

ON APPEAL
FROM THE COURT OF APPEAL TRINIDAD AND TOBAGO

B E T W E E N :

ENDELL THOMAS Appellant

- and -

THE HONOURABLE THE ATTORNEY GENERAL Respondent

CASE FOR THE APPELLANT

		<u>Record</u>
10	1. This is an appeal by leave of the Court of Appeal of Trinidad and Tobago from a decision of that Court (Sir Isaac Hyatali, C.J. Kelsick, J.A.; Phillips, J.A. dissenting) allowing the Respondent's appeal from the decision of the Honourable Mr. Justice Braithwaite on the three preliminary points raised in Paragraphs 5, 11 and 12 of the Respondent's Defence in the Action, and ordered and directed by the Honourable Mr. Justice S. Maharaj to be heard in open Court by a Judge of the High Court of Justice of Trinidad and Tobago on or before the hearing of the Summons for directions in such Action and/or the setting down of the Action on the General List of Cases to be tried pursuant to the provisions of R.S.C. Order XXXV Rule 2.	p 223 p 14 p 13
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2. The facts are as follows:-

30	The Appellant was at all material times a public officer being an Assistant Superintendent in the Trinidad and Tobago Police Service. By a letter dated 29th August, 1970 the Director of Personnel Administration ("the Director") informed the Appellant that as a consequence of allegations of indiscipline made against him the Police Service Commission had decided under regulation 80 of the Police Service Commission Regulations 1966 ("the 1966 Regulations") he should be interdicted from the performance of his duties on half-pay from the date of receipt of the said letter until further notice pending the outcome of the allegations against him. By a further letter dated 10th September, 1970 the Director informed the Appellant that the Police Service Commission had decided to charge him in accordance with Regulation 81(6) of the 1966 Regulations with three offences of neglect of duty and failure to perform his
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duty in a proper manner contrary to Regulations 74(2)(d) and 74(1)(a) of such Regulations, particulars of which were supplied to the Appellant. A tribunal consisting of the Chief Magistrate, a former Assistant Commissioner of Police and an Administration Officer of the Ministry of Works was appointed and on divers days between 18th November, 1970 and 12th June, 1971 conducted an inquiry into the said charges. The Appellant was informed by letter from the Director dated August 1971 that the Tribunal had found him guilty of all three charges and that the Police Service Commission had decided that unless he could show good cause why he should not, he should be dismissed from the Police Service. By letter dated 12th August, 1971 the Appellant applied for a review of his conviction on the said charges which application was granted, and a Review Board consisting of a Barrister-at-Law, a Solicitor, and a Social Worker, considered the same.

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By letter dated 31st December, 1971 the Director informed the Appellant that the Police Service Commission, after considering the report of the Review Board had re-affirmed the findings of the Tribunal that the Appellant was guilty of the said charges, but instead of dismissing him had decided to remove him from the Police Service in the public interest in accordance with Regulation 99 of the 1966 Regulations. The Appellant's said removal became effective on 14th August, 1972.

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p.1

3. By his Writ and Statement of Claim the Appellant alleged that:-

- (i) the three offences of which he was convicted by the Tribunal did not exist in law, as the 1966 Regulations (which purported to create the said offences) were expressed as being made by the Police Service Commission with the consent of the Prime Minister under the provisions of Section 102 of the Constitution of Trinidad and Tobago whereas the said section conferred no power upon the Police Service Commission to create the said offences.
- (ii) In the premises the acts of the Police Service Commission, the said Tribunal and the said Review Board in relation to the purported interdictions deprivation of pay laying promulgation and determination of the said charges against the Appellant were ultra vires and that the purported removal of the Appellant from the police service was of no effect.
- (iii) Alternatively, even if the 1966 Regulations conferred authority upon the Police Service Commission to create the said offences and promulgate the said charges against the Appellant, then such 1966 Regulations and in particular Regulation 81 thereof had not been complied with; and further that the Tribunal was not properly constituted under Regulation 86(2)

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and the Appellant claimed declarations accordingly, and alternatively damages for wrongful dismissal.

