15 of 1975

(15)

IN THE PRIVY COUNCIL

No. 9 of 1974

ON APPEAL

FROM THE COURT OF APPEAL OF THE WEST INDIES ASSOCIATED STATES SUPREME COURT (ANTIGUA)

BETWEEN:

THE ATTORNEY GENERAL

- and -

THE MINISTER OF HOME AFFAIRS (Defendants) Appellants

- and -

ANTIGUA TIMES LIMITED (Plaintiffs) Respondents

RECORD OF PROCEEDINGS

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IN THE PRIVY COUNCIL — No. 9 of 1974

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FROM THE COURT OF APPEAL OF THE WEST INDIES ASSOCIATED STATES SUPREME COURT (ANTIGUA)

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THE ATTORNEY GENERAL and THE MINISTER OF HOME AFFAIRS — (Defendants) Appellants

- and -

ANTIGUA TIMES LIMITED — (Plaintiffs) Respondents

RECORD OF PROCEEDINGS

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No.	Description of Document	Date
1.	Judge's Notes of speeches and submissions by Counsel at trial	May 1972
2.	Motion for leave to appeal to Privy Council	29th June 1973
3.	Affidavit in support	29th June 1973
4.	Conditional Order for leave to appeal to Privy Council	16th October 1973

IN THE PRIVY COUNCIL No. of 1974

ON APPEAL

FROM THE COURT OF APPEAL OF THE WEST INDIES ASSOCIATED STATES SUPREME COURT (ANTIGUA)

BETWEEN :

THE ATTORNEY GENERAL OF ANTIGUA

- and -

THE MINISTER OF HOME AFFAIRS (Defendants) Appellants

- AND -

ANTIGUA TIMES LIMITED (Plaintiff) Respondents

RECORD OF PROCEEDINGS

No. 1

STATEMENT OF CLAIM

In the High Court of Justice of Antigua

No. 1

Statement of Claim 12th January 1972

1. The Plaintiff is a Company organized and registered under the Companies Act of Antigua with registered office situate at the Factory Road in the Parish of Saint John in the State and Island of Antigua.

2. The Plaintiff is the Publisher of the Antigua Times Newspaper.

10 3. The Newspapers Registration (Amendment) Act No. 8 of 1971 amends the Newspapers Registration Act (Cap. 318) by inserting sections 1A and 1B immediately after section 1 thereof.

Section 1B provides:

(1) "No person shall publish or cause to be published any Newspaper unless he has obtained a licence from the Cabinet in respect of the Newspaper published or caused to be

In the High Court of Justice of Antigua

No. 1

Statement of Claim 12th January 1972 (continued)

published by him and has paid the annual licence fee prescribed by this Act PROVIDED that every person who prints or publishes a newspaper registered under the provisions of the Principal Act fifteen (15) days before the commencement hereof and has paid the annual licence fee prescribed by this Act shall be deemed to have been granted a licence.

(2) A licence issued under this section shall be signed by the Secretary to the Cabinet and the person named in the licence as the publisher of the newspaper specified therein shall on or before the 2nd day of January in every year pay into the Treasury the sum of six hundred dollars.

(3) If the publisher of a newspaper to whom a licence has been granted fails to pay the said sum of six hundred dollars on or before the 2nd day of January in every year the licence shall be invalid until such payment has been made.

(4) If any person shall publish or cause to be published any newspaper without holding a valid licence under this section he shall be guilty of an offence and shall on summary conviction be liable to a fine of five hundred dollars for every day on which such newspaper is published".

4. The Newspaper Surety Ordinance (Amendment) Act 1971 amends the Newspaper Surety Ordinance (Cap. 319) by adding sub-section (2) to Section 3 of Cap. 319.

Sub-section (2) provides:-

"No person shall print or publish or cause to be printed or published within the State any newspaper unless he shall have previously deposited with the Accountant General a sum of ten thousand dollars in cash to be drawn against in order to satisfy any judgment of the Supreme Court for libel given against the editor or printer or publisher or proprietor of the said newspaper or any writer therein and shall at all times maintain the said

deposit at a sum of ten thousand dollars. The deposit aforesaid shall be paid into deposit account in the name of the depositor and shall bear interest at the same rate payable at the Government Savings Bank: PROVIDED however that the Minister responsible for newspapers on being satisfied with the sufficiency of the security in the form of a Policy of Insurance or on a guarantee of a Bank may waive the requirement of the said deposit;

PROVIDED further that no amount of the principal sum shall be paid from the deposit account aforesaid or against any policy of Insurance or recovered from the guarantee of the Bank save upon the Certificate of the Registrar of the High Court as to any award of the Court".

5. The requirement in Cap. 319 for a bond in the sum of $960.00 with a penalty of $120.00 per day for each publication without bond has not been repealed.

6. The Plaintiff claims:-

(a) A declaration that the whole of Section 1B of the Newspaper Registration (Amendment) Act 1971 is ultra vires the powers of the legislature of Antigua by reason in particular of Section 10 of the Antigua Constitution Order of 1967 and generally thereunder

(b) A declaration that Section 3 sub-section (2) of the Newspaper Surety Ordinance Amendment Act 1971 is ultra vires the powers of the legislature of Antigua by reason in particular of Section 10 of the Antigua Constitution Order of 1967 and generally thereunder.

(c) Further and/or in the alternative a declaration that the provisions of the said statutes are contrary to natural justice and infringe guarantees provided and declared in section 1 of Chapter 1 of the Antigua Constitution Order of 1967.

In the High Court of Justice of Antigua

No. 1

Statement of Claim 12th January 1972 (continued)

(d) Further and/or in the alternative a declaration that the financial provisions of the said statutes are penal in amounts and in effect and are unlawful in that they thereby infringe the guarantee of freedom of expression generally provided by the Antigua Constitution Order of 1967.

(e) An enquiry as to damages and an order that such damages as have been suffered by the Plaintiff may be paid to them forthwith by the Minister of Home Affairs.

(f) Costs.

(g) Such further or other relief as may be just.

(Sgd.) F. A. Clarke

HENRY & CLARKE
Solicitors for the Plaintiff.

Dated and Delivered this 12th day of January, 1972

No. 2

Defence 16th February 1972

No. 2

DEFENCE

1. No admissions are made as to paragraphs 1 and 2 of the Statement of Claim.

2. The various statutes referred to in paragraphs 3 and 4 of the Statement of Claim will be referred to by the Defendants at the trial of this action for their full terms and effect.

3. The Defendants make no admission as to the construction put by the Plaintiffs upon the amendment referred to in paragraph 4 of the Statement of Claim as set out in paragraph 5 thereof.

