

*Privy Council Appeal No. 53 of 1996*

**Donald Halstead** *Appellant*

v.

**(1) The Attorney General of Antigua and Barbuda**

**(2) Cosmos Phillips and**

**(3) Wright George** *Respondents*

FROM

**THE COURT OF APPEAL OF ANTIGUA AND BARBUDA**

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JUDGMENT OF THE LORDS OF THE JUDICIAL

COMMITTEE OF THE PRIVY COUNCIL,

Delivered the 11th June 1997

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*Present at the hearing:-*

Lord Goff of Chieveley

Lord Nicholls of Birkenhead

Lord Steyn

Lord Hoffmann

Lord Clyde

*[Delivered by Lord Clyde]*

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1. In 1977 the appellant was arrested and charged with a number of offences alleged to have been committed in the State of **Antigua and Barbuda**. Preliminary inquiries before a magistrate were held with regard to certain of the charges and trials were appointed to proceed on dates in January and in May 1978. The trials did not go forward at the dates which had been fixed. The appellant states that he was not indicted for those trials and he then raised a constitutional motion which took up some time thereafter. During the course of the proceedings in relation to it the appellant left the State and was absent for more than eight years. During his absence various indictments were issued against him. Warrants for his arrest were also issued in October 1978 and in January 1979. In October 1986 following his return to the State he was arrested and imprisoned for two days before being allowed bail.

In that same month of October 1986 the appellant filed two motions, numbered 99 and 100, in the High Court seeking relief under section 18 of the Constitution of **Antigua and Barbuda** on the grounds of a number of alleged breaches of his basic rights set out in sections 5 and 15 of that Constitution. Motion 99 was brought against the Chief Magistrate, Colvin Sobers, and the Commissioner of Police, Wright George. Motion 100 was brought against the Attorney General, Cosmos Phillips, the Director of Public Prosecutions and Wright George, the Commissioner of Police. The two motions were consolidated. In these motions the appellant sought declarations and orders invalidating and quashing the magisterial preliminary inquiries, the warrants of arrest and the indictments, injunctions against the pursuit of the criminal proceedings, and damages or compensation for the contraventions which he alleged of his constitutional rights.

2. On 11th May 1987 a Consent Order was granted in respect of the consolidated motions. It was stated in the preamble to it that "... the Respondents, the Director of Public Prosecutions and Wright George, Commissioner of Police through their Counsel undertaking to discontinue all criminal proceedings and charges formerly lodged and or pending against the Applicant". The order was set out in four paragraphs. The first two ordered that the warrants of October 1978 and January 1979 should be vacated and not carried into execution or further execution. Paragraphs 3 and 4 were in the following terms:-

"3.All criminal proceedings and charges laid and or pending against the Applicant be discontinued and any further criminal proceedings in connection therewith be stayed.

4.The Consolidated Motions herein do stand discontinued upon the terms hereinbefore recited and with the term that no further proceedings in connection with or arising out of the said proceedings and charges be brought."

3. Thereafter the appellant instituted the suit, No. 261 of 1987, in which the present appeal has been taken. It was instituted against the Attorney General of **Antigua and Barbuda**, Cosmos Phillips, who had been the Attorney General at the time of the events with which the consolidated motions had been concerned, and Wright George. They are the respondents in the present appeal. In this suit the appellant claimed among other things damages against the first defendant "for unlawful arrest and false imprisonment in private law", damages against the second and third defendants "for misfeasance in public office", and against all the defendants damages for conspiracy to injure the plaintiff and for the unlawful interference in and malicious abuse of the legal process to his oppression, injury and damage. The respondents applied for an order to dismiss the suit on the grounds that it disclosed no reasonable cause of action, that it was frivolous and vexatious, that it was an abuse of the process of the Court, that it was barred by virtue of the Public Authorities Act Cap.66, the Crown Proceedings Act Cap.24 and the Limitation Act, and that the appellant was estopped from instituting or carrying on the suit by reason of the Consent Order. The summons was heard by Georges J. who dismissed the suit. He proceeded principally on the ground that in light of the Consent Order the action should be struck out as an abuse of process. He also held that in certain respects the statement of claim did not disclose a reasonable cause of action and that the claim was statute barred by the Limitation Act 1623. The appellant appealed to the Court of Appeal but that Court dismissed the appeal. That Court proceeded solely on the matter of an abuse of process, analysed under four heads, namely, *res judicata*, *transit in rem judicatam*, disobedience of an order of the Court, and promissory estoppel. The Court found it unnecessary to decide the other issues which had been raised in the lower Court.