4. By his Defence the Respondent denied that the Appellant was entitled to the relief sought, and alleged that:-

- (a) the offences with which the Appellant was charged and convicted were validly created by the 1966 Regulations;
- (b) the Appellant's action was not maintainable in view of Section 99 and 102 of the Constitution of Trinidad and Tobago;
- (c) in any event the Appellant was a servant of the Crown dismissible at pleasure;
- (d) the said Tribunal was properly constituted in accordance with regulation 86(2) of the 1966 Regulations even though the members were not police officers as required by that regulation, and
- (e) even though it was admitted that there were certain breaches of regulation 81 of the 1966 Regulations, such breaches did not invalidate the decisions of the Police Service Commission.

5. On 18th June, 1973 the Honourable Mr. Justice S. Maharaj made his said Order for the determination of the three preliminary points hereinbefore referred to, namely:- p 13

- (1) Where the power to create offences for which the Appellant was triable resided in the Governor-General only or whether the three offences with which the Appellant was charged were validly and properly created by the Police Service Commission Regulations, 1966 made by the Police Service Commission with the consent of the Prime Minister under section 102 of the Constitution of Trinidad and Tobago and existed in law at any material time.
- (2) Whether the Appellant's action was maintainable in view of sections 99 and 102 of the Constitution of Trinidad and Tobago.
- (3) Whether the Appellant was a servant of the Crown dismissible at pleasure.

6. The more important statutory provisions and orders which are relevant to the said preliminary points are:-

40 The Constitution of Trinidad and Tobago established by The Trinidad and Tobago (Constitution) Order in Council 1962 S.I. (1962) No.1875

S.I. (1962) No.1875

Section 4.

- (1) Subject to the provisions of this section, the operation of the existing laws after the commencement of this Order shall not be affected by the revocation of the existing Order but the existing laws shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Order.
- (2) The Governor-General may by order made at any time before the 31st August, 1963 make such amendment to any existing law as may appear to him to be necessary or expedient for bringing the law into conformity with the provisions of this Order or otherwise for giving effect or enabling effect to be given to those provisions. 10
- (3) Where any matter that fails to be prescribed or otherwise provided for under this Order by Parliament or by any other authority or person is prescribed or provided for by or under an existing law (including any amendment to any such law made under this section) or is otherwise prescribed or provided for immediately before the commencement of this Order, by or under the existing Order, that prescription or provision shall, as from the commencement of this Order, have effect as if it had been made under this Order by Parliament or, as the case may be, by the other authority or person. 20
- (4) The provisions of this section shall be without prejudice to any powers conferred by this Order upon any person or authority to make provision for any matter, including the amendment or repeal of any existing law. 30
- (5) For the purposes of this section, the expression, "the existing laws" means all Acts, Ordinance, laws, rules, regulations, orders and other instruments having the effect of law made or having effect as if they had been made in pursuance of the existing Order and having effect as part of the law of the Colony of Trinidad and Tobago immediately before the commencement of this Order. 40

13. The Governor-General may by Order at any time within twelve months after the commencement of this Order make provision for the definition and trial of offences connected with the functions of any Commission established by the Constitution and the imposition of penalties for such offences.

The Constitution of Trinidad and Tobago (Second Schedule S.I. 1962 No.1875)

63.(1) The Governor-General shall, in the exercise of his functions, act in accordance with the advice of the Cabinet or a Minister acting under the general authority of the Cabinet, except in cases where by this Constitution or any other law he is required to act in accordance with the advice of any person or authority other than the Cabinet:

10 (3) The reference in subsection (1) of this section to the functions of the Governor-General shall be construed as a reference to his powers and duties in the exercise of the executive authority of Trinidad and Tobago and to any other powers and duties conferred or imposed on him as Governor-General by or under this Constitution or any other law.

98.(1) There shall be a Police Service Commission for Trinidad and Tobago which shall consist of a Chairman and four other members.

