

IN THE PRIVY COUNCIL

NO. 50 OF 1983

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O N A P P E A L

FROM THE WEST INDIES ASSOCIATED STATES  
SUPREME COURT

(DOMINICA) COURT OF APPEAL

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B E T W E E N :

PATRICK JOHN  
JULIAN DAVID  
MALCOLM REID

Appellants

- and -

THE DIRECTOR OF PUBLIC  
PROSECUTIONS

Respondent

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CASE FOR THE APPELLANTS

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Respondent

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CASE FOR THE APPELLANTS

RECORD

1. This is an appeal from a judgment dated the 7th day of December 1982 of the Court of Appeal of the Commonwealth of Dominica (Sir Neville Peterkin CJ, Robotham and Berridge JJ.A) allowing the appeal of the Director of Public Prosecutions, setting aside the verdict of acquittal entered against each of the appellants in the High Court (Mitchell J) on the 20th of May 1982 and ordering that the appellants be retried upon a fresh indictment.

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2. The appellants and a co-accused were charged on an indictment containing a count of conspiracy to overthrow the lawfully constituted government of the Commonwealth of Dominica by force of arms, and an alternative count of conspiracy to assault police officers acting in execution of their duties. The trial commenced on the 12th of May 1982 before Mitchell J. and a jury.

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3. At the close of the prosecution's case, the Learned Trial Judge upheld a no case submission on behalf of all four accused and directed the jury to return a verdict of not guilty. RECORD  
p. 120

10 4. By notice of appeal dated 20th May 1982, the respondent appealed to the Court of Appeal by way of special case against the direction of the trial judge, in exercise of a right of appeal conferred on the respondent under Section 37(2) of The West Indies Associated States Supreme Court (Dominica) Act No. 10 of 1969 as amended by Act No. 16 of 1981. p. 121  
p. 122  
p. 125 11. 33-48  
Annexure i

5. The Special case referred to in foregoing paragraph 4 reads: p. 122

20 "The witness for the prosecution, Oliver Phillip, having stated that he was familiar with and knew the handwriting of the accused Patrick John by his having received official minutes from him in the course of his duties as Commissioner of Police while the said Patrick John was a Minister of Government responsible for security, and there being no challenge to or contradictions of the said evidence, did the Learned Trial Judge err and misdirect himself in law in rejecting such evidence as proving the handwriting of the said accused and in holding that it was not proved to his satisfaction to be the genuine handwriting of the said accused and in refusing to allow the said documents to be admitted in evidence for the purpose of comparison with the handwriting in relevant documents admitted in evidence. p. 122 line 23

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40 The witness for the prosecution, Gene Pestaina, having stated that he was familiar with and knew the handwriting of the accused Malcolm Reid by his having seen him write on numerous occasions, and there being no challenge to or contradictions of the said evidence, did the Learned Trial Judge err and misdirect himself in law in rejecting such evidence as proving the handwriting of the said accused and in holding that it was not proved to his satisfaction to be the genuine handwriting of the said accused, and in refusing to allow the said documents to be admitted in evidence for the purpose of comparison with the handwriting in relevant documents admitted in evidence.

The evidence for the Prosecution being consistent, credible and substantially unshaken, did the Learned Trial Judge err or misdirect himself in law in upholding the No-Case Submission of the four accused on the grounds that the evidence for the Prosecution was manifestly unreliable and it was unsafe that the case should be left to the Jury.

p. 122 l. 40

10 The Appellant prays that the questions set out above be answered in the affirmative and that accordingly that a new trial of the four accused be ordered."

The Court of Appeal answered each question in the affirmative.

p. 147 l. 15-18

20 6. On the hearing in the Court of Appeal on the 27th of September 1982, two preliminary objections were taken on behalf of the appellants and these are set out in the Judgement of the Court of Appeal as follows:

p. 127 l. 4-15

(1) That the purported special case does not raise a question of interpretation or construction of a point of substantial law, nor any point of adjectival law relating to the evidence.

(2) The amendment giving the Director of Public Prosecutions the right of appeal is unconstitutional null and void.