4. Section 1B of the Newspaper Registration (Amendment) Act, 1971 is not ultra vires the powers of the legislature of Antigua and is not unconstitutional.

5. Section 3(2) of the Newspaper Surety Ordinance Amendment Act, 1971 is not ultra vires the powers of the legislature of Antigua and is not unconstitutional.

6. Further the Defendants say that the provisions of the statutes above mentioned are not contrary to natural justice and do not infringe constitutional guarantees and are not penal in amount or character or effect and are not ultra vires or unlawful.

7. The Defendants say that the Plaintiffs do not disclose any basis for damages.

8. The Plaintiffs are not entitled to the relief claimed or any part thereof.

(Sgd.) Louis H. Lockhart

Ag. Attorney General.

Delivered this 16th day of February, 1972.

In the High Court of Justice in Antigua

No. 2

Defence 16th February 1972 (continued)

No. 3

No. 3

JUDGE'S RULING ON PRELIMINARY OBJECTION

Judge's Ruling on Preliminary objection 24th May 1972

In this action Counsel for the defendants has taken an objection in point of law that the plaintiffs have no right to appear before the Court as they are not "any person" for the purposes of Section 15(1) of the Antigua Constitution Order 1967. His contention in short is that the section relates only to natural persons and the plaintiffs not being natural persons, have no locus standi before the Court.

Section 15(1) of the Antigua Constitution Order 1967 (hereinafter referred to as the Constitution) reads as follows:-

> "If any person alleges that any of the provisions of sections 2 to 14 (inclusive) of this Constitution has been, or is being contravened in relation to him, then, without prejudice to any other action with respect to the same matter which is lawfully available,

In the High Court of Justice of Antigua

No. 3

Judge's Ruling on preliminary objection 24th May 1972 (continued)

that person may apply to the High Court for redress."

Section 1 of the Constitution reads as follows:-

"1. Whereas every person in Antigua is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely:

(a) life, liberty, security of the person, the enjoyment of property and the protection of the law;

(b) freedom of conscience, of expression and of peaceful assembly and association; and

(c) respect for his private and family life,

the subsequent provisions of this Chapter shall have effect for the purpose of affording protection to the aforesaid rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest."

For the purpose of interpreting this Constitution the Interpretation Act 1889 of the United Kingdom applies with necessary adaptations.

Section 19 of the Interpretation Act 1889 reads as follows:-

"Meaning of persons in future Acts

In this Act and in every Act passed after the commencement of this Act, the expression "person" shall, unless the contrary intention appears, include any body of persons corporate or unincorporated."

I refer to the English and Empire Digest Volume 13 under the caption "Corporation as a person". Articles 890 and 891 read -

> "890. General rule. "Persons" in a legal sense, is an apt word to describe a corpn. - Royal Mail Steam Packet Co. v Braham (1877) 2 App. Cas. 381".
>
> "891. Whether the word 'person' in a statute can be treated as including a corpn. must depend on a consideration of the object of the statute, and of the enactments passed with a view to carry that object into effect."

I also refer to the note on Article 890. It reads -

> "General rule. 'Person' may in the same Act in one clause include a corpn., while in another clause it may not so do. Exp. Sperring '1890), 11 N.S.W.L.R. 407"

In the light of what I have stated above, I would read Section 17 of the Constitution in relation to the plaintiffs as follows -

> "Whereas every person, legal or natural person in Antigua is entitled to the fundamental rights and freedoms of the individual that is to say, the right, whatever the legal or natural person's political opinions but subject to respect for the rights and freedom of others and for the public interest to each and all of the following, namely, in the case of the Antigua Times Limited, to freedom of expression as the publisher of a newspaper."

I refer also to Section 10(1) of the Constitution Order:-

> "Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, and for the purposes of this section the said freedom includes the freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence and other means of communication."

In the High Court of Justice of Antigua

No. 3

Judge's Ruling on preliminary objection 24th May 1972 (continued)

I interpret this section in relation to the Antigua Times newspaper as follows -

> "The Antigua Times Limited shall not be hindered in the enjoyment of its freedom of expression and for the purposes of this section the said freedom includes its freedom to hold opinions and to receive and impart ideas and information without interference".

Whereas the prohibitions in Chapter 1 of the Constitution seem to be intended to protect natural persons primarily, sections 6, 7 and 10 in my opinion would apply to a legal person. The plaintiffs are the publishers of the Antigua Times Newspaper and would be the legal person to apply for a licence, pay the licence fee and make the deposit under the Acts. Section 2(1) of Act 9/71 provides a penalty for non compliance with it, and the plaintiffs would be liable to such penalty. Similarly section 3(b)(2) of Act 9/71 refers to a penalty and states that <u>any person</u> or <u>company</u> shall be liable to pay the penalty.

It could not be the intention that a natural person in the same circumstances as a corporation would qualify under Section 15 and a legal person (a group of individuals legally bound together) would not.

In my view there is no contrary intention in the Constitution to exclude the plaintiffs from falling under the provisions of Sections 10 and 15. The plaintiffs, in my opinion as a legal person, falls within the ambit of section 15(1) of the Constitution. In the circumstances, the preliminary objection is overruled.

<u>(Sgd) Allan Louisy</u>

(Allen Louisy)

Puisne Judge

No. 4

In the High Court of Justice of Antigua

Plaintiff's Evidence

No. 4

Rueben Henry Harris Examination

RUEBEN HENRY HARRIS

Reuben Henry Harris s.s. I live in St. Mary's Street. I am an economist, in business. I run a Snack Bar. I am a shareholder in the Antigua Times Ltd. I am second largest shareholder, I am a Director of the Board and deputy Chairman. The name of the Company is Antigua Times Ltd. Business of Company is to distribute publish newspapers, the Antigua Times. It started publication in December 1970, it is a bi-weekly paper. It was published from December 1970 - 1971 regularly bi weekly. I contributed articles to each publication. Decision was taken unfortunately to close the newspaper. The reason in the first place is that the Board found that a licensing fee of $600 p.a. plus a bond in cash of $10,000 one had to think of bond in terms of cash, were exhorbitant and it was reckoned it would have taken the Antigua Times Ltd. about 6 months with a circulation of 350,000 newspapers to break even with that amount. The sum of $600 fee is exhorbitant because when one examines the miscellaneous Revenue Provisions Act 291/69 one sees there a chart of the various licences which are paid by more lucrative businesses than a newspaper. I have been in this before. A retail liquor licence within St. John's pays $100 per quarter $400 p.a. Retail liquor licence outside St. John's except Barbuda pays $60 per quarter $240 per annum. A hotel with under 21 beds pays $100 per quarter in Antigua. A Tavern pays $75 per quarter, a Proprietary Club pays $100 per quarter and looking through the list the only business which would compare with newspaper licence will be a hotel with over 21 beds, $150 per quarter. If newspaper made a profit would pay tax on profit. Have not published a newspaper since Act came into force. When the paper began, circulation was about 7,000 copies per week but gradually the popularity and reliability of paper increased to 10,000, it was increasing. The advertising service was increasing especially that of overseas. The newspaper has never been sued for libel. I see certificate shown to me showing Antigua Times as being registered. Antigua Times is registered as a newspaper under the Newspaper Act.