20 99.(1) Power to appoint persons to hold or act in offices in the Police Force (including appointments on promotion and transfer and the confirmation of appointments) and to remove and exercise disciplinary control over persons holding or acting in such offices shall vest in the Police Service Commission:

Provided that the Commission may, with the approval of the Prime Minister and subject to such conditions as it may think fit delegate any of its powers under this section to any of its members or to the Commissioner of Police or any other officer of the Police Force.

30 102.(1) Subject to the provisions of subsection (3) of this section, a Commission to which this section applies may, with the consent of the Prime Minister, by regulation or otherwise regulate its own procedure, including the procedure for the consultation with persons with whom it is required by this Constitution to consult, and confer powers and impose duties on any public officer or on any authority of the Government of Trinidad and Tobago for the purpose of the discharge of its functions.

40 (2) Without prejudice to the generality of the powers conferred by subsection (1) of this section, a Commission to which this section applies may by regulation make provision for the review of its findings in disciplinary cases.

50 (3) At any meeting of a Commission to which this section applies a quorum shall be constituted if three members are present, and, if a quorum is present, the Commission shall not be disqualified for the transaction of business by reason of any vacancy among its members, and any proceeding of the Commission shall be valid notwithstanding that some person who was not entitled so to do took part therein.

(4) The question whether -

(a) a commission to which this section applies has validly performed any function vested in it by or under this Constitution;

(b) any member of such a Commission or any other person has validly performed any function delegated to such member or person in pursuance of the provisions of subsection (1) of section 84, or sub-section (1) of section 93, or subsection (1) of section 99, as the case may be, of this Constitution; or

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(c) any member of such a Commission or any other person has validly performed any other function in relation to the work of the Commission or in relation to any such function as is referred to in the preceding paragraph;

shall not be enquired into any court.

(5) Reference in this section to a Commission to which this section applies are references to the Judicial and Legal Service Commission, the Public Service Commission or the Police Service Commission, as the case may be, established under this Constitution.

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S.105(1) In this constitution, unless it is otherwise provided or required by the context:-

.....

"public office" means an office of emolument in the public service;

"public officer" means the holder of any public office and includes any person appointed to act in such office;

By 105(1) as amended by Section 99C(h)(iii)(b) of the Trinidad and Tobago Constitution (Amendment) Act, 1965 - Act No.25 of 1968

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"the public service" means, subject to the provisions of subsection (4) of this section, the service of the Crown in a Civil capacity in respect of the Government of Trinidad and Tobago and includes the service of the Crown in a civil capacity in respect of the Government of the former Colony of Trinidad and Tobago; but does not include service in the office of Governor-General or service as a Judge of the High Court or as a Judge of the Court of Appeal or as a member of any court of record or any special judicial tribunal established by Act of Parliament.

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105.(4) For the purposes of this Constitution, a person shall not be considered to hold a public office by reason only -

(a) that he is in receipt of a pension or other like allowance in respect of public service; or

(b) that he is in receipt of any remuneration or allowance in respect of his tenure of the office of Minister or Parliamentary Secretary or President, Vice-President or member or temporary member of the Senate or Speaker, Deputy Speaker or member of the House of Representatives; or

(c) that he is a member of any Commission established by this Constitution; or

10 (d) that he is a member of any board, committee or other similar body (whether incorporated or not) established by any law in force in Trinidad and Tobago.

105(5) References in this Constitution to the power to remove a public officer from his office shall be construed as including references to any power conferred by any law to require or permit that officer to retire from the public service;
Provided that:-

.....

20 (b) any power conferred by any law to permit a person to retire from the public service shall, in the case of any public officer who may be removed from office by some person or authority other than a Commission established by this Constitution, vest in the Public Service Commission.

30 (7) The Interpretation Act, 1889 (52 and 53 Vict. s.63) as in force at the commencement of this Constitution shall apply, with the necessary adaptations for the purpose of interpreting this Constitution and otherwise in relation thereto as it applies for the purposes of interpreting, and in relation to, Acts of the Parliament of the United Kingdom.

The Interpretation Act, 1962 (Trinidad and Tobago Act No. 2 of 1962)

3.(1) Every provision of this Act extends and applies to every enactment passed or made before or after the commencement of this Act, unless a contrary intention appears in this Act or the enactment.

