

20/81

IN THE PRIVY COUNCIL

No. 22 of 1980

O N A P P E A L
 FROM THE COURT OF APPEAL
 OF JAMAICA

B E T W E E N :

DESMOND GRANT, ERROL GRANT Appellants

EVERARD KING, COLLIN REID

IAN ROBINSON, JOEL STAINROD

LA FLAMME SCHOOLER, FREDERICK

FRATER, SUSAN HAIK and CARL MARSH

- and -

THE DIRECTOR OF PUBLIC PROSECUTIONS First Respondent

- and -

THE ATTORNEY GENERAL Second Respondent

CASE FOR THE THE FIRST RESPONDENT

Record

1. This is an appeal from the decision of the Court of pp 165-
 Appeal dated 12th December, 1979 (Henry, Kerr, Carberry 167
 J.J.A.) affirming the decision of the Supreme Court (Smith

C.J., White, Campbell JJ.) dated 4th May, 1979 dismissing pp.50-52
the applications of the appellants that they be granted
declarations that their constitutional rights guaranteed
by Sections 15, 20(1) and 20(5) of the constitution
"have been, are being or are likely to be contravened in
relation to them" and as a consequence that the indictments
pending in the Circuit Court be withdrawn. Additionally
declarations were sought on the ground that because of the
prejudicial pre-trial publicity, a trial was not possible
within the jurisdiction of Jamaica.

2. Elaborate reasons for their decisions were handed down pp62-150
both by the Supreme Court on July 27th, 1979 and by the pp169-241
Court of Appeal on April 18th, 1980.

3. The genesis of these proceedings was that indictments pp 18-20
for conspiracy to murder and murder were preferred in the
Saint Catherine Circuit Court on 4th July, 1978, by the
Director of Public Prosecutions, pursuant to Section 2(2)
of the Criminal Justice Administration Act in the Saint
Catherine Circuit Court against the Appellants and on an
application for a change of venue, the matter was
transferred to the Manchester Circuit Court on the 18th day
September 1978, by Mr. Justice Wilkie.

4. That on 29th day of January, 1979, Mr. Justice Rowe pp 37-41
sitting in the Manchester Circuit Court granted an
adjournment to the Applicants so that they could pursue
an application in the Supreme Court pursuant to Section
25 of the Constitution. Your Respondent opposed the
application for an adjournment in the Circuit Court on
that occasion. Your Respondent contended that those

concurrent or collateral constitutional proceedings pursuant to Section 25 of the Constitution should be stayed pending the outcome of the criminal trial or alternatively the matter should have been dismissed on a preliminary point. The Supreme Court's decision refusing to grant the declarations sought was affirmed by the Court of Appeal and the applicants have been granted successive adjournments by the Circuit Court. We may point out that your Respondent has never opposed those applications so as not to appear to prejudice any decision that may be made by the Court of Appeal or the Privy Council

5. It is necessary to summarise the facts which preceded the preferment of the indictments in order to identify the points of constitutional law which fall to be determined by Your Lordships' Board

6. The allegations are that Appellants who are all members of the Jamaica Defence Force either conspired to murder or murdered five (5) civilians who were lured to the Army's shooting range at Green Bay in the parish of Saint Catherine. Further it is contended that five (5) survived and in a Coroner's Inquest which lasted some six (6) weeks, the jury after hearing from the survivors, the accused and others, returned a verdict which in effect stated that persons were criminally responsible for the death of the five (5) civilians, but that their names were unknown.

p.12

11. 7-20

pp.171-11.