Certificate tendered by consent marked Ex 1.

In the High Court of Justice of Antigua

Plaintiff's Evidence

No. 4

Reuben Henry Harris Cross-examination

Xxd. by Platts-Mills.

The paper was in circulation more than 15 days before the coming into operation of the two Acts (8/71 Newspaper Registration Amendment Act, 1st January, 1972). (The Surety Ordinance 1st January, 1972). Antigua Times if paid fee had a licence. Even if I did not have to apply for a licence, I say Act is unconstitutional, to ask newspaper get leave capitalisation of Company is $20,000 Antigua Times has no machinery. Company could not afford to pay $600 licence. It had to enter into overdraft. From business point of view could not raise $600. The Company did not want to manufacture grievance. Company was aware of ultra vires Acts. Did not want to take advantage of that now. If my Company had paid licence it would not have to apply for a licence. Applying to Court for redress. Newspapers are treated as far as tax is concerned as other businessses. Newspaper Company had no advantages over other businesses. Don't remember if the newspapers are imported into State free of duty. Machinery of Company has given certain concessions on specific list given. Company accepted concession. Machinery was for the Antigua Printing and Publishing Company and not the Antigua Times. Antigua Times does not gain machinery advantage. I cannot say this printing is done for Antigua Times because have got machinery free. There are two Companies. All the shareholders are not common to both, but main shareholders are common to both and directors. Press has access to meeting of Parliament. I don't know about Boards. Don't know statutory defences to newspapers. Closed newspapers because of licence fee of $600 and $10,000 deposit. I don't agree newspaper reporting has fallen to low level in Antigua. I am not aware that any newspaper has attacked anyone recklessly. I saw yesterday's Workers Voice, I did not read it. According to my opinion I cannot say newspapers have been scurrilous. There have been not more than 3 libel actions in 1962. I am aware there are 3 libel actions taken against the Workers Voice. I don't know of damages paid. I heard not paid. I know that all the Islands pay registration fee. In Barbados $240 E.C., in Jamaica £20 Jamaica pounds. Guyana pays I don't remember amount, Trinidad pays $100 p.a. I am in agreement with principle of insurance against

libel. I am not aware of $15,000 amount for libel in Barbados. I agree in principle with licence fee, not application for licence. A normal fee $600 not a normal fee. If $600 normal Antigua Times would be published. I do not remember when Antigua Times got into overdraft. Whether or not cutting my nose to spite my face, it is a type of sacrifice Antigua Times Ltd. is prepared to make to ensure Constitutional rights of the people of Antigua. Did not know whether approach pay and publish was right so prepared to take action and close down and not to licence, though erred on safe side. Constitution of Eastern Caribbean countries nascent felt interpretation would be difficult at this stage, to publish would have erred maybe, prepared to come to Court for guidance. While publishing paper felt we were doing a valuable service for the people of Antigua I did feel our cause as a newspaper, we were men temperate in presentation of the news. Considered duty to carry on, consider higher duty to ensure constitutional rights of our people not infringed.

In the High Court of Justice of Antigua

Plaintiff's Evidence

No. 4

Reuben Henry Harris Cross-examination (continued)

Rexd by Ashe Lincoln -

I took view would not publish newspaper either actual or implied. By that stand rendered better service. Antigua Printing and Publishing Company prints Antigua Times. It has printed Antigua Star. Concession given was granted by the previous Government. No single registration for newspaper as high as $600 a year. Most called registration fee, the highest was Barbados $240 p.a.

Re-examination

Declaration of Antigua Times Ltd. tendered marked Ex. 2.

Case for Plaintiff.

In the High Court of Justice of Antigua

No. 5

Judgment
15th June 1972

No. 5

JUDGMENT

ANTIGUA TIMES LTD. Plaintiff

v.

THE ATTORNEY GENERAL OF ANTIGUA
and
MINISTER OF HOME AFFAIRS OF ANTIGUA
Defendants

Appearances: Ashe Lincoln, Q.C. for the Plaintiff with J.R. Henry, Q.C. and F. Clarke

Platts-Mills, Q.C. for the Defendants with the Attorney General, Lockhart, and S. Christian

Date of Hearing: 24th, 25th May, 1972.
Date of Judgment: 15th June, 1972.

JUDGMENT

LOUISY J.,

The Parliament of Antigua (hereinafter called the "Parliament") passed, in the latter part of 1971, two laws -

(a) The Newspaper Registration (Amendment) Act, 1971, No. 8 of 1971 (hereinafter referred to as Act 8 of 1971);

(b) The Newspaper Surety Ordinance (Amendment) Act 1971, No. 9 of 1971 (hereinafter referred to as Act 9 of 1971).

Both Acts came into operation on 1st January, 1972 and amend respectively The Newspaper Registration Act Cap. 318 and The Newspaper Surety Ordinance Cap. 319 of the Revised Laws of Antigua.

The relevant part of Act No. 8 of 1971 reads as follows:-

"1A. In this Act the word "newspaper" shall have the same meaning as defined in section 2 of the Newspaper Surety Ordinance.

"1B. (1) No person shall publish or cause to be published any newspaper unless he has obtained a licence from the Cabinet in respect of the newspaper published or caused to be published by him and has paid the annual licence fee prescribed by this Act.

Provided that every person who prints or publishes a newspaper registered under the provisions of the Principal Act fifteen days before the commencement hereof and has paid the annual licence fee prescribed by this Act shall be deemed to have been granted a licence.

(2) A licence issued under this section shall be signed by the Secretary to the Cabinet and the person named in the licence as the publisher of the newspaper specified therein shall on or before the 2nd day of January in every year pay into the Treasury the sum of six hundred dollars.

(3) If the publisher of a newspaper to whom a licence has been granted fails to pay the said sum of six hundred dollars on or before the 2nd day of January in every year the licence shall be invalid until such payment has been made.