40 (2) The provisions of this Act apply to this Act as they apply to an enactment passed after the commencement of this Act.

7. No enactment passed or made after the commencement of this Act binds or affects in any manner Her Majesty or Her Majesty's rights or prerogatives unless it is expressly stated therein that Her Majesty is bound thereby.

9. This Act binds the Crown to the full extent authorised or permitted by the constitutional laws of Trinidad and Tobago.

Schedule

- 1(4) No enactment passed before the commencement of this Act shall in any manner whatsoever affect the rights of the Crown unless it is therein expressly provided or unless it appears by necessary implication that the Crown is bound thereby.

The Police Service Act 1965 (Trinidad and Tobago Act No.30 of 1965)

AN ACT to make provision for the classification of the Police Service, to provide a procedure for the settlement of disputes between the Government and the Police Service, to provide for matters concerning the relationship between the Government and the Police Service, to consolidate, amend and revise the law relating to the Police Service and for matters connected with and incidental thereto. 10

PART I

ESTABLISHMENT AND STRUCTURE OF THE POLICE SERVICE

- 3.(1) The several public offices, being the office of a member of the Police Force, from time to time set out in the Third Schedule shall be deemed to constitute the Trinidad and Tobago Police Service, which is hereby established for the purposes of this Act. 20
- (2) A member of the Police Force who holds such a public office, that by subsection (1) is deemed to be an office in the Police Service shall be referred to as a police officer.
- (3) Every person who immediately before the commencement of this Act held or was acting in the office of member of the Police Force shall, as from the commencement of this Act, continue to hold or act in the like office in the Police Service, by whatever title called. 30
- (4) In this section "Police Force" has the meaning assigned to that expression in section 105 of the Constitution.
- (5) References to the Police Force or to any member thereof in any enactment in force immediately before the commencement of this Act, be read and construed as references to the Police Service or to a member thereof, respectively. 40

TENURE

9. A police officer shall hold office subject to the provisions of this Act and any other enactment and any regulations made thereunder and, unless some other period of employment is specified, for an indeterminate

period.

10. A police officer who is appointed to an office in the police service for a specific period shall cease to be a police officer at the expiration of that period.
11. A police officer may resign his office by giving such period of notice as may be prescribed by Regulations.
61. The modes by which a police officer may leave the Police Service are as follows:-

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- (a) on dismissal or removal in consequence of disciplinary proceedings;
- (b) on compulsory retirement;
- (c) on voluntary retirement;
- (d) on retirement for medical reasons;
- (e) on resignation;
- (f) on the expiry or other termination of an appointment for a specified period;
- (g) on the abolition of office.

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- 65(1) The Governor General may make regulations for carrying out or giving effect to this Act and in particular for the following matters, namely:-

-(j) the enlistment, training and discipline of the Police Service;
-(n) generally, for the good order and government of the Police Service.

(3) Any Regulations and any other regulations respecting the police service in operation at the coming into operation of this Act shall have effect in relation to police officers under this Act until regulations have been made under this Act.

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The Police Service Commission Regulations 1966 made by the Police Service Commission under the provisions of Section 102 of the Constitution

46. The services of a police officer may be terminated only for the reasons stated hereafter:-

- (a) Where the police officer holds a permanent employment -
 - (i) on dismissal or removal in consequence of disciplinary proceedings;
 - (ii) on compulsory retirement;

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- (iii) on voluntary retirement;
- (iv) on retirement for medical reasons;
- (v) on being retired in the public interest;
- (vi) on resignation without benefits payable under any enactment providing for the grant of pensions, gratuities or compensation;
- (vii) on the abolition of office.