30 The Court of Appeal held that both objections failed. On the 17th day of December, 1982 the Judgment of the Court of Appeal was delivered allowing the respondents appeal.

p. 142 ll. 6-7  
p. 144 ll. 9-10

p. 147 ll. 28-32

7. The principal questions raised by this appeal are:

40 (1)(a) Whether or not Section 37(3) of The West Indies Associated States Supreme Court (Dominica) Act No. 10 of 1969 (inserted by Act No. 16 of 1981), eroded the judicial power to order a retrial under Section 8(5) of the Constitution.

Annexure 1

p. 142 ll. 10-22

(b) If the answer is in the affirmative whether or not Section 37(3) which was not enacted by the special procedure required by Section 42(3) of the Constitution is inconsistent

Annexure 2

with that Constitution and void.

RECORD

(2) Whether or not in a criminal trial, under Section 19 of the Evidence Act the prosecution must not only lead evidence that the writing to be used for comparison with the disputed handwriting is that of the accused person but also satisfy the Judge beyond a reasonable doubt that the writing is genuine.

p. 139 ll. 15-25

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(3) If the answer to question (2) is in the affirmative, whether or not the writing intended for comparison would be admissible in evidence if it is not proved to the satisfaction of the Judge to be genuine.

(4) Whether or not the decision of a trial judge in upholding no case submissions on the ground that the evidence of the sole prosecution witness was either tenuous, or manifestly unreliable or weak or a incredible or a mere scintilla that no reasonable jury could properly convict, can be set aside by the Court of Appeal as being, in the words of Section 37(3) of The West Indies Associated States Supreme Court (Dominica) Act No. 10 of 1969, wrong in law.

p. 99 - p. 111  
l. 27  
p. 115 - p. 118  
l. 35

Annexure 1

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8. In the Court of Appeal the second preliminary objection was argued first and decision deferred. The first preliminary objection was argued as part of the merits of the appeal. The discussion of the arguments appears at p. 142 line 9 - end, p. 143, p. 144 lines 1 - 10 of the Printed Record. It is submitted that the Court of Appeal did not apply its mind to the basic principle of separation of powers implicit in the Constitution that the judicial powers of the state shall be exercised by the Judicature exclusively. It is further submitted that it is in this context that the words in Section 8(5) of the Constitution, "save upon the order of a superior court in the course of appeal...." should be construed. So construed the words imply a judicial decision to make the order. It is submitted that Section 37(3) of The West Indies Associated States Supreme Court (Dominica) Act No. 10 of 1969 inserted by Act

p. 142 l. 9 -  
p. 144 l. 10

p. 142 l. 19 -  
l. 20

Annexure 1

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No. 16 of 1981 purports to direct the Court of Appeal, thereby eroding its power to make a judicial decision as to whether or not an accused person who has been acquitted should again be tried for the same offence or for any other criminal offence of which he could have been convicted at the trial. Section 37(3) directs the Court of Appeal in the following terms:

RECORD

10           ".....shall allow the appeal if it thinks           Annexure 1  
that the decision was wrong in law and  
order a retrial....."

20           Unlike Section 38(2) of the same Act which           Annexure 3  
provides it can order a new trial if the interest  
of justice so requires. The effect of Section  
37(3) is that there may be repeated retrials in a  
case where, as a result of a wrong decision of a  
point of law, the trial judge has directed an  
acquittal. In order to effect a change of Section  
8(5) it would have been necessary for parliament  
to enact the said section 37(3) in the manner  
prescribed by section 42(3) of the Constitution as  
was pointed out by this Board in the Jamaican  
appeal of Trevor Stone v. The Queen (Privy Council  
Appeal No. 11 of 1978, judgment delivered on the  
4th March 1980) unreported. The Jamaican

30           Constitution has identical provisions in Section  
20(8) with the exception of some words relating           Annexure 4  
to pardon. It is submitted that parliament cannot  
evade a constitutional restriction by a colourable  
device. It is submitted that the Court of Appeal  
erred in relying on Section 9(2) of The West  
Indies Associated States Supreme Court Order 1967  
S. I. 223 of 1967 as an answer to the Appellants'  
argument. Section 37(2) confers a new juris-  
diction on the Court of Appeal to hear appeals by  
the Director of public prosecutions. Section  
37(3) directs the Court of Appeal to order a re-  
trial if it thinks a decision of the trial judge  
was wrong in law. It did not give the Court any  
power other than to allow or dismiss the appeal.