(4) If any person shall publish or cause to be published any newspaper without holding a valid licence under this section he shall be guilty of an offence and shall on summary conviction be liable to a fine of five hundred dollars for every day on which such newspaper is published."

The relevant part of Act No. 9 of 1971 reads as follows:-

"2. Section 3 of the Principal Law is hereby amended as follows:-

(a) by renumbering the section as

In the High Court of Justice of Antigua

No. 5

Judgment 15th June 1972 (continued)

section 3(1); and

(b) by adding the following as sub-section (2)thereof -

'(2) No person shall print or publish or cause to be printed or published within the State any newspaper unless he shall have previously deposited with the Accountant General a sum of ten thousand dollars in cash to be drawn against in order to satisfy any judgment of the Supreme Court for libel given against the editor or printer or publisher or proprietor of the said newspaper or any writer therein and shall at all times maintain the said deposit at the sum of ten thousand dollars. The deposit aforesaid shall be paid into a deposit account in the name of the depositor and shall bear interest at the same rate payable at the Government Savings Bank;

Provided however that the Minister responsible for newspapers on being satisfied with the sufficiency of the security in the form of a Policy of Insurance or on a guarantee of a Bank may waive the requirement of the said deposit:

Provided further that no amount of the principal sum shall be paid from the deposit account aforesaid or against any policy of Insurance or recovered from the guarantee of the Bank save upon the Certificate of the Registrar of the High Court as to any award of the Court."

The Antigua Times Ltd., a company registered under the Companies Act of Antigua Cap. 358 is the publisher of the Antigua Times Newspaper. The company on the 5th January, 1972 issued a Writ against the Attorney General of Antigua and the Minister of Home Affairs and Labour of Antigua in which the company claims declarations that sub-section 1B(1) of Section 2 of Act 8 of 1971 and subsection (2) of Section 2 of Act 9 of 1971 are ultra vires the Constitution of Antigua in that

the Acts infringe section 10 of the Antigua Constitution Order 1967 (hereinafter called "the Constitution").

At this point I set out below the relevant sections of the Constitution -

"1. Whereas every person in Antigua is entitled to the fundamental rights and freedoms of the individual, that is to say, the right whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect of the rights and freedoms of others and for the public interest to each and all of the following, namely:-

(a) life, liberty, security of the person, the enjoyment of property and the protection of the law;

(b) freedom of conscience, of expression and of peaceful assembly and association; and

(c) respect for his private and family life,

the subsequent provisions of this Chapter shall have effect for the purpose of affording protection to the aforesaid rights and freedoms, subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest".

"10. (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, and for the purposes of this section the said freedom includes the freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence and other means of communication.

(2) Nothing contained in or done under the authority of any law shall be held to be

In the High Court of Justice of Antigua

No. 5

Judgment 15th June 1972 (continued)

inconsistent with or in contravention of this section to the extent that the law in question makes provision --

(a) that is reasonably required -

(i) in the interests of defence, public safety, public order, public morality or public health;

or

(ii) for the purpose of protecting the reputations, rights and freedoms of other persons, or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts or regulating telephony, telegraphy, posts, wireless, broadcasting, television or other means of communication, public exhibitions or public entertainments."

I would like to state at this point that although the Constitution does not expressly provide for the freedom of the press it has been held that this freedom is included in freedom of speech and expression guaranteed by subsection 1 of section 10 (see Brij Bushan v. State of Delhi 1950 S C R 405 (610).

"15. - (1) If any person alleges that any of the provisions of sections 2 to 14 (inclusive) of this Constitution has been, or is being, contravened in relation to him, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress.

(2) The High Court shall have original jurisdiction to hear and determine any application made by any person in pursuance of subsection (1) of this section and may make

such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of the said sections 2 to 14 (inclusive) to the protection of which the person concerned is entitled:

Provided that the High Court may decline to exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law."

"37. Subject to the provisions of this Constitution, Parliament may make laws for the peace, order and good government of Antigua."

"61. - (1) There shall be a Cabinet for Antigua which shall have the general direction and control of the Government of Antigua and shall be collectively responsible therefor to Parliament."

When the hearing of the action began, counsel for the defendants raised a preliminary objection that the plaintiffs have no locus standi before the Court as they are not "a person" for the purposes of section 15 of the Constitution. I overruled this objection on the ground that there is no contrary intention in the Constitution to exclude the plaintiffs from being protected by section 10 and as a legal person, the plaintiffs fall within the ambit of section 15(1). At the time of my ruling I was unable to find direct authority for it. Since then, in my researches for the purpose of this judgment, I have discovered that in the case of Gros Jean, Supervisor of Public Accounts of Louisiana v. American Press Co. Inc. 297 U.S. 244 it was held that a corporation is not a "citizen" within the meaning of the privileges and immunities clause. But a corporation is "a person" within the meaning of the equal protection and due powers of law clauses. This provision is in effect similar to the Protection of Fundamental rights and Freedoms under the Constitution.

In the High Court of Justice of Antigua

No. 5

Judgment 15th June 1972 (continued)

Both counsel submitted to the Court three agreed propositions of law affecting the issues in this case. They are -

(1) Any law the effect of which is that the Cabinet has the right to decide what person shall and what person shall not obtain a licence for a newspaper published or caused to be published by him or what person shall and what person shall not be allowed to register such newspaper by declaration is unconstitutional.

(2) Any law is constitutional which provides for a fee for registration of a newspaper such fee being of a moderate figure in keeping with the established practice in the Caribbean.

(3) Any law is constitutional which provides that no person shall print or publish or cause to be printed or published any newspaper unless he shall have previously deposited with the Accountant General a sum of $10,000 in cash or a bond for the like amount from an established Bank or Insurance Company, to be drawn against in order to satisfy any judgment of the Court for libel against the editor or printer or publisher or proprietor of the newspaper and to be at all times maintained at the sum of $10,000.

I think the word "registration" in proposition 2 should read "licensing" as we are dealing with a licensing fee and not a registration fee.

I will deal with these agreed propositions of law later in this judgment.

Counsel for the plaintiffs submitted that:-

(1) The requirement in subsection 1B(1) of Act No.8 of 1971 of a licence to be granted by the Cabinet or the requirement of a licence before a person can publish a newspaper is a hindrance to publication.

(2) It is unconstitutional to impose upon a newspaper the payment of a sum of money which is penal - in this case $600 per annum

(Section 1B(2) of Act No. 8 of 1971). However, a reasonable or moderate fee would be alright.