74.(1) A police officer who without reasonable excuse does an act which -

- (a) amounts to failure to perform in a proper manner any duty imposed upon him as a police officer; or 10
- (b) contravenes any of the provisions of these regulations; or
- (c) contravenes any enactment relating to the Service; or
- (d) is otherwise prejudicial to the efficient conduct of the Service or tends to bring discredit on the reputation of the Service;

commits an offence against discipline and is liable to such punishment as is prescribed by regulation 101 or by any other regulation. 20

(2) Without prejudice to the generality of the provisions of paragraph (1) a police officer commits an offence against discipline if he is guilty of -

.....(d) Neglect of duty, that is to say, if a police officer -

- (i) neglects, or without good and sufficient cause omits, promptly and diligently to attend to or carry out anything which is his duty as a police officer,.....

and is liable to such punishment as is prescribed by regulation 101 or by any other regulation. 30

80.(1) Where there have been or are about to be instituted against any police officer -

- (a) disciplinary proceedings for his dismissal; or
- (b) criminal proceedings;

and where the commission is of opinion that the public interest requires that that police officer should forthwith cease to perform the functions of his office, the Commission shall interdict him from such performance. 40

- (3) A police officer so interdicted shall, subject to the provisions of regulation 105 be permitted to receive such proportion of the pay of his office, not being less than one-half, as the Commission may determine after taking into consideration the amounts being deducted per month from the pay of the police officer.
- 10 (4) If disciplinary proceedings against any such police officer result in his exoneration, he shall be entitled to the full amount of the remuneration which he would have received if he had not been interdicted, but if the proceedings result in any punishment other than dismissal the police officer shall be allowed such pay as the Commission may in the circumstances determine.
- 20 81.(1) Where a report or allegation is received from which it appears that a police officer may have committed an offence the Commissioner shall, in addition to making a report as required by regulation 77, concurrently warn the police officer in writing of the report or allegation and shall forthwith refer the matter to an investigating officer appointed by him.
- (3) The investigating officer shall, within three days of his appointment give the police officer a written notice specifying the time, not exceeding seven days, within which he may, in writing, give an explanation concerning the report or allegation to the investigating officer.
- 30 (4) The investigating officer shall request those persons who have direct knowledge of the alleged offence to make written statements within seven days of the receipt of the request for the information of the Commission.
- (5) The investigating officer shall, with all possible dispatch, but not later than twenty-one days from the date of his appointment, forward to the Commission, for the information of the Commission, the original statements and all relevant documents, together with his own report on the particular act.
- 40 (6) The Commission, after considering the report of the investigating officer and any explanation given under paragraph (3), shall decide whether the police officer should be charged with an offence and if the Commission decides that the police officer should be so charged, the Commission shall, as soon as possible, cause the police officer to be informed in writing of the offence with which such police officer is charged, together with such particulars as will leave the police officer under no misapprehension as to the precise nature of the alleged offence.
- 50 86.(1) Where the Commission under paragraph (6) of regulation 81 charges a police officer with an offence

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and the provisions of regulation 84 apply, the Commission may appoint a disciplinary tribunal to hear the evidence and find the facts.

(2) A disciplinary tribunal which the Commission appoints under paragraph (1) may be constituted of -

- (a) one police officer, or
- (b) an uneven number of police officers not being less than three.

99. Where on a consideration of the report of the disciplinary tribunal, the Commission is of the opinion that the police officer does not deserve to be dismissed by reason of the charges alleged but that the proceedings disclose other grounds for removing him from the Police Service in the public interest, the Commission may make an order for the removal of such police officer without recourse to the procedure prescribed by regulation 49.

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102.(1) The following are the penalties that may be imposed by the Commission by disciplinary proceedings brought against a police officer in respect of an offence -

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- (a) dismissal that is termination of appointment;
- (b) reduction in an office, that is removal to another grade with an immediate reduction in pay;
- (c) reduction of remuneration, that is an immediate adjustment of remuneration to a lower point on the scale of remuneration attached to the particular office;
- (d) deferment of increment, that is a postponement of the date on which the next increment is due, with corresponding postponements in subsequent years;
- (e) stoppage of increment, that is no payment for a specified period of an increment otherwise due;
- (f) transfer;
- (g) fine;
- (h) reprimand.