40           9. The Court of Appeal erred in accepting the           p. 143 l. 44-1.  
submission of Counsel for the State that the case           45  
of Don Liyanage v. The Queen, 1967 A.C. 259 was  
inapplicable. The Court of Appeal misunderstood  
the submission of Counsel for the Appellants which           p. 142 l. 8 - p  
was that in a Westminster model constitution there           143 l. 23  
is implied a basic principle of separation of  
powers first recognised by this Board in the  
Liyanage case and affirmed by it in subsequent

cases dealing with Westminster model constitutions. This confirms the earlier submission that the Court of Appeal failed to apply its mind to the context in which Section 8(5) of the Dominica Constitution is to be construed. (Liyanage was not cited for its facts which are distinguishable from the facts of the present case).

10 10. The first preliminary objection was dealt with by the Court of Appeal together with the first and second questions in the special case at p. 135 line 35 to p. 143 lines 1 - 8 of the printed Record. It is submitted that the question whether or not a judge is satisfied on evidence is a question of fact and not a question of law. The word "satisfied" is "a neutral word which leaves to the Court the duty of assessing its own satisfaction". Section 19 of the Evidence Act (chapter 64 of the Laws of Dominica 1963) reads as follows:

p. 135 l.  
35 - p.  
143 l. 8

p. 139 ll.  
15-25

20 "Comparison of a disputed writing with any writing proved, to the satisfaction of the judge, to be genuine shall be permitted to be made by witnesses; and such writings, and the evidence of witnesses respecting the same, may be submitted to the Court and jury as evidence of the genuineness or otherwise, of the writing in dispute".

30 At the end of each enquiry the learned trial judge held that he was not satisfied that the writings sought to be put in by the prosecution for purposes of comparison were genuine in accordance with Section 19 chapter 64. At p. 141 lines 3 - 14 of the printed Record the Court of Appeal opined as follows:

p. 51 l. 4  
- 1. 8  
p51 1.21-1.22  
p.88 1.1-1.6  
p.89 1. 16-19

40 "The Court is firmly of the view that on the basis (underlining by Counsel for Appellants) of the evidence given by Oliver Phillip and Gene Pestiana and the authorities, the learned trial judge ought to have admitted in evidence the passport application form purported to have been written up and signed by Patrick John, and the diary purported to have been written up by Malcolm Reid. In this respect, therefore, there was a wrongful exclusion of evidence."

p. 141 ll.  
3-14

The Court of Appeal impliedly erred in law in holding that the prosecution having adduced evidence of familiarity with the handwriting

of the first and third Appellants, shown to the witness and intended comparison thereby in law became evidence. The Court of Appeal did mind to the words "any writing produced to the satisfaction of the judge to be genuine" appearing in Section 19 Cap. 64. that the true test of admissibility is the production of evidence by witness or the writing of the accused but whether the writing produced is proved to the satisfaction of the Judge to be genuine. It is further held that the Court of Appeal erred in holding that the standard of proof in deciding whether or not the writings intended for comparison are genuine is the civil standard. This error is evident in the following from the printed Record:

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p. 139 1  
17-19

p. 140 1  
36-48

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"Counsel for the respondents before this Court that the civil standard was applicable. It was pointed out by Dr. Barnett for the State that the standard is contained in the Evidence Act and is applicable to both civil and criminal proceedings so that the criminal standard of proof could hardly be accepted in this submission. The Court sees no difficulty in agreeing to accept the standard of proof in Angeli's case".

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Section 19 of the Evidence Act is the standard of proof and did not purport to change the common law as to the standard of proof in criminal cases.