43-53,173

11. 1-36

7. Both before the Coroner's Inquest and during those proceedings, there was widespread publicity concerning

the matter. Additionally after the Inquisition on 20th March, 1978 and July 14th, 1978 when the indictments were preferred there was further publicity by the media. The Appellants exercised their undoubted constitutional right to apply for a writ of attachment against the Gleaner Company Limited and the Editor of the 'Gleaner' newspaper for contempt as regards the adverse publications and the Supreme Court on an application by the Appellants acceded to the Appellants request that the matter be stayed, until the constitutional and criminal proceedings were completed. The Appellants also request Your Respondent to take over those proceedings but in the exercise of our discretion we considered it prudent to await the outcome of the constitutional and criminal proceedings before deciding whether it would be appropriate in the circumstances to take over the contempt proceedings as requested. We should respectfully add for completeness that it was also open to the Supreme Court to institute proceedings for contempt on its own motion.

p.173

11.33-36

8. Final leave to appeal was granted by the Court of Appeal (Kerr, Rowe J.J.A. and White J.A. acting) on 28th day of May, 1980, and Your Respondent submits that Four Issues of constitutional law arise for Your Lordships' consideration. These may be conveniently summarised as follows:-

pp 241-242

- (i) Whether on a true construction of Section 25 of the constitution the discretion of the Supreme Court and the Court of Appeal was correctly exercised to hear and determine the concurrent constitutional issues prior to a determination

- of the criminal proceedings
- (ii) Whether adverse pre-trial publicity by the media concerning persons charged with a criminal offence can infringe the constitutional rights guaranteed by Section 20(1) of the Constitution.
- (iii) Whether the Director of Public Prosecutions is empowered by Section 2(2) of the Criminal Justice Administration Act to prefer indictments directly into the Circuit Court without recourse to committal proceedings.
- (iv) Whether the presumption of innocence guaranteed by Section 20(5) of the constitution to a person charged with a criminal offence can be infringed by the verdict of a Coroner's jury.

Scope and effect of Section
25 of the Constitution

9. With respect to the constitutional issue posed in paragraph 8(1), two (2) judgments, those of Rowe J. pp37-41
 as he then was in the Circuit Court and Smith C.J. in the p.65
 Supreme Court deal expressly with the matter and the two p.66
 other judges in the Supreme Court and the Court of Appeal 11. 1-22
 must be taken to have concurred with the reasoning of the
 learned Chief Justice. Rowe J. declared that:-

"I am of the clear view that a Circuit Court has p.40
 jurisdiction to hear and to determine all questions 11.6-12
 in relation to the presentation of an indictment, all
 questions in relation to its validity and all circum-
 stances pertaining to trial before that court - rather
 a criminal trial before that court".

It is submitted that this statement is a correct expression
 of the law and is in accordance with Section 29 of the
 Judicature (Supreme Court) Act which reads:-

29. The Judges of the Supreme Court shall act within the Circuits in all respects as the Judges of Assize, Oyer and Terminer and Gaol Delivery have heretofore done, and it shall be the duty of each, within the jurisdiction of the Courts respectively over which he shall preside, and at the times at which such Courts are respectively over which he shall preside, and at the times at which such Courts shall be held, of all treasons, misprison of treason, felonies and misdemeanours whatsoever, and of the accessories to the same, and each of them according to law; and it shall be their duty, each within his Circuit, and at the

several times at which the Courts of the said Circuit are held, to deliver the goal and goals within his said Circuit, doing therein what justice shall require, and at the times respectively aforesaid shall take verdicts upon issues and assessments of damages within such Circuits

10. Moreover, a fair reading of Section 25 of the Consitution and its proviso which reads:-

'25. - (1) Subject to the provisions of subsection (4) of this section, if any person alleges that any of the provisions of sections 14 to 24 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him, then without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the Supreme Court for redress.

(2) The Supreme Court shall have original jurisdiction to hear and determine any application made by any person in pursuance to subsection (1) of this section and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of the said sections 14 to 24 (inclusive) to the protection of which the person concerned is entitled:

Provided that the Supreme Court shall not exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law'

emphasizes that Supreme Court's undoubted jurisdiction on all matters pertaining to the operative part of Chapter III coupled with a fetter on the powers of that Court where adequate means redress for the contravention alleged are or have been available to the person concerned under any other law

11. Because of this construction it is submitted that Rowe J. erred when he further stated that 'The independent procedure in Section 25, however indicates to me that if the Constitutional protection is to have effect, it should

p.40

11.47-51

have precedence over either pending or proposed proceedings.'

