

35/81

O N A P P E A L

F R O M T H E C O U R T O F A P P E A L O F J A M A I C A

B E T W E E N :-

ERIC FRATER

APPELLANT

- AND -

THE QUEEN

RESPONDENT

CASE FOR THE APPELLANT

Record

- 10 1. This is an Appeal from a Judgment, dated 12th October 1979 of the Court of Appeal of Jamaica, which, by a majority, (Henry, Carberry, JJ.A.), (Kerr J.A. dissenting) dismissed the appeal of the Appellant who had been convicted on the 6th of December 1977 in the Supreme Court by Parnell J. of the offence of contempt of court. p.9,1. 181 p.97,11. 2268/9 p.29,1. 642
- 2. The principal questions involved in the Appeal are:- p.14,11. 329/333
- (1) Whether or not, a person who is asked to show cause whether he should not be cited for contempt of Court has in fact been charged with that offence. 20
- (2) Whether or not a true construction of Section 20 (6) (a) of the Constitution, "the nature of the charge" include the particularisation of the charge.
- (3) If the question to (2) above is in the affirmative, whether or not in the instant case there was such particularisation as held by a majority of the Court of Appeal.
- (4) Whether or not, it is permissible to draw an inference not only from the Judge's report as to "the nature of the charge" of which the Appellant was convicted in the absence of a formulation of a specific charge distinctly stated to him. 30
- (5) Assuming that the matters constituting the contempt of Court were unambiguous, whether or not, it was still necessary to formulate a specific charge and distinctly state the same to be the accused.

Leave was granted by the Court of Appeal on the 20th November 1979 for the determination of these questions. pp.110-111

3. The background to the conviction was set out by Carberry J.A. as follows:-

p.26.1.596
to p.28 1.635

".....two young men, Anthony Isaacs and Michael Miles were being tried at the Circuit Court held at Spanish Town for the murder of a third young man George Cooper on the 26th September, 1975. There was a sole eye witness, a girl friend of the deceased, aged at the time of the incident about 15 years old, who in effect stated that while she and the deceased were eating an ice cream together at about 8.45 p.m. at night at an isolated spot two men approached, one she recognised as the accused Miles whom she had previously known for about two years before (as a friend of the deceased), and the other whom she pointed out at an identification parade held 5 weeks later as the accused Isaacs, Miles, she said, held her by the shoulders and spun her round away from the deceased, while the other man drew something hidden beneath his shirt, she heard an explosion and when she turned round she discovered that the deceased had been shot. He died shortly after.

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There had been two previous trials, in one there had been misdirection and a new trial had been ordered, while in the other there had been a failure by the jury to reach agreement. It appears that the appellant Mr. Frater had represented Miles at the two previous trials, and was doing so (with Miss Tapper) for the third time, while Isaacs was represented by Mr. W. Bentley Brown. Understandably there must have been a great deal of tension on the part of the defence counsel. The appellant Mr. Frater, after a distinguished career in education had joined the Bar somewhat late in life, and we were told by his counsel that he had been admitted in 1974. His colleague Mr. W. Bentley Brown had considerably longer experience, while Miss Tapper, was a relative newcomer. The trial Judge was Hon. Mr. Justice U.N. Parnell, the Senior Puisne Judge, and a Judge of vast experience. But even he must have been affected by the tension of what he realised was the third trial: see his report of January 17, 1978, paragraph 2."

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4. The facts giving rise to the conviction of the Appellant were set out in the judgment of Henry J.A. as follows:-

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p.9, 1.183
to p.11,1.256

"The appellant, an attorney at law, appeared in the St. Catherine Circuit Court for Michael Miles one of two persons charged with murder. One of the prosecution witnesses was the father of the deceased. During the course of cross examining this witness the appellant asked certain questions designed to show that the deceased and the accused had been friends and had in fact at one time been jointly charged for theft and acquitted. At the close of the re-examination of the witness the learned trial judge asked some questions relating to the association between the deceased and the accused. Finally the following dialogue ensued:-

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"His Lordship: The last question I want to find out from you now. After the trial between -- let me write it down and

you listen to the question.
Listen carefully. After the
trial of your son and Miles,
did Miles continue to visit
your son?

Witness: No.

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Mr. Frater: M^oLord, I am objecting to this.
I want to put my protest to
this trend of questioning.

