order" and therefore I would hold that it is not unconstitutional. 10 20

As regards the second test, the onus of proving that the provisions of s.5 of the Act are "not reasonably justifiable in a democratic society" is on the appellant as he is impugning the validity of the section. Support for this principle can be found in the case of Chiranjit Lal Chodhury v. The Union of India and others reported in Basu's Cases on the Constitution of India (1950-51) at p.10 where Mukherjea, J. said at p. 18:

"It is an accepted doctrine of the American Courts, which seems to me to be well founded on principle that the presumption is in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a transgression of constitutional principles." 30

Unfortunately no argument was addressed to the Court by counsel for the appellant on this aspect of the matter. He has therefore not discharged the burden of disproving the presumed constitutionality of s.5 of the Act. 40

I would accordingly dismiss the appeal with costs here and in the court below.

(Sgd.) P. Cecil Lewis

Justice of Appeal

No. 9 (c)

JUDGMENT OF E.L. ST. BERNARD, J.A. (AG.)ST. BERNARD, J.A. (Ag.)In the Court
of Appeal

No. 6 (c)

Judgment of
E.L. St.
Bernard,
J.A. (Ag.)

28th July 1970

10 I agree that the appeal should be dismissed. I would only add that all the freedoms provided for under sections 10 and 11 of the Constitution are subject to limitations. Any freedom which is unrestricted must of necessity interfere with the rights and liberties of others, and the unrestricted use of loudspeakers must cause such infringements. It therefore becomes necessary at times to regulate the conduct of the members of a community. Counsel, himself, conceded that there was nothing wrong in regulating the use of loudspeakers. He stated, however, that the unfettered discretion given to the Chief of Police under section 5(2) of the Public Meetings and Processions Act, 1969 (No. 4) made that Act unconstitutional. In my view that Act does not take away or abridge any of the

20 freedoms guaranteed by the Constitution. It merely gives the Chief of Police a discretion to grant or refuse permission for the use of noisy instruments which may create nuisances. Under section 33 of the Small Charges Act, Cap. 75, of the Laws of the State, a nuisance, committed in any public place, is an offence punishable on summary conviction. The Chief of Police is the person in whom the responsibility for the enforcement of law and order largely rests. The discretion conferred on him

30 under the Act does not take away any right guaranteed by the Constitution. It simply allows him to say when, and under what circumstances, loudspeakers may be used. This, I think, is a proper subject for regulation within the powers of the Police. There is no presumption that the discretion will be abused as the exercise of a discretion implies its use in good faith in the discharge of a public duty.

40 Assuming that the use of a loudspeaker at a public meeting is an adjunct of the freedom of expression as submitted by counsel for the appellant, it appears to me that if the grant of a permit for such use is unreasonably withheld or abused, then the ordinary remedies at common law are open to the sufferer if such abuse can be proved. I hold, however, that there is no fundamental right under

In the Court
of Appeal

the Constitution for the use of noisy instruments
at public meetings.

No. 6 (c)

(Sgd.) E.L. St. Bernard

Judgment of
E.L. St.
Bernard,
J.A. (Ag.)

Justice of Appeal (Ag.)

28th July 1970
(continued)

No. 7

No. 7

Order

ORDER

28th July 1970

K.L. GORDON, C.J. (Ag.)

This appeal is dismissed with costs here and
in the Court below.

(Sgd.) K.L. Gordon

10

C.J. (Ag.)