It is being contended that an independent procedure existed prior to 1962 in Westminster type constitutions see

Imperial Tobacco Limited and Another v. Attorney General

(1980) 2 W.L.R. at p.466, a case on the unwritten constitution of England and Spilsbury v. The Queen (1899) A.C.

on the constitution of Gibraltar. Further it is submitted

that the fact that the independent procedure is now

entrenched does not give it precedence as Rowe J. contends

as such a ruling, if correct would permit a civil court

to intrude improperly into the domain of the criminal

court, notwithstanding that criminal proceedings had already

begun. The purpose of entrenchment was to enable the

Supreme Court to act as a Court of last resort in the

face of legislative, executive or judicial attempts to

deprive the citizen of the fundamental rights guaranteed

by Chapter III.

12. Smith C.J. also pronounced on the scope and

effect of Section 25 of the Constitution when Your

Respondent took a preliminary point in the Supreme

Court. The kernel of the Chief Justice's decision was

p.65

that since it was not manifest that there was no merit

11.53-54

in the application or that adequate means of redress

page 66

were available under other law, there was a duty to hear

11. 1-22

the application on the merits. Campbell J. in his

reasons, justify dismissal of the preliminary point on

similar grounds. It is respectfully submitted that as

to the issues of law raised by the applicants in the

Supreme Court, all the facts in the nature of the

affidavit evidence could be assumed to be true as there was no challenge to them by Your Respondent. In those circumstances, the Supreme Court could have come to the same decision by examining in respect of the pre-trial publicity point the fact that the complaint was against private parties and not the State. Also they could have examined the existing legal provisions in respect of challenge to jurors including the innovation of Mr. Justice Lawton in Kray (1969) 53 Cr. App. R. at p.413 and postponement, change of venue and proceedings for contempt. With respect to the propriety of the indictment as preferred that depended on the true construction of Section 2(2) of the Criminal Justice Administration Act which was decided in a number of cases, the earliest being R. v. Sam Chin (1960-61) 3 West Indian Reports at p.156. With respect to the effect of the verdict for a Coroner's jury on the presumption of innocence, resort must be made to Section 26(8) of the constitution which reads:-

'Nothing contained in any law in force immediately before the appointed day, shall be held to be inconsistent with any of the provisions of this Chapter, and nothing done under the authority of any such law shall be held to be done in contravention of any of these provisions.'

It is submitted that on the face of the pleadings in the Supreme Court, it was manifest that adequate means of redress were provided for by pre-1962 laws and furthermore, the nature of the relief sought was in the form of declarations, a remedy well known to the Supreme

Court before 1962

13. Additionally, it is being contended that there is further support that the criminal proceedings should have precedence over the constitutional action and this is to be found in Lord Diplock's speech in Maharaj v. Attorney General of Trinidad and Tobago where in discussing the powers of the Supreme Court he held that there was an inherent power to stay proceedings at p. 912 1978 2 W.L.R. It is being submitted that the proviso in the Jamaican Constitution reinforces this power and that once the Supreme Court in substance, decided that the proviso was applicable the applicants were bound to fail in limine.

14. Your Respondent would respectfully ask Your Lordships' Board for a ruling on the scope and effect of Section 25 with reference to these proceedings as there have been at least three (3) such criminal cases since his case, where resort has been had to procedure pursuant to Section 25 of the Constitution where the matter could be disposed of in the Criminal Courts. Such a ruling would be of great assistance to prosecuting authorities and the courts concerned with the administration of the Criminal Law. pp60-61
p.174
11.20-52

15. Your Respondent would respectfully point out that the unreported judgment of the Court of Appeal in D.P.P. v Michael Feutardo No. 59/79 delivered November 16th, 1979, suggests that these submissions were accepted in that case as Kerr J.A. stated thus:-

"In that regard the following observations of Lord Diplock in Privy Council Appeal No. 40 of 1977, Kemrajh Harrikisson v. The

Attorney General of Trinidad and Tobago, 1979
3 W.L.R. 62 at p.64 are indicative of the
approach the Court should adopt to applications
of this nature.