His Lordship: What are you objecting to?

Mr. Frater: I am objecting to that in open
Court before the jury in a
matter that you have said that
is not relevant; now you are
making it relevant.

His Lordship: I said nothing about it. It is
not relevant? If you take your
seat, please.....

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Mr. Frater: I would like you to answer my
question.

His Lordship: I am the Judge here.

Mr. Frater: But I am representing two men
here and I have to stand up and
protect them and I don't want any
interference that should go to
the jury that should not go and I
want it recorded.

His Lordship: Everything is being recorded.

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Mr. Frater: And that is why I am saying it.
These people will have to come to
a decision and I don't think that
line of questioning is relevant.

His Lordship: You raised it and therefore I have
to know what it is all about.

Mr. Frater: Not to the extent of the chap's
Schooling.

His Lordship: Yes, what?

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Mr. Frater: What answer would you expect from
the person when you asked that?

His Lordship: You take your seat.

Mr. Frater: No, M^oLord, I am not sitting.
This is something I would like you
to straighten. I am an officer
of the Court just as you.

His Lordship: You are obstructing the Court.

Record

Mr. Frater: I am not sitting, I am standing for the men I am defending. You cite me. You can do anything. You lock me up as well; But I am standing up because that is unfair, that is not justice.

His Lordship: I am going to adjourn for ten minutes and when I come back you must show cause why I must not cite you for contempt. 10

Mr. Frater: You must do that, and I will show no cause for it."

5. The Judge's Report was sent to the Court of Appeal in accordance with the provisions of Section 34(3) of the Judicature (Appellate Jurisdiction) Act and part of it was set out in the judgment of Henry J.A. and that part is as follows:-

p.13,1.302 to
p.14,1.333

"At the last answer Mr. Frater sprang to his feet in a rage and said he was objecting to the questions being asked by the Court. He said he was also recording his protest to "this trend of questioning." I told him that the questions were relevant, that his objection was noted and that he should take his seat. He refused. Twice in clear and unmistakable terms he was ordered to take his seat so that the business of the Court could continue. He was given time to comply. Mr. Frater was adamant. He refused to take his seat, invited the Court to cite him for contempt and by his demeanour, indicated that he was going to stand his ground. He was given every opportunity to obey the ruling and to avoid the brand of contumacy in the course of proceedings during a trial. Having made his point that he was objecting to the questions of the trial Judge and knowing that it was recorded, his only intention to remain standing thereafter like a statue was to obstruct the proceedings and to prevent any further questions from being asked." 20 30

"No cause has been shown in this case. It is a wilful obstruction of the Court and a wilful conduct to disobey the ruling of the Court, so I find him guilty of contempt." 40

6. The Appellant was fined \$500 but before the fine was imposed the other counsel in the case, Mr. Bentley Brown already referred to in the foregoing paragraph 3, pleaded mitigation for the Appellant. The Judge's note of that plea was set out by Carberry J.A. in his judgment:-

p.95,1.2241-2246

"No disrespect of the Court was intended by Mr. Frater who was merely defending his client and to treat it in that light. 50

No obstruction intended.

No disobedience intended."

The official transcript of what took place before sentence is as follows:-

10 "MR FRATER: I am prepared to take whatever the Court pleases to offer. I am not begging for any mercy. I believe that what I did I did it properly in the interest of my client because that was being elicited by the Court and I have nothing more to say. p.40,11.904 to p.42,1.965

HIS LORDSHIP: And you have no.....

20 MR. FRATER: I was not disrespectful, and I have no intention of being disrespectful to the Court, and I never am. But I believe it is my duty to be firm and fearless when it comes to the defence of my client and that is all I am doing; and whatever the Court pleases to do I am willing to take it. I don't beat around the bush.

HIS LORDSHIP: And you don't admit that it is a contempt?

MR. FRATER: I don't think it is a contempt M^eLord.

HIS LORDSHIP: Well, that is what I have found.

MR. FRATER: That is what you have found. I agree, you are the Judge in your own cause. I have to accept your finding.

30 HIS LORDSHIP: I am a Judge in my own cause?

MR. FRATER: Well, that is what it is. You are trying me for contempt.

HIS LORDSHIP: You pay a fine of \$500.00 or thirty days.

MR. BROWN: May he have time; M^eLord, since not even a cheque book is of any use if the cash was available.