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p. 139 1  
15-25

11. It is submitted that when at the prosecution's case a no case submission is made this may involve one or other of the following reasons:

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(a) firstly, the failure of the prosecution to adduce evidence on each of the elements or ingredients of the offence charged, or

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(b) secondly, some evidence was adduced on all the elements or ingredients of the offence but the prosecution failed to direct such that no reasonable doubt as to the guilt of the accused could properly be directed.

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The first position raises a point or question of law. The second position raises a point or question of fact. It is submitted the Court of Appeal unwittingly failed to appreciate the difference between these two positions. At page 145 line 46 to p. 146 lines 1 - 7 of the printed Record the Court of Appeal said:

RECORD

p. 145 l. 46

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"In reply counsel for the respondents submitted that not every submission of No-Case can be treated as a point of law. At the highest, the decision here of the learned Judge raises only a question of mixed law and fact, and does not ground the appeal of the Director of Public Prosecutions. The Court is not in agreement with this. We are of the opinion that a submission of No-Case involves a point of law as was clearly shown in the case of Ross v Rivenoll (supra)" 1959 2 All E.R. 376 .

p. 146 l. 7

20

The Court of Appeal with respect, misread the judgments in Rivenall's case. At p. 378 letter C of the All England Law Report Donavon J recognised the two positions in the following passage:

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"There has been some discussion whether the learned recorder decided as a matter of law that no prima facie case was disclosed or whether he decided that, as a question of fact, it was too weak a case to justify conviction. I think that the first of these alternatives represents the position, and I agree that the Case should go back to him with the direction proposed".

At page 378 letter E - F of the same report, Salmon, J. also recognised the two positions. He said:

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"The only doubt which I have felt in this case is what the learned recorder really did decide. This doubt springs from the somewhat nebulous way in which he has stated the Case. If, at the end of the case for the prosecution, he found that there was in law some evidence against the appellant but that it was not in his view strong enough to call for an answer, I, for myself, have grave doubts whether this court could have interfered. The recorder's view might have been mistaken, but it would not have been a

mistake in law and, accordingly, would not have been a mistake that could successfully be challenged in this court. I have come to the conclusion, however, that, on a fair reading of the case, the recorder decided that in law there was no evidence to support the charges. This, in my judgment, was a wrong conclusion on a point of law, since it is always a question of law whether there is or is not evidence".

10

12. The Court of Appeal unwittingly confounded the two positions stated in the foregoing paragraph 11 of this case. The thrust of the prosecution's case of conspiracy against the three appellants and Dennis Joseph (the third respondent in the Court of Appeal) is contained in the evidence of the witness Algernon Maffei in which he describes discussions and meetings before and after the Antigua trip. He said:

20

"This word Council was discussed at previous meetings with Dennis Joseph, Mr. John, Julian David, Malcolm Reid and myself. In those meetings, the discussion which took place was about positions which each member of the Council would hold in the Council". (underlining by counsel for appellants).

p. 19 l. 17

p. 19 l. 23

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"I know that Mr. Joseph used to be Insurance Salesman for British American Life Insurance Co. Ltd. I had said that the Council was responsible for the financing of the operations of the invasion of Dominica. By that I meant the Council took the burden of shouldering the financing of the operation but the finance had been negotiated. This was discussed at the Council meeting - the one before going to Antigua. Mr. John, Malcolm Reid, Julian David, Dennis Joseph and myself were present".

p. 31 l. 49

p. 32 l. 9

40

"We took an aircraft from Antigua to Dominica.

p. 20 l. 14

Reid and I handed in Immigration Cards in Dominica.

This is the one I filled in and handed in, tendered, admitted and marked Exhibit "H". This is the one which Reid filled in

On arrival in Dominica on 1/2/81 we travelled in two separate taxis from the airport. From the airport we stopped at Concorde. From Concorde we went our separate ways.

10

At Concorde we stopped at the "Stop and go" bar where we had overnighted. On the Tuesday following - 3rd February, 1981, Reid and myself went to Mr. John's house. Reid took me there on a motor cycle. On arrival there I met Mr. John and Julian David. Whilst there Dennis Joseph arrived. On Joseph's arrival the five of us came together and discussed the trip to Antigua.

p. 20 l. 33

We discussed the contract and the amendments.

