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O N A P P E A L

FROM THE WEST INDIES ASSOCIATED STATES
SUPREME COURT

(DOMINICA) COURT OF APPEAL

B E T W E E N :

PATRICK JOHN
JULIAN DAVID
MALCOLM REID

Appellants

- and -

THE DIRECTOR OF PUBLIC
PROSECUTIONS

Respondent

SUPPLEMENTARY CASE FOR THE APPELLANTS

RECORD

1. Renumber paragraph 8 as 8(a). Insert in original Case, the following as:

2. 8(b) Section 9(2) of the West Indies Associated States Supreme Court Order 1967 S.I. 223 of 1967 reads as follows:

"The Court of Appeal shall have in relation to the State such jurisdiction to hear and determine appeals and to exercise such powers as may be conferred upon it by the Constitution or any other law of the State".

p.143 11.38-43

The Supreme Court Order is by virtue of Section 42(1) and 42(3) of the Constitution of the Commonwealth of Dominica, a part of the same, (see Annexure 2 of Case for the Appellant). The Constitution (based on the Westminster model) implies a Judicature free from legislature direction or control in the exercise


of its Judicial Power. See - Societe United Docks & Others vs. Government of Mauritius; Marine Workers Union and Others vs. Mauritius Marine Authority and Others, Privy Council Appeals 29 of 1983 and 34 of 1982 Judgment No. 42 of 1984 delivered 25th October, 1984.

RECORD

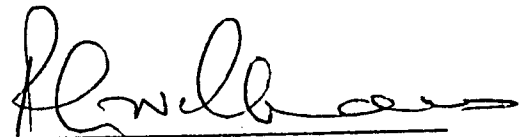
Therefore, it is submitted, that the jurisdiction to hear and determine appeals must be exercised exclusively by the Court of Appeal. It is submitted that an Order for a retrial is a determination of an appeal. Section 9(2) of the said Order does not entitle Parliament by an ordinary law to deprive the Court of Appeal of a significant part of such appellate jurisdiction. (See Hinds v. R.: D.P.P. v. Jackson, Att-Gen. intervening (1977) A.C. 195, P.C.)

Therefore, it is further submitted, that, in so far as Section 37(3) of the West Indies Associated States (Dominica) Act, 16 of 1981 contains a direction to the Court of Appeal to determine appeals by an order for a retrial, in all cases, where it allows appeals, from the Director of Public Prosecutions, the said Act erodes or interferes with the Judicial power of the said Court. p. 142 11.36-42

The Act is therefore unconstitutional by virtue of Section 117 of the Constitution of the Commonwealth of Dominica, (see Annexure 2 of Case for the Appellants).



BERTHAN MACAULAY, Q.C.



RANDOLPH WILLIAMS