(3) The proviso to subsection (2) of Act No. 9 of 1971 is penal and an infringement of the constitutional guarantee in section 10(1) of the Constitution.

Counsel pointed out that prior to the coming into effect of the Constitution, there was the Newspaper Registration Act of 1883, No. 2/1883. This Act required the delivery of a declaration to the Registrar of the Supreme Court before a newspaper was published or printed, but there was no fee payable for the making of such declaration. That in 1909 the Newspaper Surety Ordinance (5/1909) was passed requiring the execution and registration of a bond in the sum of $960 by a person before printing or publishing a newspaper. He stated that matters in Antigua proceeded happily until 1971 when the new Government felt that the Acts should be amended because of actions for defamation in which judgments obtained by plaintiffs in the High Court were not satisfied by the defendants.

Counsel referred to several authorities in support of his submission. I will refer to some of them later in this judgment.

A witness, Reuben H. Harris a director of the Board of Directors of the plaintiff company, stated that the Times Newspaper ceased publication because the plaintiff company felt the licence fee of $600 and the requirement of a deposit or a bond in the sum of $10,000 exhorbitant. He compared the licences paid by more lucrative businesses than a newspaper and gave as examples liquor licences paid by liquor shops and hotels in Antigua varying from $305 per annum - $600 per annum.

Counsel for the defendants submitted that -

(1) the plaintiff is not entitled to any of the reliefs claimed as the plaintiff is not a person who may apply for redress under section 15 of the Constitution in that the plaintiff does not have to apply for a

In the High Court of Justice of Antigua

No. 5

Judgment 15th June 1972 (continued)

licence under Act 8 of 1971. Under the proviso to subsection 1B(1) the plaintiff is deemed to have been granted a licence, as the plaintiff published a newspaper 15 days before the commencement of Act 8 of 1971.

(2) It was not intended that the Cabinet should refuse to grant a licence. On application made to the Cabinet for a licence, the licence is automatically granted and the payment of a licence fee is made afterwards.

(3) the requirement that a lump sum of $10,000 should be paid unless the Minister states a bond may be given is constitutional. Newspaper proprietors are required now to enter into a bond in the sum of $960 before publishing a newspaper.

(4) it is constitutional to charge a moderate fee of $600 for a licence when compared with what other newspapers in the other territories pay.

Counsel contended that every statute is presumed to be within the Constitution unless otherwise proved.

He referred to an authority in support of his submission. I will in the course of this judgment, refer to this authority.

Since the plaintiff has challenged the power of Parliament to enact Acts 8 of 1971 and 9 of 1971, it is necessary to discover at the outset whether Parliament has any authority to pass laws. Section 37 of the Constitution provides as already stated, that "Subject to the provisions of this Constitution, Parliament may make laws for the peace, order and good government of Antigua." The words "subject to the provisions of this Constitution" immediately puts the legislature on its guard that legislation passed by it must not be unconstitutional.

Act 8 of 1971 appears on the face of it to make provision for a person to apply for a licence and for the payment of a licence fee before the publication of a newspaper. There is a penalty for noncompliance with the Act.

As regards Act 9 of 1971, Counsel for the Plaintiff stated that the new Government felt that the existing Acts should be amended because judgments obtained by plaintiffs in actions for defamation were not satisfied. The cross examination by counsel for the defendants of the witness Harris was directed at eliciting that the newspapers published in Antigua were scurrilous and had attacked persons recklessly. That there have been three libel actions in 1962 and no judgments were recovered by the plaintiffs. Section 2 of Act 9 of 1971 appears to have been passed to remedy this situation. This Act also provides for a penalty.

I will now proceed to consider whether the provision of subsection (1) of section 10 of the Constitution was contravened in relation to the plaintiffs. Were the plaintiffs hindered in the enjoyment of their freedom of expression? If they were, there is no suggestion that this was with their consent. The plaintiffs were the publishers of the newspaper, the Antigua Times., It is duly registered according to law. It was a bi-weekly paper. It started with a circulation of 7,000 copies per week and gradually its popularity and reliability increased, and the circulation reached to 10,000 copies. The advertising sector was increasing especially overseas. The plaintiffs claim that Acts 8 of 1971 and 9 of 1971 are ultra vires; that the legislature of Antigua has no power to enact them, further that the Acts infringe the guarantee of freedom of expression provided under subsection 1 of section 10 of the Constitution.

At this stage it is necessary to look at the first proposition of law. I agree with it. It is as follows -

(1) Any law the effect of which is that the Cabinet has the right to decide what person shall and what person shall not obtain a licence for a newspaper published or caused to be published by him or what person shall and what person shall not be allowed to register such newspaper by declaration is unconstitutional.

I now refer to subsection 1B(1) of section 2 of

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Act 8 of 1971 it provides -

> "No person shall publish or cause to be published any newspaper unless he has obtained a licence from the Cabinet in respect of the newspaper published or caused to be published by him and has paid the annual licence fee prescribed by this Act.
>
> Provided that every person who prints or publishes a newspaper registered under the provisions of the Principal Act fifteen days before the commencement hereof and has paid the annual licence fee prescribed by this Act shall be deemed to have been granted a licence."
>
> "(2) A licence issued under this section shall be signed by the Secretary to the Cabinet and the person named in the licence as the publisher of the newspaper specified therein shall on or before the 2nd day of January in every year pay into the Treasury the sum of six hundred dollars."

Counsel for the plaintiff contends that the section gives the Cabinet a discretionary power to grant or refuse a licence to a person applying to publish a newspaper. This he states amounts to a precensorship and is in breach of section 10(1) in that it hinders the plaintiffs in the enjoyment of their freedom of expression as publishers of a newspaper.

In the case of Lovell v. Griffin U.S. Reports Vol. 303 pages 450, 451, on appeal from the Court of Appeal of Georgia. The appellant, Alma Lovell was convicted in the Recorders Court of the City of Griffin Georges (sic) of the violation of a city ordinance which dealt with the practice of distributing circulars, handbooks, advertising and other literature within the city limits without first obtaining written permission from the City Manager of the City of Griffin. Chief Justice Hughes in delivering the opinion of the Court stated as follows at p. 450:-

> "Freedom of speech and freedom of the press, which are protected by the First

Amendment from infringement by Congress, are among the fundamental personal rights and liberties which are protected by the Fourteenth Amendment from invasion by state action."

At page 451 the learned Chief Justice stated as follows:-

"The ordinance prohibits the distribution of literature of any kind at any time, at any place, and in any manner without a permit from the City Manager.