Reid went to the bathroom and he came back with the contract.

20

When he came back from the bathroom Reid had the contract in his hand. We sat down together first and gave every individual sitting there to take a look at the entries made by Purdue while in Antigua.

Mr. John asked a question concerning the name "Black Revolutionary Council".

30

Reid replied with the reasons Purdue gave. Reid said, "The word Black would block future financing, especially investors." Mr. John agreed on that. The other members of the Council took the same line. We the Council went down to the section of the entries made pertaining to \$200,000.00 dollars. Reid explained what Purdue said. Mr. John replied, "That's crazy he is not sure of raising that kind of money immediately".

Mr. John (No. 1) said that he would try to see what he could do about that but he can't promise anything at this point in time.

40

On the following week-end there was a next meeting at David Kentish's home, Camefield. Mr. John (No. 1), Dennis Joseph, Julian David, Malcolm Reid, Accused persons and myself were present.

p. 21 l. 19

At that meeting was discussed (1) the landing site given by Malcolm Reid for the mercenaries. The site was the Dominica Mining Co. at Rockaway beach. Reid said that distance would be easy to cover to attack the Dominica Police Headquarters. The time of landing which is 2 o'clock in the morning, that would allow them one hour to take up position for the attack.

10 Mr. John said to find out who controlled HAM radio sets and to organise transportation for the mercenaries and to get together my twenty (20) men and Reid's men on the grounds of Rockaway Beach to await landing operation.

20 We discussed the position that every member of the Council will have to take up. Mr. John indicated those positions. John said Dennis Joseph would handle the position - Radio and Communication; Julian David would be the Council's treasurer; Mr. John would hold the position as Chairman of the Council, Prime Minister, Minister of Foreign Affairs and Defence. Reid would be in the position in charge of the military and I would be second place to Reid.

p. 21 l. 39

John told Reid that he had to relay decision taken at this meeting concerning the contract and the entire operation".

p. 21 l. 49

30 When I was discussing with Purdue on 31/1/81 in Antigua I knew to whom "Black Revolutionary Council" referred. I know because it was discussed at previous meetings.

p. 29 l. 10

Those meetings were attended by Mr. John, David, Joseph, Reid and myself. It is not true to suggest that Julian David never attended any meeting with John, Joseph, Reid and myself at which the Black Revolutionary Council was discussed".

p. 29 l. 20

40 It is clear from the foregoing that Dennis Joseph allegedly attended each and every one of the meetings and took part in the discussions of the alleged conspiracy. The Court of Appeal impliedly held that the evidence of Dennis Joseph's presence and discussion was not evidence in law against him. However, that same evidence of presence and

discussion was held to be evidence against the appellants of conspiring together, or which a jury properly directed could convict. The Court of Appeal said beginning at p. 146 line 46 to p. 147 line 14:

RECORD

p. 146 l. 46

10 "At the close of Dr. Barnett's submissions, and in answer to the Court, he guardedly admitted that the decision of Mitchell J. to uphold the No-Case submission in respect of the accused Dennis Joseph only, could be justifiable in law. We are entirely in agreement with this. We find that there was no evidence to go to the jury in respect of Joseph. In so far as the other accused Patrick John, Malcolm Reid, and Julian David are concerned, we are of the view that there was evidence against them on which a jury properly directed could convict, and that the learned trial Judge was wrong in law in  
20 upholding the No-Case submission in respect of these three accused. This too in our opinion raises a point of law sufficient to ground the appeal of the Director of Public Prosecutions". (underlining by counsel for appellants).

p. 147 l. 14

30 It is submitted that the dismissal of the respondent's appeal against Joseph could not in the circumstances have been based on a point of law, and that the consideration of the third question of the special case in the respondent's appeal by the Court of Appeal was based on a question of fact. In so doing, the Court of Appeal substituted its own judgment on the evidence for that of the trial Judge when it decided at page 147 lines 21 - 35 of the Printed Record:

p. 122 l. 40

40 "(1) The appeal of the Director of public Prosecutions in respect of the accused Dennis Joseph is dismissed, and the verdict of acquittal entered in his favour on both counts of the indictment is sustained.