No. 8

No. 8

Notice of
Petition for
Special Leave
to Appeal to
Her Majesty
in Council

NOTICE OF PETITION FOR SPECIAL LEAVE TO APPEAL
TO HER MAJESTY IN COUNCIL

IN THE COURT OF APPEAL

ST. CHRISTOPHER NEVIS AND ANGUILLA

10th August
1970

Criminal Appeal No. 1 of 1970

Between:

ARTHUR FRANCIS Appellant/defendant

and

CHIEF OF POLICE Respondent/Complainant

To: The Acting Registrar
and
The Chief of Police
and
The Attorney General

In the Court
of Appeal

No.8

NOTICE OF PETITION FOR
SPECIAL LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL
WITH SPECIAL LEAVE TO HER MAJESTY FROM A DECISION
OF THE COURT OF APPEAL DATED 28th DAY OF JULY 1970

Notice of
Petition for
Special Leave
to Appeal to
Her Majesty
in Council

10 Take Notice that the Defendant/Appellant in
the matter of Arthur Francis and the Chief of
Police Respondent/Complainant desires to obtain
special leave to appeal under section 101 (3) of
the Constitution of St. Christopher Nevis and
Anguilla from a decision of the Court of Appeal
delivered on the 28th day of July 1970, affirming
a judgment of the Honourable Puisne Judge in the
St. Christopher Circuit given on the 10th day of
20 March 1970 in finding that Section 5 of the Public
Meetings and Processions Act 1969 did not
contravene sections 10 and 11 of the Constitution.

10th August
1970
(continued)

And further take Notice that such Petition
under Section 101 (3) or such Appeal under Section
101 (1) will be lodged with the least possible
delay.

(Sgd.) William V. Herbert.

Solicitor for Arthur Francis

Dated this 10th day of August 1970

Delivered this day of August 1970

In the Court
of Appeal

No 9

AFFIDAVIT OF JOHN HENRY LYNCH-WADE

No 9

IN THE COURT OF APPEAL

Affidavit of
John Henry
Lynch-Wade

STATE OF SAINT CHRISTOPHER NEVIS AND ANGUILLA
CRIMINAL APPEAL NO. 1 of 1970

15th February
1971

BETWEEN:

ARTHUR FRANCIS Appellant

V

CHIEF OF POLICE Respondent

AFFIDAVIT

10

I, John Henry Lynch-Wade of La Guerite, Basseterre, Chief of Police of the Royal Saint Christopher, Nevis and Anguilla Police Force make oath and say as follows:-

1. I am the Chief of Police aforesaid and has been functioning in this capacity for upwards of six years and up to the current date.

2. That there are twenty-two (22) cases filed in the Magistrate's Court against a number of persons offending against the said Section 5 (1) of the Public Meetings and Processions Act, 1969 (No. 4 of 1969) under which the Appellant is charged. (See schedule attached and marked "A").

20

3. That the delay in the hearing of the cases aforesaid is militating against Public Order and an inroad against the Police in maintaining Law and Order and preventing breaches of the Peace in the face of the widespread feeling that a mockery is made of the Law, the Police and the Courts.

SWORN to this 15th) (Sgd.) John Henry Lynch Wade 30
day of February, 1971.)

Before me:

John Henry Lynch Wade
Chief of Police

(Sgd.) H. Hamilton

A COMMISSIONER FOR OATHS
ST. KITTS

15 FEB. 1971

SCHEDULE TO AFFIDAVIT BY CHIEF OF POLICE MARKED "A"LIST OF DEFENDANTS CONTRAVENING SECTION 5 (1) OF
THE PUBLIC MEETINGS AND PROCESSIONS ACT, 1969
(No. 4 of 1969)In the Court
of Appeal

No. 9

Affidavit of
John Henry
Lynch-Wade15th February
1971
(continued)