"We think that the ordinance is invalid on its face. Whatever the motive which induced its adoption, its character is such that it strikes at the very foundation of the freedom of the press by subjecting it to licence and censorship. The struggle for the freedom of the press was primarily directed against the power of the licensor. It was against that power that John Milton directed his assault by his 'Appeal for the Liberty of Unlicensed Printing'. And the Liberty of the press became initially a right to publish 'without a license what formerly could be published only with one'. While this freedom from previous restraint upon publication cannot be regarded as exhuasting the guarantee of liberty, the prevention of that restraint was a leading purpose in the adoption of the constitutional provision. (See Patterson v. Colorado, 205 U.S. 454, 462; Near v. Minnesota, 283 U.S. 697, 713 - 716; Grosjean v. American Press Co., 297 U.S. 233, 245, 246). Legislation of the type of the ordinance in question would restore the system of license and censorship in its baldest form."

In re G. Alavandar A.I.R. Vol. 44 1957.5 Madras 427 Ramaswami J. referring at p. 430 to the case of In Gitlow v. State of New York (1923) 69 Law Ed 1138 (W) Sandford J. observed:-

"It is a fundamental principle, long established, that the freedom of speech and of the press, which is secured by the Constitution, does not confer an absolute right to speak or published without responsibility whatever one may choose, or

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an unrestricted licence that gives immunity for every possible use of language and prevents the punishment of those who abuse this freedom. Reasonably limited ..... this freedom is an inestimable privilege in a free Government; without such limitation, it might become the scourge of the republic. That a State in the exercise of its police power, may punish those who abuse this freedom by utterances inimical to the public welfare, tending to corrupt public morals, incite to crime, or disturb the public peace is not open to question. And for yet more imperative reasons, a State may punish utterances endangering the foundations of organised Government and threatening its overthrow by unlawful means. These imperil its own existence as a constitutional State. Freedom of speech and press .. does not protect disturbances of the public peace or the attempt to subvert the Government. It does not protect publications prompting the overthrow of Government by force, the punishment of those who publish articles which tend to destroy organised society being essential to the security of freedom and the stability of the State. By enacting the present statute the State has determined, through its legislative body, that utterances advocating the overthrow of organised Government by force, violence and unlawful means, are so inimical to the general welfare and involve such danger of substantive evil that they may be penalised in the exercise of its police power. We cannot hold that the present statute is an arbitrary or unreasonable exercise of the power of a State unwarrantably infringing the freedom of speech or press; and we must and do sustain its constitutionality."

The learned Judge went on to state -

"Similarly in the words of Blackstone -

"The liberty of the press ... consists in having no previous restraints upon publications and not in freedom from censure for criminal matters when punished." (Blackstone Commentaries Vol. 17, pages 151 - 152).

"As Dicey puts it:

"The simplest way of setting forth broadly the position of writers in the Press is to say that they stand in substantially the same position as letter writers."

The Liberty of the press is a mere application of the principle that no man is liable to be punished or condemned in damages except for a breach of law. Any person may publish what he pleases without obtaining any previous licence subject to the law of libel.

To quote Lord Ellenborough:

"the law of England is the law of liberty, and consistently with this liberty we have not what is called Imprimatur; there is no such preliminary licence necessary but if a man publishes a paper he is exposed to the penal consequences as he is in every other act, if it be illegal". Rex v. Cobbett, (1804) 29 St. Tr 49 (Y); see also the King v. Dean of St. Asaph (1789) 100 ER 657 (Z).

In the words of Lord Mansfield:

"The liberty of the press consists in printing without any previous licence subject to the consequences of law."

"To sum up, liberty of the press as now understood and enjoyed, is of very recent origin. It is not mentioned in the English Petition of Rights. The term itself means only the liberty of publication without the previous permission of the Government, i.e. neither Courts of Justice nor any other Judges whatever are authorised to take notice of writings intended for the press, but are confined to those which are actually printed. The same idea is incorporated in the American Bill of Rights.

There is no licensing or censorship of literature of any kind in times of peace, but the guarantee does not exempt the press

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from the ordinary law of civil and criminal libel, contempt of court, obscenity, or in respect of acts of violence against the State and organised Governments. Thus the freedom of speech and expression in substance is freedom from any provision which even indirectly amounts to censorship. Courts have in general construed freedom of press so as to preserve the fundamental values intended to be protected by the Constitutional provisions protecting them."

The case of Near v. Minnesota 283 U.S. 697 is an authority on the question of previous restraint or censorship violating section 10 of section 1 of the Constitution. There are numerous other authorities on this point but to refer to any more would be like gilding the lily.

I will turn now to an examination of the relevant section of the Act impugned. I bear in mind that if the language of the section is clear and unambiguous then the duty is to give effect to the grammatical meaning and interpretation of the words employed.

Subsection 1B(1) provides that -

(a) No person shall publish or cause to be published any newspaper unless he has obtained a licence from the Cabinet in respect of the newspaper published or cause to be published by him; and

(b) has paid an annual licence fee.

The Ordinance does not state the procedure to be employed to obtain a licence from the Cabinet. I take it that an application would be made in writing to the Cabinet, the Cabinet would consider the application and grant or refuse a licence.

Counsel for the defendants has submitted that the grant of the licence is automatic, an application for a licence is presented to the Cabinet Secretary or the person in the office delegated to receive it, and all that person has to do is to stamp the application and grant the licence. I might appear gullible but not so

gullible as to accept this simple statement of counsel. Section 61 of the Constitution states that the function of the Cabinet is to have the general direction and control of the Government of Antigua; if a law gives the cabinet the power to deal with a matter it must go to Cabinet for a decision. It is clear from the circumstances which provoked the passing of the Acts that Government wished to exercise a certain measure of control over the press. As I have already stated above, Government may pass laws affecting newspapers but those laws must not infringe the provisions of the Constitution.

Subsection (1) of Section 10 of the Constitution provides -

> "Except with his own consent no person shall be hindered in the enjoyment of his freedom of expression, and for the purposes of this section the said freedom includes the freedom to hold opinions and to receive and impart ideas and information without interference and freedom from interference with his correspondence and other means of communication."

Subsection 10(1) is subject to subsection (2) which provides that -

> "Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision -
>
> (a) that is reasonably required -
>
> (i) in the interests of defence, public safety, public order, public morality or public health, or
>
> (ii) for the purpose of protecting the reputations, rights and freedoms of other persons, or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the

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courts, or regulating telephony, telegraphy, posts, wireless broadcasting, television or other means of communication, public exhibitions or public entertainment; or

(b) that imposes restrictions upon public officers."