HIS LORDSHIP: How much time you want Mr. Frater?

MR. BROWN: May I speak on his behalf because I couldn't recover from a shock like that if I had got one.

40 HIS LORDSHIP: What he said to me awhile ago is sufficient to send him straight to jail.

MR. FRATER: Well, M^eLord if you choose to send me to jail you can, I am quite prepared to go in the interest of justice.

Record

HIS LORDSHIP: Having come to this I thought he would recant and that he would

MR. BROWN: Beg, he is not a beggar, M^eLord.

MR. FRATER: I am not begging, I will never beg.

HIS LORDSHIP: How much time you want to pay the money?

MR. FRATER: I think I rather choose the sentence M^eLord. I don't have the money to pay. This is a legal aid case.

MR. BROWN: I don't have the money to pay it. 10

HIS LORDSHIP: So you want the sentence?

MR. BROWN: M^eLord I will pay the fine, if it is for a month, although I am also legal aid.

HIS LORDSHIP: When the adjournment comes you sign a paper with your surety for a month.

MR. BROWN: Much obliged."

7. The Appellant appealed to the Court of Appeal on six grounds, three of which were abandoned, and only the second, fourth and sixth grounds of appeal were argued. These were as follows:- 20

p.17,11.397-493 "The learned trial judge.... did not cite the Appellant for contempt of court, but only required the appellant to show cause why he should not be cited and proceeded wrongly on the basis that he had cited him for contempt."

p.12,11.264-273 "The learned trial judge although not required to state with that degree of particularity required by the Indictments Act, of the charge against the Appellant, for contempt of Court, was wrong in law in failing to inform the appellant of the specific charge against him and giving him an opportunity for explanation before arriving at his verdict." 30

p.18,11.418/9 ".....the verdict is unreasonable and cannot be supported having regard to the evidence."

p.97,11.2270 to 2273 8. After the dismissal of the appeal, by leave of the Court, Counsel for the Appellant addressed the Court on sentence. The sentence was varied by substituting a fine of \$200 for the fine of \$500.

9. It is submitted that the majority in the Court of Appeal erred in impliedly holding, firstly (Henry, Carberry JJ.A.) that there had been a sufficient specification of the charge and secondly, (Carberry J.A.) that a specification of the charge was not necessary in the instant case and thirdly, (Carberry J.A.) that the reason given by the Judge in his report did not disclose that the appeal was convicted for matters which were not put to him originally; fourthly

p.17,11.386-390
p.96,11.2250-2257
p.93,11.2204 to
p.94,11.2209-2212

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10. It is further submitted that the Court of Appeal erred in failing to appreciate the distinction between a citation for contempt and an intention on the part of the trial judge calling upon the Appellant to show cause why he should not be cited.

11. It is further submitted that the judgment of (Kerr J.) was right and the judgments of the majority of (Henry, Carberry JJ.A.) were wrong.

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12. The appellant humbly submits that his conviction by Parnell J. in the Supreme Court of Jamaica on December 6th 1977 should be set aside; and that the costs of the appeal to Her Majesty in Council be paid by the Respondent to the Appellant.

13. The Appellant submits that the appeal be allowed for the following, amongst other;

R E A S O N S

1. BECAUSE the Court of Appeal erred in failing to draw a distinction between a citation for contempt and an invitation to show cause why such a citation should not be made.
2. BECAUSE the majority in the Court of Appeal impliedly failed to appreciate that contempt of Court being a criminal offence, the nature of the charge should be stated to persons so accused as required by Section 20 sub-section (a) of the Constitution.
3. BECAUSE (a) the majority in the Court of Appeal erred in coming to a conclusion that there had been a particularisation of the charge; and (b) in drawing an inference from the Judge's report in the absence of a formulation of a specific charge distinctly stated to the Appellant; and (c) Carberry J.A. erred in holding that it was not necessary to formulate a specific charge and distinctly stating the same to the Appellant in view of the fact that the transcript and the Judge's report disclosed a contempt of court.

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BERTHAN MACAULAY

MARGARETTE MACAULAY

No. 45 of 1980

IN THE PRIVY COUNCIL

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

B E T W E E N :

ERIC FRATER

Appellant

- and -

THE QUEEN

Respondent

CASE FOR THE APPELLANT

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