The notion that whenever there is a failure
by any organ of government or a public authority
or public officer to comply with the law this
necessarily entails the contravention of some
human right or fundamental freedom guaranteed
to individuals by Chapter 1 of the Constitution
is fallacious. The right to apply to the High
Court under section 6 of the Constitution for
redress when any human right or fundamental
freedom is or is likely to be contravened, is
an important safeguard of those rights and
freedoms; but its value will be diminished if
it is allowed to be misused as a general
substitute for the normal procedures for
invoking judicial control of administrative
action.

A fortiori this is even more pertinent when
the Constitution contains a purposeful proviso
as that in Section 25 (2) of the Jamaica
Constitution. We are of the view that even if
there was a contravention of Section 20 of the
constitution, adequate means of redress was
available to the Respondents under other law
and consequently the Court should not exercise
its powers under Section 25 of the Constitution."

Pre-trial publicity and Section 20(1) of the Constitution

16. Notwithstanding these submissions of Your	page 66
Respondent on the scope of Section 25 of the	11.23-52
Constitution, it is desirable for the Privy Council	page 75
to pronounce on the merits of this case as it was	11.1-30
developed in the Courts below and the principal	pages 101-
issue in this regard, pertains to the effect of the	11.47-52
pre-trial publicity as regards Section 20(1) of the	page 125
Constitution. It is appropriate to quote that	11.1-14
subsection. It reads:-	pages 143-
'Whenever any person is charged	11.25-55
with a criminal offence, he	page 150
should unless the charge is	11.1-9
withdrawn, be afforded a fair	pages 174-
hearing within a reasonable	11.11-20
time by an independent and	page 221

impartial court established
by law.'

11.1-19

Apart from the inbuilt procedures of the ordinary law adverted to when dealing with the preliminary point on the proviso to Section 25 of the Constitution, the starting point is Section 13, the relevant portion of which reads as follows:-

13 - Whereas every person in Jamaica is entitled to the fundamental rights and freedoms of the individual, that is to say, has the right, whatever his race, place or origin, political opinions, colour creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following namely:-

- (a) life, liberty, security of person, the enjoyment of property and the protection of the law.

17. The contention of Your Respondent is that the object and intendment of Section 20(1) was to guarantee the procedures pertaining to a fair hearing which were part of the procedures of the Supreme Court from future legislative, executive or judicial interference. It is submitted that pp209
it would be impossible for the applicant to prove that at the 11.38-52
current stage of the criminal trial where the accused p211
have been called on to answer to the indictment that the 11.1.42
protection of law provided by Judicature (Supreme Court) Act and the statutory and common law provisions to ensure a 'fair hearing' have been or are being contravened. Moreover, if there were a miscarriage of justice during the trial because of adverse publicity either past or current, Section 14(1) of the Judicature (Appellate Jurisdiction) Act would apply. That section enables the Court to set

aside the conviction if there were a miscarriage of justice in the Court below.

18. With respect to the Appellants contention that Section 20(1) is likely to be contravened, it is submitted that on the evidence adduced there is no proof that the judge or jury likely to be chosen 'is likely' to deny them a fair hearing.