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7. The said preliminary points came before Mr. Justice Braithwaite for determination and the learned judge in giving judgment on 17th December, 1976 decided as follows:-

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On the first point,

- (a) that only the Governor General acting under the

provisions of section 65(1)j of the Police Service Act 1965 or under the provisions of the former Police Ordinance Ch.11 No.1 had the power to create disciplinary offences in respect of police officers. and

(b) that all regulations purported to have been made under section 102 of the Constitution under which the Appellant was supposedly charged were void null and of no effect.

10 On the second point,

20 that the combined effect of Sections 99 and 102(4) of the Constitution did not create or give the power to create disciplinary offences. Section 99 clearly defined "jurisdiction" and section 102(4) clearly limited the regulatory powers of a Commission to its own procedure and nothing further. Accordingly the purported creation of disciplinary offences by the Public Service Commission was a nullity; and the provisions of section 102(4) whereby the question whether the Police Service Commission had validly performed any function vested in it should not be enquired into by any Court did not preclude the acts of the Police Service Commission in this case being reviewed by the Court; because the function of creating disciplinary offences was not vested in it. The Appellants action was therefore maintainable notwithstanding the said provisions of sections 99 and 102.

On the third point.

30 (a) that the appellant was a servant of the Crown (now the State) dismissible at pleasure;

(b) such dismissal at pleasure is based on an implied term at common law unless it is provided otherwise by statute;

40 (c) that Sections 9, 10 and 11 of the Police Service Act, 1965 bearing in mind the purpose of the Act set out in the long title, are inconsistent with importing into the contract of the appellant, a Police Officer, the term that the Crown may put an end to it at its pleasure;

(d) that the long title to the Police Service Act, 1965 and/or its provisions, in particular Sec. 61(a) satisfy the provisions of Sec.7 of the Interpretation Act, 1962.

8. By notice dated 22nd December, 1976 the Respondent p 48
appealed to the Court of Appeal on the grounds that the Honourable Mr. Justice Braithwaite had erred in law in the determination of each of the said preliminary points and the Appellant by notice dated 24th December, 1976 cross-
50 appealed on the grounds that the learned Judge should have p 51

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granted substantially the relief claimed in the Writ, as a necessary consequence of his determination of the said preliminary points (by reason of the R.S.C. Order 33 rule 6).

9. The judgment of the Court of Appeal of Trinidad and Tobago was delivered on 19th January, 1979.

On the first point,

(a) Kelsick J.A. held that section 102 of the Constitution did not enable the Police Commission to enact regulation 74 of the 1966 regulations but that the plenitude of the Governor's powers to create disciplinary offences before the enactment of the Constitution were transferred or delegated to the Police Commission as a necessary implication of the combined effect of sections 99 and 102 of the Constitution, and to the extent that it conflicted with these provisions the Police Service Act of 1965 was void. 10

(b) Sir Isaac Hyatali C.J. held that the Police Service Commission at all material times had exclusive power under section 99 of the Constitution to define the matters which constituted disciplinary breaches or offences in the Police Service; and that while the publication of the 1966 Regulations was improperly done under section 102(1) the misdescription of the offences as being contrary to those regulations was mere surplusage and had not prejudiced the Appellant since the power to create disciplinary offences was vested in the Police Service Commission anyway. 20 30

(c) Phillips J.A. held that section 99(1) did not expressly confer upon the Police Service Commission power to create disciplinary offences, nor was it a necessary implication of that subsection; since the said power was expressly vested in the Governor General by Section 65 of the Police Service Act, 1965, and it was also expressly provided by the Legislature that the 1954 Regulations, (which vested such power in the Governor) should continue in operation until the making of new regulations under Section 65(1) of the Police Service Act, 1965, the provisions of which section militated against any construction which vested the power of creating disciplinary offences in the Police Service Commission. 40

On the second point,

(a) Kelsick J.A. held that

(i) the clear words of s.102(4) of the 1962

Constitution ousted the jurisdiction of the courts to inquire into the validity of the removal of the Appellant which was a function vested in the Police Service Commission by Sections 99 and 105(5) of the Constitution, and

10 (ii) alternatively if the Appellant was only dismissible for cause the Police Service Commission acted within the jurisdiction conferred on it by section 99 in removing the Appellant for a disciplinary offence which existed in law and in accordance with the rules of natural justice incorporated in the 1966 Regulations.