Court No. of Case	Name and Address of Defendant	Offence Charged
	<u>DATE OF OFFENCE 29/6/69</u>	
	525/69 Auburn Francis of Sandy Point	Use Noisy Instrument
10	526/69 Lucille Sprott-Shroueten of Sprott Street	do.
	527/69 Ralph Gumbs of Greenlands	do. (Not served)
	528/69 Vincent Williams of Sandy Point	do.
	529/69 Vivian Vaughn of	do. (do.)
	530/69 Hugh Heyliger of Sandy Point	do.
	531/69 Colin Pereira of Fortlands	do.
	532/69 Boysie Laplace of Greenlands	do.
	533/69 Arthur Browne of Lozac Road	do. (do.)
	534/69 Esbon Ross of Taylors Range	do.
20	535/69 Clinton Clarke of New Pond Site	do.
	536/69 Michael Powell of Buckley's Site	do.
	537/69 Richard Caines of Greenlands	do.
	538/69 William V. Herbert, Jr. of Central Street	do.
	<u>DATE OF OFFENCE 27/7/69</u>	
	679/69 Vernon Fleming of Connell Street	do.
	680/69 Warren Thomas of Park Range	do.
	<u>DATE OF OFFENCE 31/8/69</u>	
30	727/69 William V. Herbert, Jr. of Central Street	do.
	728/69 Richard Caines of Greenlands	do.

In the Court
of Appeal

No. 9

Affidavit of
John Henry
Lynch-Wade

15th February
1971
(continued)

Court No. of Case	Name and Address of Defendant	Offence Charged
729/69	Michael Powell of Buckley's Site	Use Noisy Instrument
<u>DATE OF OFFENCE 7/11/69</u>		
183/70	Michael Powell of Buckley's Site	do.
184/70	William V. Herbert, Jr. of Central Street	do.
185/70	Richard Caines of Greenlands	do.

10

(Sgd) John Henry Lynch-Wade

John Henry Lynch-Wade
Chief of Police

No. 10

Affidavit of
Ivan Hanley

16th February
1971

No. 10

AFFIDAVIT OF IVAN HANLEY

IN THE COURT OF APPEAL

STATE OF SAINT CHRISTOPHER NEVIS AND ANGUILLA
CRIMINAL APPEAL NO. 1 of 1970

BETWEEN:

ARTHUR FRANCIS

Appellant

V

CHIEF OF POLICE

Respondent

20

AFFIDAVIT

I, Ivan Hanley of Force Headquarters, Basseterre, Corporation of Police of the Royal St. Christopher-Nevis-Anguilla Police Force make oath and say as follows:-

1. I am a Corporal of Police in the above named Force for upwards of 10 years and up to the present date.

30

2. Arthur Francis the Appellant in this matter is well known to me and from my observation and investigation it does not appear to me that he is possessed of sufficient means to provide the necessary costs for the prosecution of an appeal to the Privy Council.

In the Court of Appeal

No.10

Affidavit of Ivan Hanley

16th February 1971 (continued)

Sworn to this 16th) (Sgd) Ivan Hanley
day of February, 1971)

10 Before me: Ivan Hanley
Corporal of Police

(Sgd) H. Matadial

A COMMISSIONER FOR OATHS
St. Kitts

16 FEB 1971

No. 11

No.11

NOTICE OF MOTION

Notice of Motion

IN THE COURT OF APPEAL

STATE OF SAINT CHRISTOPHER NEVIS AND ANGUILLA

17th February 1971

CRIMINAL APPEAL NO. 1 of 1970

20 BETWEEN:

ARTHUR FRANCIS Appellant

V

CHIEF OF POLICE Respondent

TO: The Registrar of the Court
and

To: Arthur Francis
and

To: William V. Herbert
Solicitor for Appellant

30 NOTICE OF MOTION

TAKE NOTICE that the Court of Appeal at the Saint Christopher Circuit at Basseterre, St. Kitts will be moved on Thursday the 4th March 1971 at

In the Court
of Appeal

No. 11

Notice of
Motion

17th February
1971
(continued)

9 o'clock in the forenoon or as soon thereafter as counsel can be heard on the hearing of an application that the Notice of Petition for special leave to Appeal to Her Majesty in Council with special leave of HER MAJESTY from a Decision in the above-named cause by the Court of Appeal dated 28th day of July, 1970 be deemed abandoned by the Appellant and that the Appellant be no longer permitted to pursue the said appeal on the following grounds viz:-

- (1) That up to the date of this Notice of Motion the Appellant has not taken any action nor shown any real intention to obtain an order of the Court granting any leave to appeal.
- (2) That it is not apparent that the Appellant can provide the sufficient security required by Law.
- (3) That the Notice of Petition for leave has been one of delaying tactics to supersede the Judgement of the Court and to postpone the hearing of charges against several other offenders committing breaches of the said Law on divers occasions.
- (4) That the Appellant has failed generally to prosecute the said appeal.