19. In any event the applicants abandoned this aspect of their claim as they instituted proceedings by Notice of Motion rather than by writ of Summons as the Judicature (Constitutional Redress) (No. 2) Rules ordain - see 1963 Proclamation Rules and Regulations at p.260. Further the Appellants have not established that a trial judge resorting to the procedures adopted by Lawton J. in Kray (1969) 53 Cr. App. R at p. 412 would fail to produce a jury which would accord the accused a 'fair hearing'.

pp 70

11.16-18

p210

11. 43-53

p211

11.1-6

20. There is yet another ground on the Appellants argument, that must be answered. The media of which they complain are not the state or its organs, but private parties and the Constitutional provisions in Chapter III are meant to protect the citizens against interference by the legislative judicial and executive organs of the State, and this reasoning was cited with approval by the Supreme Court where the Court held

p50

11.27-37

pp71

11.6-52

p75

11.1-30

p119

11.13-53

'We hold following Lord Diplock in Maharaj v. The Attorney General of Trinidad and Tobago No. 2 that the protection afforded in the Constitution and in particular in Chapter 3 of our constitution is against contravention of the rights and freedoms of citizens by the State or by some other public authority endowed by law with coercive powers and that therefore there has been no proof that the rights of the Applicants

p145

11.49-54

p146

11.1-39

pp201-205

11.37-50

in this respect have been infringed. They are not therefore entitled to the declaration sought under this head.'

21. Support for Your Respondent's submission is derived from Bazie v. The Attorney General (1975) 18 W.I.R. at p. 113 cited with approval by both White and Campbell JJ. in the Supreme Court:

'The principles of fundamental justice or as it is frequently referred to as natural justice do not protect the individual against publicity of a hearing but on the other hand the categories are fairly well defined.

Foremost among them is the right of a person to be given adequate notice of the hearing or charge against him and an opportunity to be heard in his defence. This is followed by the principle that a tribunal or an adjudicator must be disinterested and unbiased'.

22. In the Court of Appeal the appellants advanced the argument that Your Respondent had a duty in law to institute contempt proceedings against the media in respect of the articles which were calculated to prejudice a fair trial of the appellants. They further contended that in so far as Your Respondent as an arm of the state, failed to prosecute, then it was as a result of that failure, that Section 20(1) of the Constitution was infringed in relation to them. Your Respondent would reply that in so far as Section 94(3) of the Constitution was concerned that section reads:

94(3) The Director of Public Prosecutions shall have power in any case in which he considers it desirable so to do:-

- (a) institute and undertake criminal proceedings against any person before any Court other than a court-martial in respect of any

offence against the law of Jamaica

23. It is submitted that this constitutional provision empowers Your Respondent to institute criminal proceedings at his discretion and that the fact that a discretion was not exercised in the manner the appellants would have wished cannot be the basis of a constitutional action in breach of Section 20(1) of the Constitution. Furthermore the leading authority on this branch of law Gouriet v. Union of Port Officer Workers(1978) A.C. at p.435 suggests that the Courts would not interfere with the exercise of Your Respondents' discretion in this matter.

p203

11.44-52

24. Assuming that the evidence is calculated to prejudice a fair trial, these are matters to be determined in contempt proceedings. If the articles are defamatory to the accused, libel proceedings would be appropriate. Any findings by the Supreme Court and Court of Appeal in this regard were unnecessary for the determination of the constitutional issues and likely to prejudice any contempt proceedings or the criminal trial where the trial judge in his discretion may, adopt the procedures of Lawton J. in Kray's case.

pp108

11. 37-49

p111

11.1-44

pp206-208

25. It is respectfully submitted that the applicants contention that the Supreme Court has the powers to order that no trial be held because of pre-trial publicity is untenable as the fundamental rights provision stipulate where a trial should not be held and are set out in Section 20(8) of the Constitution which reads-

20.-(8) No person who shows that he has been tried by any competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence for which he could have been convicted at the trial

for that offence save upon the order of a superior Court made in the course of appeal proceedings relating to the conviction or acquittal; and no person shall be tried for a criminal offence if he shows that he has been pardoned for that offence:

It is submitted that as far as Section 20(1) of the Constitution is concerned, there should be a trial whenever any person is charged with a criminal offence unless the charge is withdrawn as the mature legal system which existed prior to 1962 in Jamaica has all the guarantees for a fair hearing.