(b) Sir Isaac Hyatali C.J. held that the Police Service Commission was clearly exercising a function vested in it when it charged the Appellant with the three disciplinary offences, and the Appellant was precluded by section 102(4) of the Constitution from instituting the present proceedings.

20 (c) Phillips J.A. held that when the Police Service Commission charged the Appellant with legally non-existent disciplinary offences, it was not performing any function vested in it by section 99 of the Constitution, and had no jurisdiction to enter on the enquiry in question. Accordingly the Court was not precluded from entertaining the action by section 102 of the Constitution.

On the third point,

(a) Kelsick J.A. held that

30 (i) the Appellant was a Crown servant whose appointment was terminable at will, unless otherwise provided by statute;

(ii) section 7 of the Interpretation Act, 1962 provided that no enactment passed thereafter (which would include the Police Service Act, 1965) should bind or affect the Crown unless it was expressly so stated therein;

(iii) the general provision in section 3 of the Interpretation Act must give way to the special one in section 7;

40 (iv) there was no express provision in the Police Service Act 1965 binding the Crown; and

(v) alternatively if the principle of necessary implication applied, Parliament had not manifested any clear intention in the Police Service Act 1965 that the Crown should be bound by its provisions;

(b) Sir Isaac Hyatali C.J. held that

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(i) on a true construction of the Interpretation Act 1962, reading sections 3 and 7 together, no subsequent enactment would bind the Crown unless it was therein expressly provided or unless it appeared by necessary implication that the Crown was bound thereby.

(ii) there was no express provision in the Police Service Act 1965 binding the Crown; but

(iii) it was a necessary implication in the long title of the Police Service Act 1965 that the Crown was bound thereby.

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(iv) there was nothing in the Police Service Act 1965 which altered the implied term of the employment of the Appellant that he held office during pleasure.

(c) Phillips J.A. held that

(i) the combined effect of sections 3 and 4 of the Interpretation Act 1962 was to leave intact the paramount common law rule that instruments must be construed so as to give effect to their intentions, notwithstanding the provisions of section 7.

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(ii) a perusal of the Police Service Act 1965 as a whole, including its long title, led to an irresistible conclusion that the Legislature intended that the Act should have a legally binding effect on the relations between the Crown and the members of the Police Service;

(iii) the long title of the Police Service Act 1965 contained a statement that the Crown was bound thereby which was sufficient for the purpose of satisfying section 7 of the Interpretation Act 1962; and

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(iv) alternatively there was a clear indication by necessary implication from the language of the Police Service Act 1965 as a whole of an intention to bind the Crown, which was sufficient for the purposes of section 3(1) of the Interpretation Act 1962 and thus rendered nugatory the operation of section 7 thereof

p 223 In the result the Court of Appeal allowed the Respondent's appeal, dismissed the Appellant's cross-appeal, and accordingly dismissed the Appellant's claim herein.

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p 225 10. On the 14th February, 1979 the Court of Appeal granted the Appellant conditional leave to appeal against the judgment of that Court to Her Majesty in Council.

11. The contentions of the Appellant are:-

(a) on the first point:-

(i) Section 102 of the Constitution empowers the Police Service Commission to regulate its own procedure, including procedure to consult with other persons when so required by the constitution and to confer powers and impose duties on any public officer for the discharge of its functions; and to make provision for the review of its findings in disciplinary cases.

10 (ii) The said section 102 is therefore not apt to empower the Police Service Commission to make the 1966 Regulations in so far as the same purport to create disciplinary offences.

(iii) The Appellant could not be convicted of disciplinary offences which purported to be created by the 1966 Regulations.

20 (iv) Section 99(1) of the Constitution empowers the Police Service Commission, inter alia, to remove and exercise disciplinary control over police officers, but the creation of disciplinary offences is not a necessary incident to the exercise of disciplinary control; further and in any event the Police Service Commission did not purport to act under section 99 when promulgating the charges against the Appellant.