10

20

Dated the 17th day of February, 1971.

(Sgd) John M. Lewis

for Chief of Police
Respondent

No. 12

In the Court
of Appeal

AFFIDAVIT OF WILLIAM VALENTINE HERBERT

No.12

IN THE COURT OF APPEAL

STATE OF SAINT CHRISTOPHER NEVIS AND ANGUILLA
CRIMINAL APPEAL NO. 1 of 1970

Affidavit of
William
Valentine
Herbert

BETWEEN:

ARTHUR FRANCIS	Appellant
V	
CHIEF OF POLICE	Respondent

2nd March
1971

10

AFFIDAVIT

I, William Valentine Herbert of Basseterre, St.Kitts,
Solicitor of the Supreme Court make oath and say as
follows:-

1. I have instructed a firm of solicitors in
London, T.L. Wilson & Co., to prosecute the appeal
to the Privy Council in the above matter.
2. Due to the lack of means of the Appellant the
appeal is being conducted in forma pauperis.
- 20 3. There is difficulty in communicating with London
due to a postal strike which is still in operation.
4. To the best of my knowledge information and
belief the decision of the Court has been respected
and there have been no breaches of the Public
Meetings and Processions Act No. 4 of 1969 from the
date of the decision in the above matter.

Sworn to this 2nd day) (Sgd) William V. Herbert
of March, 1971)

Before Me:- William V. Herbert
Solicitor of the Supreme Court

30 (Sgd) R. Hamilton

A COMMISSIONER FOR OATHS
St. Kitts

2 MAR. 1971



In the Court
of Appeal

No. 13

JUDGMENT

No.16

IN THE COURT OF APPEAL

Judgment

SAINT CHRISTOPHER, NEVIS and ANGUILLA

26th March
1971

Motion No. 1 of 1971

Between: CHIEF OF POLICE Applicant

and

ARTHUR FRANCIS Respondent

Before: The Honourable the Chief Justice
The Honourable Mr. Justice Gordon
The Honourable Mr. Justice P. Cecil Lewis

10

H. Squires (Director of Public Prosecutions) for
applicant
Dr. W. Herbert for respondent

1971, March 26

JUDGMENT

LEWIS, C.J.:

This is a motion by the Chief of Police represented by the Director of Public Prosecutions filed in connection with Criminal Appeal No. 1 of 1970, Arthur Francis, Appellant, versus The Chief of Police, Respondent, in which this Court delivered judgment on 28th July, 1970. It asks this Court to order that a Notice of Petition for special leave to appeal to Her Majesty in Council with special leave of Her Majesty from that decision be deemed to have been abandoned by the respondent Francis and that the respondent be no longer permitted to pursue the said appeal. The Notice of Motion gives several reasons in support of the application.

20

30

On looking at the Notice of Petition referred to, the Court observes that it merely notifies the Registrar that the defendant/appellant in the appeal

desires to obtain special leave to appeal under section 101 (3) of the Constitution of Saint Christopher, Nevis and Anguilla from this Court's decision. Section 101 of the Constitution deals with appeals to Her Majesty in Council. Under section 101 (1) an appeal shall lie from a decision of the Court of Appeal as of right in the following cases:

In the Court
of Appeal

No.13

Judgment

26th March
1971
(continued)

- 10 "(c) final decisions in any civil or criminal proceedings which involve a question as to the interpretation of this Constitution;"

Section 101 (3) says that an appeal shall lie to Her Majesty in Council with the special leave of Her Majesty from any decision of the Court of Appeal in any civil or criminal matter.

