

Eric Frater - - - - - Appellant

v.

The Queen - - - - - Respondent

FROM

THE COURT OF APPEAL OF JAMAICA

REASONS FOR REPORT OF THE LORDS OF THE JUDICIAL
COMMITTEE OF THE PRIVY COUNCIL OF THE 7TH JULY 1981
DELIVERED THE 6TH OCTOBER 1981

Present at the Hearing :

LORD DIPLOCK

LORD ELWYN-JONES

LORD EDMUND-DAVIES

LORD ROSKILL

SIR OWEN WOODHOUSE

[*Delivered by* LORD DIPLOCK]

On 6th December, 1977, the appellant, Mr. Frater, who is an Attorney at Law of Jamaica, was conducting the defence of one of two defendants upon their trial for murder before Mr. Justice Parnell and a jury in the Circuit Court at Spanish Town. In consequence of his behaviour in the course of the trial he was convicted summarily by the learned judge for contempt committed in the face of the court and was fined \$500. He appealed to the Court of Appeal against his conviction and against the amount of the penalty imposed. At the hearing of his appeal, for reasons as to which their Lordships can only speculate, he was represented by no less than seven counsel whereas the Crown found representation by a single counsel to be adequate. His appeal against conviction was dismissed by the Court of Appeal by a majority (Henry and Carberry JJ.A., Kerr J.A. dissenting); but the penalty imposed upon him was reduced to \$200.

The transcript of the dialogue between Mr. Justice Parnell and Mr. Frater, which took place in open court and, after an adjournment of ten minutes to enable Mr. Frater to consider his position, led to his committal for contempt, is set out *in extenso* in the judgment of Mr. Justice Henry. It is unnecessary for their Lordships to reproduce it here. Suffice it to say that Mr. Frater had cross-examined the father of the deceased with the object of showing that at some time before the murder one of the accused and the deceased had been on friendly terms. At the conclusion of this cross-examination the judge put to the witness some questions directed to elucidating whether the suggested friendship had continued up to the date of the murder of the deceased. Mr. Frater rose to his feet to object to this

line of questioning (which the judge had in fact already completed) on the ground that it was not relevant. The judge overruled the objection and requested Mr. Frater to resume his seat. In fairness to the learned judge it is only right to say that, in their Lordships' view, the questions put by him to the witness were clearly relevant and proper; but for the purpose of the contempt of court of which Mr. Frater was found guilty it would not matter if the correctness of the judge's ruling were doubtful or even if it were clearly wrong. It was a matter upon which he, as the judge presiding over a jury trial, had sole authority to rule. His ruling, if erroneous, might be the subject of appeal but, once made, it was the duty of counsel to accept it. Mr. Frater did not resume his seat when requested by the judge to do so. He continued to protest to the judge in terms that were discourteous and disrespectful but did little to clarify the grounds of his objection. The judge then ordered him to take his seat. He point-blank refused to do so. The judge told him he was obstructing the court. Mr. Frater's reply deserves to be set out in full:

"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."

This, in their Lordships' view, makes it clear that Mr. Frater was well aware that he was risking committal for contempt of court by his continued refusal to sit down after an unequivocal order by the judge to do so, coupled with a warning that his failure to obey was obstructing the court. It was when this defiant reply was given that the judge announced his intention of adjourning for ten minutes, and that on his return he would require Mr. Frater to show cause why he should not be cited for contempt.

After the adjournment, Mr. Frater for the purpose of showing cause why he should not be cited for contempt, was represented by another counsel who had been appearing in the case, a senior and more experienced advocate. The judge's note of what was said on Mr. Frater's behalf, which amounted to a plea in mitigation, reads:—

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

In their Lordships' view the words they have caused to be italicised show that counsel, who at that juncture was appearing on Mr. Frater's behalf and who had been present himself throughout the incidents that led up to Mr. Frater's being found guilty of contempt of court, was well aware that the specific nature of the contempt with which Mr. Frater was charged was his obstructing the court by continuing to stand up and protest after being ordered by the judge to take his seat.

Their Lordships have set out these particular quotations from the transcript of the shorthand note of the proceedings and from the judge's note because, although the record before this Board does not include Mr. Frater's notice of appeal to the Court of Appeal, it appears from the judgments of that Court that, although it was apparently also submitted that Mr. Frater's conduct did not amount to a contempt of court, the main ground of appeal was that the judge "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". It was upon the question whether the specific acts of contempt of court with which Mr. Frater had been charged had been stated to him with sufficient particularity that Mr. Justice Kerr differed from the majority of the court, apparently upon the ground that in the course of the dialogue between Mr. Justice Parnell and Mr. Frater, which preceded his being

ordered to sit down and warned that by continuing to stand up and protest he was obstructing the court, Mr. Frater had said things to the judge that might also have amounted to contempt.