4. The argument which was presented to this Board was even more restricted in its scope than that which had been advanced before the Court of Appeal. The matter of abuse of process, in whatever form it took, rested essentially on the proper construction of the critical paragraph of the Consent Order. No argument was raised about the consequences of the one construction as against the other. The sole matter which the Board is required to resolve is accordingly the single question of the proper construction of the particular words in paragraph 4 of the Consent Order. It is then solely to that matter that the Board has given attention. The appellant argues that the paragraph is not to be construed so as to include

proceedings in private law the right to which he submits is preserved by section 18 of the Constitution. The respondents argue that the paragraph covers all such proceedings.

5. In considering this question of construction the Board must record the assistance it received from the appellant who appeared for himself as well as from counsel for the respondents. The appellant presented his argument with a restraint which was the more admirable when he was dealing with a matter which concerned him so immediately and so personally. The Board is indebted to both sides for arguments which were clear and concise. But despite the appellant's attractive presentation the Board has been unable to hold that the construction which he supported is correct.

6. No issue of principle is raised in this case. The recognised approach to the construction is to consider not only the words themselves but the circumstances with reference to which the particular words were used and to ascertain the object which the parties would have had in view in making this particular agreement. So far as the terminology is concerned the word "proceedings" is by itself capable of applying both to criminal and to all kinds of civil proceedings. The appellant argues that it is distinct from "causes of action". That is correct. Proceedings may arise out of a cause of action, but the proceedings may be based on a number of grounds arising out of the same basic facts. The word "proceedings" in the present case is qualified, but only qualified, by the word "further". But it is difficult to understand this as referring to further criminal proceedings. For one thing the final phrase "the said proceedings and charges" can only refer to the criminal proceedings and charges mentioned in the preamble and in paragraph 3. It does not seem meaningful to read paragraph 4 as relating to "further criminal proceedings in connection with or arising out of the said criminal proceedings". Moreover paragraph 3 appears to be designed to stop the pursuit of further criminal proceedings so that paragraph 4 should not be intended simply as a duplication. The structure of the Order also supports this interpretation. Paragraphs 1,2 and 3 seek to secure a finality so far as criminal proceedings are concerned. As Sir Vincent Floissac C.J. pointed out those clauses relate to acts and undertakings performed or required to be performed by the respondents. Paragraph 4 on the other hand is readily seen as relating to civil proceedings. Those are the concern of the appellant.

7. Nor does it seem likely that the phrase "further proceedings" is intended to be limited to proceedings on constitutional grounds. The opening part of paragraph 4 has expressly provided for the discontinuance of the motions which were raised on constitutional grounds and it is not easy to see what further constitutional grounds could be found to give adequate content to the later part of the paragraph. If the intention had been to impose a limitation to some particular kinds of proceedings it would have been easy to express the limitation. But no such limitation has been expressed.

8. The appellant argued that the present suit was directed against Wright George as an individual as distinct from Wright George as Commissioner of Police. That kind of difference was noticed by the lower Courts at least in relation to Cosmos Phillips, the former Attorney General. But even if this was a material point of difference between the constitutional motions and the present suit, although it was not so regarded in the lower Courts, that does not enable the appellant to limit the wide scope of the phrase "further proceedings". As Sir Vincent Floissac C.J. pointed out in the Court of Appeal the cause of action on which the appellant proceeded was capable of engendering rights of action both on constitutional grounds and on grounds of private law against the respondents personally.

9. The object which may reasonably be taken to have been in the view of the parties when they agreed to the Consent Order in the circumstances then prevailing was a termination of all criminal proceedings against the appellant relating to the matters originally alleged against him or arising out of the proceedings taken in relation thereto and of all civil proceedings on the part of the appellant relating to any of those criminal proceedings. As the width of the terminology shows, the intention was to bring an end to all the issues which had been raised and to secure that there would be no further litigation of any kind in relation to them. In the view of their Lordships the decision reached by the Court of Appeal was correct and they will accordingly humbly advise Her Majesty that the appeal should be dismissed.

10. Despite the appellant's plea that the normal course of requiring costs to follow success should not be followed, their Lordships see no good reason for ordering otherwise. The appellant must therefore pay the respondents' costs before their Lordships' Board.