p. 147 l. 21

(2) The appeal of the Director of public Prosecutions in respect of the accused Patrick John, Malcolm Reid and Julian David is allowed, and the verdicts of acquittal entered against each of them on both counts of the indictments, are set aside".

p. 147 l. 35

∟ arose

It is further submitted that on the face of the third question by the Director of public prosecutions only the second position as set out in paragraph 11 of this Case/and that the Court of Appeal was wrong when it said at p. 147 lines 11 - 14:

RECORD  
p. 122 l. 40

"This too in our opinion raises a point of law sufficient to ground the appeal of the Director of Public Prosecutions".

p. 147 l. 11

- 10 13. The learned trial Judge did not give any reasons for upholding the no case submission. What appears in the Judge's notes is incorporated at p. 120 lines 2 - 6 of the Printed Record and is as follows:

"The Court gives its Ruling upholding the submissions and directs that the Jury to return a verdict of Not Guilty in respect of both Counts of the indictment, in respect of each Accused".

p. 120 l. 2

- 20 It is evident that the ruling of no case was based on the submissions by counsel for the appellants which appear at p. 99 lines 26 - end, p. 100- p. 111 line 27 and p. 115 - p. 118 line 35 of the printed Record. The submissions of counsel for the appellants were based on the second position stated in paragraph 11 of this Case. That this is so, is in part confirmed by the third question to the Court of Appeal in the Respondent's special case. The third question of the special case of the Respondent rests on the assumption that the evidence for the prosecution was "consistent, credible, and substantially unshaken" (p. 122 lines 40 - 42 of the printed Record). If the Judge had concluded otherwise, his conclusion could not have raised a question of law. The submissions did not only contain the phrase and words "manifestly unreliable" and "unsafe" appearing in the Respondent's third question. It was more than that. The evidence of the Prosecution was also characterised as "weak", "unreliable", "tenuous" (p. 99 lines 28 -29 and p. 115 line 6) "scintilla of evidence" (p. 100 line 20 and line 25) and by the following paragraphs:

p. 122 l. 40

p. 122 ll. 6-

p. 106 ll. 34  
37

"These discrepancies in the light of his conduct, the police leave much to be desired in the credibility of the witness - most unsafe".

"In the circumstances I submit that on the uncorroborated evidence of Maffie - the evidence is unreliable, manifestly unreliable, that men of ordinary reason and fairness would not convict".

RECORD  
p. 118 11. 27-  
31

10 It is submitted that the pith and substance of the no-case submissions was that the case was weak, not strong enough in all the circumstances to go to the jury. These submissions did not raise any point of law.

14. The appellants respectfully submit that the answers to the principal questions referred to in paragraph 7 of this Case are as follows:

- 7(1)(a) - Yes
- 7(1)(b) - Yes
- 7(2) - Yes
- 7(3) - No
- 7(4) - No

20 The appellants further submit that the appeals be allowed for the following amongst other

#### REASONS

- 1. BECAUSE the Court of Appeal did not apply its mind to the fact that there was in the Dominica Constitution a basic principle of separation of powers.
- 2. BECAUSE Section 37(3) of the West Indies Associated States Supreme Court (Dominica) Act No. 10 of 1969 is inconsistent with the Constitution of Dominica and void by virtue of section 117 of the Constitution being a colourable device by parliament to evade the constitutional restrictions contained in Section 42(3) of the Constitution vis-a-vis Section 8(5) of the Constitution; and parliament cannot do indirectly what it cannot do directly.
- 3. BECAUSE the Court of Appeal was wrong in law in relying on Section 9(2) of the West Indies Associated States Supreme Court Order 1967 (S. I. 223 of 1967).

