

Andy Mitchell and 18 Others

Appellants

v.

The Director of Public Prosecutions
and The Attorney General

Respondents

FROM

THE COURT OF APPEAL OF GRENADA

REASONS FOR REPORT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL OF THE 10TH JULY 1985,
UPON A PETITION FOR SPECIAL LEAVE TO APPEAL,
DELIVERED THE 25TH JULY 1985

Present at the Hearing:

LORD FRASER OF TULLYBELTON

LORD SCARMAN

LORD DIPLOCK

LORD KEITH OF KINKEL

SIR OWEN WOODHOUSE

[Delivered by Lord Diplock]

Upon the presentation to the Board on 10th July 1985 of this Petition for special leave to appeal to Her Majesty in Council their Lordships, after hearing oral argument, announced that they would humbly advise Her Majesty that they do not have jurisdiction to hear the Petition; and that they would give their reasons for so advising later. This they now do.

The proceedings in which special leave to appeal to Her Majesty in Council were brought originated on 11th October 1984 before Chief Justice Nedd who was then exercising the functions of the High Court of Grenada. The Petitioners had in August been committed for trial at the October Assizes of the High Court on charges of murder and conspiracy to murder, and the proceedings before Nedd C.J. were brought under section 101 of the Constitution of Grenada of 1973 ("the Independence Constitution") by originating motion for declarations challenging the constitutionality both of the High Court before which they had been committed for trial as it was then composed, and of the Court of Appeal, as it was then

composed, to which an appeal would lie from that High Court, and claiming the right to be tried on the criminal charges brought against them before a court validly constituted in accordance with the provisions of the Independence Constitution and not otherwise. They also sought a declaration that People's Law No. 84 of 16th November 1979 made by the self-styled People's Revolutionary Government which purported to abolish appeals to Her Majesty in Council was inconsistent with the Independence Constitution and therefore void.

Chief Justice Nedd dismissed the Petitioners' motion with costs on 19th November 1984. They promptly appealed to Mr. Justice Haynes, Mr. Justice Liverpool and Sir Neville Peterkin who were then exercising the functions of the Court of Appeal of Grenada. The appeal was heard at the end of March 1985 by which time the Independence Constitution had been restored, a parliament had been elected and had passed Act No. 1 of 1985 entitled "People's Laws, Interim Government Proclamations and Ordinances, Confirmation of Validity Act 1985" to the terms of which their Lordships will find it necessary to refer. On 10th May 1985 the appeal judges delivered three separate reserved judgments. They dealt extensively and eruditely with the constitutional validity of the exercise by Nedd C.J. of the functions of the High Court of Grenada and their own exercise of the functions of the Court of Appeal of Grenada, but only Liverpool J. dealt specifically with the abolition of the right of appeal to the Judicial Committee of the Privy Council by People's Law No. 84 of 1979. So there is no decision on this point by the Court from which leave to appeal is being sought by the Petitioners. However, as the point goes to the jurisdiction of their Lordships to entertain a petition for special leave to appeal from a decision of a court of an independent Commonwealth state, it is one which their Lordships themselves are bound to take before embarking on any further consideration of the likelihood that the judgment from which leave to appeal is sought could be faulted if a full appeal against it were allowed to be heard.

The source of this Board's jurisdiction to hear appeals in proceedings originating in Grenada is section 3 of the West Indies Associated States (Appeals to Privy Council) Order 1967 ("the Privy Council Appeals Order"). That Order is closely linked with the West Indies Associated States Supreme Court Order 1967 ("the Court Order") and the reference to "State" in section 3 is to the six Caribbean States to which the Court Order applies, one of which is Grenada. Section 3 is in the following terms:-

"3. An appeal shall lie to Her Majesty in Council from decisions of the Court given in any proceeding originating in a State in such cases as may be prescribed by or in pursuance of the Constitution of that State."

So, in order to determine in what kinds of cases and subject to what conditions a right of appeal (if any) in proceedings originating in Grenada is granted by the section, it is necessary to have recourse to the provisions of the Constitution of Grenada itself as they are currently in force at the time at which leave to appeal to Her Majesty in Council is sought, including any amendments to the original Independence Constitution that have been validly made by then.