30 (v) the proviso to section 99 of the Constitution makes it manifest that the creation of disciplinary offences by the Police Service Commission is not contemplated by the said subsection as delegation of such powers would be inappropriate to the persons referred to in the proviso.

(vi) the power to create disciplinary offences is vested in the Governor General by section 65(1)(j) and (n) of the Police Service Act 1965, alternatively in the Governor by virtue of the legislation subsisting before the Constitution came into effect, which said legislation continued to have effect by virtue of the Existing Laws Amendment Order 1962.

40 (b) on the second point:-

(i) in the premises there was no power to create disciplinary offences vested in the Police Service Commission by either section 99 or 102 of the Constitution.

(ii) Section 102(4) of the Constitution prohibits any Court from enquiring into the question whether the Commission has valdily performed any function vested in it by the Constitution.

(iii) as the Police Service Commission was purporting to exercise a power not vested in it by the Constitution the Courts may enquire into such exercise and this action is accordingly maintainable.

(c) on the third point:-

(i) that the Appellant was at all material times a public officer, namely a police officer in the service of the Crown (now the State).

(ii) that the Appellant was dismissible at the pleasure of the Crown (now the State) on the basis of such a term being implied at common law into his contract of service, unless it is otherwise provided by Statute. 10

(iii) that the Police Service Act 1965 and the Regulations govern the relationship between the Appellant and the State, the provisions of which are manifestly intended for the protection and benefit of all Police Officers, and are therefore inconsistent with importing into his contract of service a term that the State may put an end to it at its pleasure. 20

(iv) the said Police Service Act 1965, binds the Crown as the provisions thereof are sufficient to meet the requirements of Sec. 7 of the Interpretation Act 1962; alternatively the terms and provisions of the Police Service Act conform to the requirements of sec. 3 (1) of the Interpretation Act 1962, in that the same by necessary implication manifest an intention that the Crown should be bound thereby. 30

12. The Appellant will further contend that, if it be held that the said disciplinary offences were validly created by the Police Service Commission in the 1966 Regulations, then the Police Service Commission, through the said Tribunal and the Investigating Officer failed to comply with the said 1966 Regulations, and in particular Regulation 81 thereof; and further that the said Tribunal was not lawfully constituted under the 1966 Regulations nor was the Review Board lawfully constituted under the relevant provisions of the Constitution, so that the proceedings against the Appellant were conducted without jurisdiction and were therefore void. 40

13. The Appellant accordingly respectfully submits that the decision of the Court of Appeal of Trinidad and Tobago was wrong and ought to be reversed and set aside and that the judgment of the Honourable Mr. Justice Braithwaite dated and entered on 17th December, 1976 ought to be restored and that the declarations orders and relief sought by the Appellant in the Statement of Claim herein should be granted for the following (amongst other) 50

R E A S O N S

- 10
- (1) BECAUSE the Appellant's terms of service are set out in the Police Service Act, 1965 and the State is bound thereby.
 - (2) BECAUSE there was no power in the Police Service Commission to create disciplinary offences under either section 99 or section 102 of the Constitution.
 - (3) BECAUSE in purporting to create disciplinary offences the Police Service Commission was acting without jurisdiction and its said acts may be enquired into by the Courts.
 - (4) BECAUSE the judgments of the Honourable Mr. Justice Braithwaite and of the Honourable Judge of Appeal C.E.G. Phillips were right and should be affirmed.
 - (5) BECAUSE the decision of the Court of Appeal for Trinidad and Tobago is unsound in law and should be reversed.

Donald Jarquharson
Michael Gettleson

IN THE JUDICIAL COMMITTEE
PRIVY COUNCIL No.47 of 1980

ON APPEAL
FROM THE COURT OF APPEAL TRINIDAD AND
TOBAGO

BETWEEN:-

ENDELL THOMAS Appellant

AND

THE HONOURABLE THE ATTORNEY GENERAL
Respondent

CASE FOR THE APPELLANT

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