Their Lordships share the view of the majority of the Court of Appeal that there was not any room for doubt as to what were the specific acts by Mr. Frater that constituted the offence of contempt of court with which the learned judge was charging him and giving him an opportunity to explain. The passages from the record of the proceedings at the Circuit Court which their Lordships have cited demonstrate that neither Mr. Frater nor counsel, who had been present during the whole incident and made the plea in mitigation on Mr. Frater's behalf, was under any misapprehension as to what the charge was. In their Lordships' view there is no substance in this ground of complaint.

In a very full and erudite judgment Mr. Justice Carberry refers to a number of authorities to support the proposition, which their Lordships consider to be beyond all doubt, that for counsel (or anyone else) to obstruct the orderly progress of the trial by continuing to stand up and protest after being specifically ordered by the judge to sit down is a blatant contempt committed in the face of the court which it is appropriate for the judge to deal with summarily and in the face of the court which the contemnor has defied; provided that before punishing the contemnor the judge gives to him a fair and reasonable opportunity of explaining and excusing his conduct—as Mr. Justice Parnell did by the adjournment that he ordered in the instant case and by allowing experienced counsel instructed by Mr. Frater to address him on Mr. Frater's behalf.

Mr. Justice Carberry, in his judgment, also cites a number of cases in England and various other Commonwealth jurisdictions where the principle laid down by the Judicial Committee of the Privy Council in *In re Pollard* [1868] L.R. 2 P.C. 106 at page 120 has been referred to or applied. In their Lordships' view, the way in which the principle was expressed in *In re Pollard* viz.

“ No person should be punished for contempt of Court, which is a criminal offence, unless the specific offence charged against him be distinctly stated, and an opportunity of answering it given to him ” cannot be improved upon for brevity and clarity, if it be understood that in this context “ distinctly stated ” means: made known to the contemnor in terms which are not reasonably capable of being misunderstood by him. For the reasons already discussed their Lordships are in complete agreement with the majority of the Court of Appeal that this requirement was satisfied in the instant case.

For the sake of completeness their Lordships ought to mention in order to reject, as did all three members of the Court of Appeal, a submission on behalf of Mr. Frater that to call upon a person to show cause why he should not be cited for contempt does not amount to charging him with that offence. This submission, although mentioned in the written Case for the appellant, was, very sensibly, not persisted in at the oral hearing before the Board.

In the result the appeal must fail, but before departing from the matter their Lordships desire to comment upon the grounds upon which the appeal was brought to Her Majesty in Council apparently *as of right* under section 110(1) of the Constitution of Jamaica. Mr. Frater's application set out three questions of law alleged to be of exceptional importance and was expressed to rely on section 35 of the Judicature (Appellate Jurisdiction) Act as bringing it within section 110(1)(d); “ such other cases as may be prescribed by Parliament ”. But this cannot

be so, because section 35 does not apply to proceedings for contempt of court. In the order made by the Court of Appeal upon this application the questions of law were varied so as to include among them questions (2) and (3) which read as follows:—

- “(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 answer 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.”

. . . .

Question (2) appears to have been drafted in order to bring the appeal to Her Majesty in Council within section 110(1)(c):

“final decisions in any civil, criminal, or other proceedings on questions as to the interpretation of this Constitution.”

Section 20(6)(a) of the Constitution reads:—

- “(6) Every person who is charged with a criminal offence—
- (a) shall be informed as soon as reasonably practicable, in a language which he understands, of the nature of the offence charged.”

In their Lordships' view it cannot plausibly be suggested that any question of *interpretation* of the plain and simple words “informed . . . of the nature of the offence charged” in section 20(6)(a) arose in the instant case. The question that did arise, or could have done if in the Court of Appeal reliance had been placed upon this constitutional provision (as does not appear to have been the case), was the *application* of these plain and simple words to the particular facts of Mr. Frater's case. The information required to be given to an accused by paragraph (a) of section 20(6) is in order to enable him to exercise effectively his rights under the immediately following paragraph (b) which provides that he “shall be given adequate time and facilities for the preparation of his defence”.

In *Harrikissoon v. Attorney General of Trinidad and Tobago* [1980] A.C. 265 this Board had occasion to point out the danger of allowing the value of the right to apply to the High Court for redress for contravention of his fundamental rights and freedoms which is conferred upon the individual by section 6 of the Constitution of Trinidad and Tobago (of which the corresponding section in the Constitution of Jamaica is section 25) to become debased by lack of vigilance on the part of the courts to dispose summarily of applications that are plainly frivolous or vexatious or are otherwise an abuse of process of the court. In their Lordships' view similar vigilance should be observed to see that claims made by appellants to be entitled to appeal as of right under section 110(1)(c) are not granted unless they do involve a genuinely disputable question of *interpretation* of the Constitution and not one which has merely been contrived for the purpose of obtaining leave to appeal to Her Majesty in Council as of right.

In the Privy Council

ERIC FRATER

v.

THE QUEEN

**DELIVERED BY
LORD DIPLOCK**