26. It is submitted that the authorities relied on by the appellants from the United States of America and cited in the judgments, do not assist the proposition that adverse publicity is a breach of a fundamental right. Nor are they necessary to demonstrate that if adverse publicity results in a miscarriage of justice, the Court of Appeal in Jamaica would need guidance from the United States of America to set aside the conviction and sentence. This is all the more so as judicial observations in R.v. Savundra and Walker (1968) 3 All E.R. at p. 439 pertaining to adverse pre-trial publicity were made in a Court of Appeal with jurisdiction and powers similar to that in Jamaica.

The power of the Director of
Public Prosecutions to prefer
indictments

27 With respect to the indictment point it is respectfully submitted that when properly construed Section 2(2) of the Criminal Justice (Administration) Act which reads:-

(2) No indictment for any offence shall be preferred unless the prosecutor or other person

preferring such indictment has been bound by recognizance to prosecute or give evidence against the person accused of such offence, or unless the person accused has been committed to or detained in custody, or has been bound by recognizance to appear to answer to an indictment to be preferred against him for such offence, or unless such indictment for such offence be preferred by the direction of, or with the consent in writing of a Judge of any of the Courts of this Island, or by the direction or with the consent of the Director of Public Prosecutions, or of the Deputy Director of Public Prosecutions, or of any person authorised in that behalf by the Director of Public Prosecutions -

pp126
11.16-52
p143
11.1-24
pp221
11.20-48

p239
11.1-23

enables the Director of Public Prosecutions to prefer an indictment directly into the Circuit Court.

28. It is submitted that whether we rely on the literal rule or external aids or have recourse to legislative history as aids to constructions, the result is that the Director of Public Prosecutions has the power he exercised. In applying the literal rule there are four (4) situations Firstly, an indictment may be preferred after the prosecutor or person preferring an indictment is bound by recognizance to prosecute or give evidence against the person accused. Secondly, after committal proceedings and the person accused of such an offence is committed to or detained in custody or bound by recognizance to appear to answer to an indictment. Thirdly, with the written consent of a Judge of the Supreme Court and fourthly, by the direction or consent of the Director of Public Prosecutions.

29. An external aid which it is submitted is useful is section 13 of The Central Criminal Court Act 4 & 5 William 4 C 36 U.K. which is in part materia with the Criminal Justice Administration Act. Two cases Rex v. Carlton Vol 6 1935 Carrington and Payne p.651 and the Queen v.

Gregory -1 Cox Criminal Law cases p.198 are pertinent.
 They demonstrate the application of the literal rule to
 the first situation although this aspect of the act is not
 in issue

30. additionally, we must consider the Vexatious
 Indictments Act 1859 a later U.K. Act modelled on the
 Central Criminal Court Act. The Court of Appeal has dealt
 exhaustively with the cases on the 1859 Act and it is
 submitted that the cases were rightly decided and support
 the contention that the D.P.P. has the power he exercised.
 Two of the cases cited are particularly apt, Knowlden Dron p230
and Oxford (1864) 9 Cox C.C. and R.v. Rogers (1902) 60 11.32-50
 J.P. at p. 825. p231

31. If reliance be placed on the Legislative 11.1-33
 history as an aid to interpretation, then it seems that
 since 1833 successive enactments which were the pp.128
 precursors of modern Criminal Justice Administration 11.35-51
 Act conferred the power on the Attorney General and since p141
 1962 on his successor in the criminal domain - the Director 11.1-38
 of Public Prosecutions. Campbell J. in the Supreme Court pp225-237
 traced the history of these enactments to emphasize that
 the power claimed by the Director of Public Prosecutions
 was always part of the legal system in Jamaica. It is
 against this background that the Court of Appeal approved pp237
 of the decision R. v. Sam Chin (1961) 3 W.I.R. at p. 136 11. 45-53
 and R. v. Hugh O'Connor Criminal Appeal No. 111/77 and p.238
 the Supreme Court cited Osmond Williams Criminal Appeal 11.1-39
 No. 194/76 with approval, and these cases supported the pp98
 action of the Director of Public Prosecutions in preferr- 11.33-55

ing an indictment directly into the Circuit Court. p100

32. It is only if this approach be incorrect that it 11.1-12
is necessary to envisae the breach of the appellants' p239
constitutional rights protected by 15 of the Constitution. 11.24-52