I am unable to accept that the precensorship or restraint in subection (1) of section 2 1B is reasonably required for any of the purposes mentioned in subsection (2) of section 10. The limitations therein do not save subsection 1B(1) from its unconstitutionality.

In the light of the authoritative pronouncements I have referred to above, in my view the provision that a licence should be obtained from the Cabinet to be able to publish a newspaper amounts to a hindrance or previous restraint in the enjoyment of freedom of expression, is a precensorship, and therefore infringes section 10(1) of the Constitution. The authorities I have referred to clearly show that the provision for obtaining a licence from the Cabinet in section 2 1B(1) is unconstitutional and I so hold.

I repeat here the words of Madholkar, J. in the case of Sakal Papers (P) Ltd. v. Union of India, AIR 1962 S.S. 305 in delivering the judgment of the Court. This judgment dealt with legislation restricting the circulation of newspapers. The Judge stated there as follows -

"Whether to allow an additional supplement or not would depend on the sweet will and pleasure of Government and this would necessarily strike at the root of the independence of the press."

In Antigua whether to grant a licence or not under subsection 1B(1) of section 2 would be dependent on the sweet will and pleasure of the Cabinet and this would necessarily strike at the root of freedom of expression according to the authorities cited.

It was argued by counsel for the defendants that the plaintiffs had no standing as to the

reliefs claimed inasmuch as they do not have to apply for a licence from the Cabinet to publish; that under subsection 1B(2) they are deemed to have been granted a licence under the Act as they were publishing a newspaper fifteen days before its commencement. I do not think there is any merit in this argument. The Plaintiffs' case is that the legislation to obtain a licence is unconstitutional; and it is also unconstitutional for the legislature to deem that they have been granted a licence under the Act. The plaintiffs' stand on this matter is that it is their right to publish a newspaper without the authority of the legislature, that right they say is guaranteed under section 10(1) of the Constitution and the legislature has no authority to interfere with that right.

However, assuming that counsel's argument is correct, which it is not, the plaintiffs are a company, with one of their objects being -

> "To start, acquire, print, publish and circulate, or otherwise deal with any newspaper or newspapers, or other publications and generally to carry on the business of newspaper proprietors and general publishers."

The plaintiffs may wish to acquire, print, publish and circulate newspapers other than the Antigua Times. Could it still be argued in view of such objects, that the plaintiffs have no standing as to the relief claimed? Of course the answer is no, and I dispose of this argument without saying more.

I shall now proceed to consider the second agreed proposition of law, that is -

> "Any law is constitutional which provides for a fee for registration of a newspaper, such fee being of a moderate figure in keeping with the established practice in the Caribbean."

I disagree with it for the following reasons.

An examination of the component parts of

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this general proposition of law will best demonstrate whether or not it is a tenable one.

(i) "Any law is constitutional which provides for a fee for registration of a newspaper."

It can hardly be sufficient to say that legislation in relation to newspapers is constitutional because it has the attribute of prescribing a fee for registration of a newspaper. I take this view for the reason that the proposition as framed presupposes that there is vested in the legislature a power to enact provisions which impose a charge.

It is a fundamental principle that the constitutionality of any given piece of legislation depends upon whether or not it was intra vires the legislature to enact that legislation. This is the principle by which the Courts have been guided when called upon to construe the validity of legislative provisions which impose a fee or a levy.

In Gallagher v. Lynn [1937] A.C.863 Lord Atkin observed that:-

> "It is well established that you are to look at the 'true nature and character of the legislation"; 'the pith and substance of the legislation'. If, on the view of the statute as a whole, you find that the substance of the legislation is within the express powers, then it is not invalidated if incidentally it affects matters which are outside the authorised field. The legislation must not under the guise of dealing with one matter in fact encroach upon the forbidden field. Nor are you to look only at the object of the legislator. An act may have a perfectly lawful object, e.g. to promote the health of the inhabitants, but may seek to achieve that object by invalid methods, e.g., a direct prohibition of any trade with a foreign country. In other words, you may certainly consider the clauses of an Act to see whether they are passed in respect of the forbidden subject."

Again in Lilleyman v. I.R. Com. Vol.13 W.I.R. 241, 242 Cummings J. in a judgment affirmed by the British Caribbean Court of Appeal enunciated the principle as follows:-

> "The constitution of British Guiana is a written document. It provides the organic or fundamental law with reference to which the validity of laws enacted by the legislature are to be tested. A law enacted by the legislature cannot transgress or violate the provisions of the fundamental law."

It is therefore evident that the power of the legislature to impose the fee cannot be presupposed. The existence of the power must be established by examination of the legislation, to determine the precise nature or character of the fee levied, and then by reference to the general grant of legislative powers as contained in a Constitution, or otherwise, to determine whether or not the legislature had the power to impose a fee of that nature.

Only if it can be found that the fee imposed is of the nature or character which it was within the power of the legislature to prescribe can it be said that the law which provides for the fee is constitutional.

I come to the second arm of the proposition -

> "Such fee being of a moderate figure in keeping with the established practice in the Caribbean."

Inherent in the second arm are the following:-

(a) That the test of the valid exercise of the power is whether or not the fee charged is moderate.

(b) That to determine what is moderate regard must be had to what is the prevailing practice in the Caribbean.

Once it is found that there is conferred upon the legislature a power to impose a charge with respect to the registration of a newspaper and

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that the provisions of the legislation fall within and are authorised by the power, the Court cannot look into the question of the size of the fee. The question of "Quantum" is a matter of policy which is strictly within the discretion of the law-making body.

The principle was considered in Magnamo Co. v. Hamilton 292 U.S. 40.45. The opinion of the Court was that the validity of legislative provisions imposing a tax lawfully within the power of the legislature could not be challenged through the Courts on the ground that the tax was excessive. I quote -

> "The point may be conceded that the tax is so excessive that it may or will result in destroying the intrastate business of appellant; but that is precisely that point which was made in the attack upon the validity of the ten per cent tax imposed upon the notes of state banks involved in Veazie Bank v. Fenno, 8 Wall. 533, 548. This court there disposed of it by saying that the courts were without authority to prescribe limitations upon the exercise of the acknowledged powers of the legislative departments. 'The power to tax may be exercised oppressively upon persons, but the responsibility of the legislature is not to the courts, but to the people by whom its members are elected'. Again, in the McCray case, supra, answering a like contention this court said (p.59) that the argument rested upon the proposition 'that although the tax be within the power, as enforcing it will destroy or restrict the manufacture of artificially coloured oleomargarine, therefore the power to levy the tax did not obtain. This, however, is but to say that the question of power depends, not upon the authority conferred by the Constitution, but upon what may be the consequence arising from the exercise of the lawful authority'. And it was held that if a tax be within the lawful power of the legislature the exertion of the power may not be restrained because of the results to arise from its exercise."