Annexure 2

4. BECAUSE the Court of Appeal failed to construe to words "to the satisfaction of the Judge" in section 19 of the Evidence Act.
5. BECAUSE the Court of Appeal held that the criminal standard of proof was not applicable to Section 19 of the Evidence Act.
- 10 6. BECAUSE the Court of Appeal failed to recognise that a trial Judge in a criminal case may uphold a submission on a point of law or fact.
7. BECAUSE the Court of Appeal wrongly held, impliedly, that the submissions in the instant case were on a point of law.
8. BECAUSE on the evidence, the Court of Appeal impliedly decided the third question in the special case of the Director of public prosecutions not as a point of law but as a point of fact.
- 20 9. BECAUSE the Court of Appeal erred in entertaining the third question in the special case of the Director of public prosecutions which raised only a question of fact.



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BERTHAN MACAULAY, Q.C.



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RANDOLPH WILLIAMS



Amendment of  
Section 37 of the  
Act.

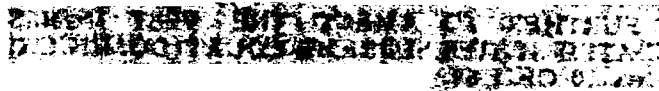
4. Section 37 of the Act is amended as follows:—  
(a) by renumbering the Section as Section 37 (1);  
(b) by adding the following as Sections 37 (2) and 37 (3) thereof;

“37.—(2) Where during the trial of a person on indictment the trial judge decides on a point of law or evidence, the Director of Public Prosecutions, if dissatisfied with the trial judge's decision may appeal by way of special case to the Court of Appeal for a determination of the point in issue: Provided that where a jury has deliberated and returns a verdict of not guilty there shall be no appeal against such verdict.”

“37.—(3) The Court of Appeal in any such appeal by the Director of Public Prosecutions shall allow the appeal if it thinks that the decision was wrong in law and order a retrial and in any other case shall dismiss the appeal.”

Passed in the House of Assembly this 22nd day of April,  
1981.

JENNIFER O. WHITE  
*Clerk of the House of Assembly.*



DOMINICA

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A N N E X U R E 2

THE CONSTITUTION OF COMMONWEALTH  
OF DOMINICA

Section 42 -(1) "parliament may alter any of the provisions of this Constitution or of the Supreme Court Order in the manner specified in the following provisions of this section".

(2) .....

(3) A bill to alter any of the provisions of this Constitution or the Supreme Court Order shall not be submitted to the President for his assent -

- (a) unless there has been an interval of not less than ninety days between the introduction of the bill in the House of Assembly and the beginning of the proceedings in the House on the second reading of the bill; and
- (b) if the bill provides for the alteration of this section, schedule 1 to this Constitution or any of the provisions of this Constitution or the Supreme Court Order specified in that Schedule, unless after it has been passed by the House the bill has been approved on a referendum, held in accordance with such provision as may be made in that behalf by parliament, by a majority of the votes validly cast on that referendum.

(4) - (9) .....

Section 117 "This Constitution is the supreme law of Dominica and, subject to the provisions of this Constitution, if any other law is inconsistent with this Constitution, this Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void".

A N N E X U R E 3

WEST INDIES ASSOCIATED STATES  
SUPREME COURT (DOMINICA)  
ACT 10 OF 1969

Section 38 -(1) .....

(2) subject to the provisions of this Act the Court of Appeal shall, if it allows an appeal against conviction, either quash the conviction and direct a judgment and verdict of acquittal to be entered, or the interests of justice so require, order a new trial.

(3) - (5) .....

A N N E X U R E 4

THE CONSTITUTION OF JAMAICA

section 20 -(1) - (7) .....

(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 of 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:

provided that nothing in any law shall be held to be inconsistent with or in contravention of this subsection by reason only that it authorises any court to try a member of a defence force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under service law; but any court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under service law.

(9) - (10) .....

IN THE PRIVY COUNCIL

NO. 50 OF 1983

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O N A P P E A L

FROM THE WEST INDIES ASSOCIATED STATES  
SUPREME COURT

(DOMINICA) COURT OF APPEAL

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B E T W E E N :

PATRICK JOHN  
JULIAN DAVID  
MALCOLM REID

Appellants

- and -

THE DIRECTOR OF PUBLIC  
PROSECUTIONS

Respondent

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CASE FOR THE APPELLANTS

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850. ✓ P.W.

RECEIVED

10 DEC 1984

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