That section in part reads -
15.-(1) No person shall be deprived of his
liberty save as may be in any of the following
cases be authorised by law -

(e) for the purpose of bringing him
before a Court in execution of the
order of a Court

(f) upon reasonable suspicion of his
having committed or of being about to
commit a criminal offence,

and the appellants contend that the warrants on which
they were brought to Court were without lawful authority
as the indictments were illegally preferred. Your
Respondent's reply is that even if the indictments be
incorrectly preferred, that was procedural fault which
can easily be set right and cannot be the basis of a
Constitutional action. See D.P.P. v. Nasralla 1967
2 A.C. at p.238.

33. Your Respondent would also pray in aid Section
of the Constitution which reads -

94.-(3) The Director of Public Prosecutions
shall have power in any case in which he
considers it desirable so to do -

(a) to institute and undertake criminal
proceedings against any person before
any court other than a court-martial
in respect of any offence against the
law of Jamaica -

as an additional basis for preferring an indictment directly p143
into the Circuit Court. This submission found favour with 11.16-24
Campbell J. in the Supreme Court.

The effect of the verdict
of a Coroner's jury on Section
20(5) of the Constitution

pp75-76
11. 31-52

34. In so far as the contention of the appellants is that their constitutional rights, protected by Section 20(5) of the Constitution were breached by the finding of the Coroner's jury, there are two approaches. Firstly, that section 26(8) of the Constitution referred to in paragraph 12 provides a complete answer. Secondly, the approach of Smith C.J. in the Supreme Court which in approving the passage from Cross of Evidence 4th edition at page 109 states:-

p150
11.10.36

'when it is said that an accused person is presumed to be innocent all that is meant is that the prosecution is obliged to prove the case against him beyond reasonable doubt.'

p240-
11.13-80
p241
11.1-13

35. It is respectfully submitted that in view of the foregoing, the Order of the Court of Appeal dismissing the applicants appeal be affirmed with costs for the following among other reasons:-

B E C A U S E

- (i) The matter should have been stayed pending the determination of the criminal trial or alternatively both the Court of Appeal and the Supreme Court should have indicated that because of the proviso to Section 25 of the Constitution if the declarations sought were granted, there would be an unwarranted intrusion into the criminal domain
- (ii) That the pre-trial publicity complained of was by the media and that no alleged breaches by

private parties can amount to breaches of fundamental rights.

(iii) That the power exercised by the D.P.P. pursuant to Section 2(2) of the Criminal Justice Administration Act was correctly exercised.

(iv) That section 26(8) of the Constitution precludes any argument that a pre 1962 law can infringe the fundamental rights provisions of the Constitution.

IAN X. FORTE

HENDERSON DOWNER

IN THE PRIVY COUNCIL

No. 22 of 1970

O N A P P E A L
FROM THE COURT OF APPEAL OF JAMAICA

B E T W E E N

DESMOND GRANT, ERROL GRANT
EVERARD KING, COLLIN REID
IAN ROBINSON, JOEL STAINROD
LA FLAMME SCHOOLER, FREDERICK
FRATER, SUSAN HAIK and CARL
MARSH Appellants

-and-

THE DIRECTOR OF PUBLIC PROSECUTIONS First Respondent

THE ATTORNEY GENERAL Second Respondent

CASE FOR THE FIRST RESPONDENT

CHARLES RUSSELL & CO.,
Hale Court, Lincoln's Inn,
LONDON. WC2A 3UL.

Tel. 01-242 1031