- 20 The decision from which the respondent desires to appeal involves a question as to the interpretation of the Constitution, so that he could have come to this Court by way of Motion or by way of Petition and he would have been entitled to be granted leave to appeal as of right under s. 101 (1) (c) subject to such conditions as the Court might lay down in accordance with s.5 of the West Indies Associated States (Appeals to Privy Council) Order 1967. But he has not done this, and Dr. Herbert, who appears for him, has confirmed the view that this Court has taken of the Notice filed, that he has elected to go direct to the Privy Council for special leave to appeal to the Privy Council under s. 101 (3) of the Constitution. He has told the Court that the record of the appeal has been forwarded to London as far back as October, and that a firm of solicitors in London has been retained to prosecute the appeal. In view of this it is clear that so far as the respondent in this Motion is concerned there is no application before this Court for leave to appeal to the Privy Council. That being so, this Court has no power to interfere with the proceedings which the respondent has set in motion and this Motion is accordingly dismissed with costs.
- 30
- 40

ALLEN LEWIS

Chief Justice

In the Court
of Appeal

GORDON, J.A.:

I agree.

No.13

K.L. GORDON

Judgment

Justice of Appeal

26th March
1971
(continued)

CECIL LEWIS, J.A.

I agree.

P. CECIL LEWIS

Justice of Appeal

In the Privy
Council

No. 14

No. 14

ORDER GRANTING SPECIAL LEAVE TO APPEAL IN
FORMA PAUPERIS TO HER MAJESTY IN COUNCIL

10

Order granting
Special Leave
to Appeal in
forma pauperis
to Her Majesty
in Council

AT THE COURT AT BUCKINGHAM PALACE

The 27th day of October 1971

Present

THE QUEEN'S MOST EXCELLENT MAJESTY

27th October
1971

Lord President
Lord Privy Seal
Lord Tryon
Lord Maclean

Mr. Amery
Mr. Corfield
Sir Eustace Roskill

WHEREAS there was this day read at the Board
a Report from the Judicial Committee of the Privy
Council dated the 11th day of October 1971 in the
words following viz.:-

20

"Whereas by virtue of His late Majesty
King Edward the Seventh's Order in Council of
the 18th day of October 1909 there was
referred unto this Committee a humble Petition
of Arthur Francis in the matter of an Appeal

from the Court of Appeal for St. Christopher Nevis and Anguilla between the Petitioner and Chief of Police Respondent setting forth that the Petitioner prays for special leave to appeal in forma pauperis from the Judgment of the Court of Appeal of St. Christopher Nevis and Anguilla dated the 28th July 1970 which dismissed the Petitioner's Appeal from a Judgment of the High Court dated the 10th March 1970 on a reference by the Magistrate of District A arising out of a charge under Section 5 of the Public Meetings and Processions Act 1969: And humbly praying Your Majesty in Council to grant him special leave to appeal in forma pauperis against the Judgment of the Court of Appeal of St. Christopher Nevis and Anguilla dated the 28th July 1970 or for further or other relief:

In the Privy
Council

No. 14

Order granting
Special Leave
to Appeal in
forma pauperis
to Her Majesty
in Council

27th October
1971
(continued)

"The Lords of the Committee in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof no one appearing at the Bar in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute this Appeal in forma pauperis against the Judgment of the Court of Appeal of St. Christopher Nevis and Anguilla dated the 28th July 1970:

"And Their Lordships do further report to Your Majesty that the proper officer of the said Court of Appeal ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy of the Record proper to be laid before Your Majesty on the hearing of the Appeal."

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor or Officer administering the Government of St. Christopher Nevis and Anguilla for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

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 -

THE CHIEF OF POLICE

Respondent

RECORD OF PROCEEDINGS

WILSON FREEMAN,
6/8 Westminster Palace
Gardens,
London, SW1P 1RL.
Solicitors for the
Appellant.

CHARLES RUSSELL & CO.,
Hale Court,
Lincoln's Inn,
London, WC2A 3UL.
Solicitors for the
Respondent.