Bearing in mind that the Privy Council Appeals Order applies not to Grenada alone but to six separate states of which Grenada is but one, and its use of the word "may", it is in their Lordships' opinion impossible so to construe the section as to exclude the power of an individual State to prescribe by or in pursuance of its own constitution that no appeal shall lie to Her Majesty in Council in proceedings of any kind originating in that State. Furthermore the consequences of adopting such construction would lead to absurdity. It would mean that the parliament of Grenada could cut down the right of appeal to the Privy Council to anything that was short of absolute vanishing point, so long as there was left some narrowly defined type of case in which an appeal could be brought subject to specified stringent conditions, however unlikely it might be that a case falling within the definition would ever be brought and the specified conditions fulfilled.

The relevant provision of the Constitution of Grenada prior to the coup d'etat of March 1979 was section 104 of the Independence Constitution. This section granted extensive appeals to Her Majesty in Council as of right and an unlimited right of appeal by special leave of Her Majesty. By section 39(2) of the Independence Constitution any bill amending section 104 had to be supported on final reading by the votes of not less than two-thirds of all the members of the House of Representatives; but, by virtue of section 39(5) and the express exclusion of section 104 from Part 1 of Schedule 1 to the Independence Constitution, that sub-section does not apply to alteration or repeal of section 104 and neither ninety days' delay nor approval by referendum was required.

The relevant provision of People's Law No. 84 of 1979 reads as follows:-

"2.(1) As from the prescribed day appeals to Her Majesty in Council are abolished and all

decisions of the Judicial Committee of the Privy Council, whether given before or after the prescribed day, shall have no binding legal force in Grenada.

(2) In the foregoing sub-section "the prescribed day" is the 13th day of March, 1979."

Whatever may be argued about (i) the original validity or continued effectiveness of People's Law No. 84 of 1979, (ii) its subsequent continuance by the Governor-General in his Proclamation of 4th November 1983, made after the military intervention and (iii) such reservations about constitutional provisions relating to the judicial system as he purported to make in his Order of 9th November 1984 declaring the Independence Constitution to be once more in force, that constitution was, in general, treated as operative. General elections pursuant to its provisions were held and a new parliament was sworn in by the end of December 1984.

The first law that the new parliament passed was Act No. 1 of 1985 of which the relevant enacting provision was:-

"2. For the avoidance of doubt it is hereby enacted that the following laws, rules and proclamations are in force, and shall remain in force until otherwise enacted:

(i) Laws and rules made by the People's Revolutionary Government."

The Act received the assent of the Governor-General on 21st February 1985. Although there is not among the papers lodged with the Petition a certificate by the Speaker or Deputy-Speaker under section 39(8) of the Constitution to the effect that Act No. 1 of 1985 was supported by two-thirds of all members of the House of Representatives, no point was taken as to this either before their Lordships or in the courts of Grenada; for it is common ground that the Bill which became Act No. 1 of 1985 received the support of at least two-thirds of all members of the House of Representatives, where the Bill passed unopposed as it did also in the Senate.

The words of People's Law No. 84 which purport to abolish appeals to the Privy Council are in absolute and unambiguous terms. In effect the first thirteen words purported to repeal the whole of section 104 of the Independence Constitution. Those words have since been confirmed and thereby validated by an Act of the legitimate parliament of Grenada passed by a procedure by which section 104, (which may be described as a semi-entrenched, rather than fully entrenched provision), may validly be repealed or amended. The repeal has therefore altered the

Constitution of Grenada since 21st February 1985. Their Lordships, in dealing with a Petition lodged on 28th June 1985, are not concerned with any retrospective effect of amendments to the Independence Constitution or with the effect of the words after the first thirteen in People's Law No. 84. These might pose highly arguable questions, but Act No. 1 of 1985 speaks to the future only. In their Lordships' view it deprives them clearly and unambiguously of any jurisdiction to entertain this Petition under section 3 of the Privy Council Appeals Order, which is, as they have already pointed out, their only source of jurisdiction to hear appeals in proceedings originating in Grenada.