"In Alaska Fish Co. v. Smith, supra, 48-49, a statute of Alaska levying a heavy license tax upon persons manufacturing fish oil, etc., was upheld as constitutional against the contention that it would prohibit and confiscate plaintiff's business. 'Even if the tax', the court said 'should destroy a business it would not be made invalid or require compensation upon that ground alone. Those who enter upon a business take that risk ..... The acts must be judged by their contents not by the allegations as to their purpose in the complaint. We know of no objection to exacting a discouraging rate as the alternative to giving up a business, when the legislature has the full power of taxation."

At p.47 of the Report, it is observed that the discretion of Congress could not be controlled or limited by the Courts because the latter might deem the incidence of the tax oppressive or even destructive.

I adopt these statements and conclude that the test referred to in (a) above is not one which the Court can apply to determine the validity of the provision for payment of a licence fee.

Consequently, it is unnecessary to consider the merit of the means of determining what is moderate save that it further emphasises that the "moderate figure" test is not one which the Court can entertain.

As regards the question of prevailing practice in the Caribbean, the legislative power of any State governs that State alone, and can only be exercised in relation to the State whose fundamental law it is. To hold that the established practice in the Caribbean can be relevant to the test whether or not given provisions enacted by the legislature of a State are valid is to conclude that in the exercise of its legislative power the discretion of the legislature of one State can properly be limited and controlled by what other legislatures have regarded as being necessary to meet the

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needs and requirements of their own communities. This is a limitation on the exercise of the legislative power which is external to the fundamental law of the State and cannot properly be invoked.

For the above reasons I conclude that the proposition is not tenable as a general proposition of law. I would substitute the following in lieu thereof -

> "Any law which provides for a licence fee the nature of which falls within the taxing powers of the legislature is constitutional unless such law is so arbitrary as to compel the conclusion that it does not involve an exertion of the taxing power but constitutes in substance and effect, the direct execution of a different and forbidden power".

I proceed to consider subsection (2) of section 2 1B of Act 8 of 1971; it reads as follows -

> "A licence issued under this section shall be signed by the Secretary to the Cabinet and the person named in the licence as the publisher of the newspaper specified therein shall on or before the 2nd day of January in every year pay into the Treasury the sum of six hundred dollars."

In view of subsection 1 of section 10 of the Constitution, does such a law fall within the taxing power of the legislature?

The provision in section 10(1) is in my view of similar effect as the First Amendment to the Federal Constitution of the United States of America which provides that "Congress shall make no law ... abridging the freedom of speech, or of the press ..." There is no similar provision to subsection (2) of section 10 in the Federal Constitution of the United States of America, but there is authority which states that the provision of the First Amendment is not a restraint upon the powers of the States. In considering a State licence tax in the case of Grosjean, Supervisor of Public Accounts of Louisiana v. American Press Co.

Inc. 297 United States Reports at p.250 the opinion of the Court was that -

> "It is not intended by anything we have said to suggest that the owners of newspapers are immune from any of the ordinary forms of taxation for support of the government. But this is not an ordinary form of tax, but one single in kind, with a long history of hostile misuse against the freedom of the press."

It is observed that Act 8 of 1971 speaks of a licence fee. Whether it is called a licence fee, a tax, or a charge is not important to the question under consideration if subsection (1) of section 10 of the Constitution is contravened.

Counsel for the defendants submitted that the licence fee of $600 was constitutional as it is a moderate fee and it is in keeping with fees charged in the different territories of the Eastern Caribbean, and that the fee charged was for licence to publish. I have already dealt with the question of moderate fee. The point here is, can the legislature enact a law providing for a licence fee?

I will refer to some authorities on this point. In the case of Grosjean, Supervisor of Public Accounts of Louisiana v. American Press Co. Inc. already referred to in the State of Louisiana passed an Act which provided for a licensing of the press and payment of a gross receipts tax on the portion of the revenues of the press received from the sale and publication of advertising. The Supreme Court of the United States held as follows:-

(1) "A State license tax (La. Act No. 23 of July 12, 1934) imposed on the owners of newspapers for the privilege of selling or charging for the advertising therein, and measured by a percent of the gross receipts from such advertisements, but applicable only to newspapers enjoying a circulation of more than 20,000 copies per week, held unconstitutional."

(2) "From the history of the subject it is

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plain that the English rule restricting freedom of the press to immunity from censorship before publication was not accepted by the American Colonists, and that the First Amendment was aimed at any form of previous restraint upon printed publications or their circulation, including restraint by taxation of newspapers and their advertising, which were well known and odious methods still used in England when the First Amendment was adopted."

Mr. Justice Sutherland who delivered the opinion of the Court in the case stated at page 242 as follows:-

"The validity of the act is assailed as violating the Federal Constitution in two particulars, the one relevant to the case being that it abridges the freedom of the press in contravention of the due process clause contained in paragraph 1 of the Fourteenth Amendment.

"The first point presents a question of the utmost gravity and importance; for, if well made, it goes to the heart of the natural right of the members of an organized society, united for their common good, to impart and acquire information about their common interests. The First Amendment to the Federal Constitution provides that 'Congress shall make no law ... abridging the freedom of speech, or of the press ..." While this provision is not a restraint upon the powers of the states, the states are precluded from abridging the freedom of speech or the press by force of the due process clause of the Fourteenth Amendment."

At page 245 of the same authority, the learned Judge gives a history of this type of legislation. It is somewhat lengthy but I think it well worth repetition in the circumstances of this case:-

"A determination of the question whether the tax is valid in respect of the point now under review, requires examination of the history and circumstances which antedated and

attended the adoption of the abridgement clause of the First Amendment, since that clause expresses one of those 'fundamental principles of liberty and justice which lie at the base of all our civil and political institutions' (Hebert v. Louisiana, 272 U.S. 312, 316), and, as such is embodied in the concept 'due process of law' (Twining v. New Jersey 211 U.S. 78, 99), and, therefore, protected against hostile state invasion by the due process clause of the Fourteenth Amendment (Cf. Powell v. Alabama, supra, pp. 67-68). The history is a long one; but for present purposes it may be greatly abbreviated.

For more than a century prior to the adoption of the amendment - and, indeed, for many years thereafter - history discloses a persistent effort on the part of the British government to prevent or abridge the free expression of any opinion which seemed to criticize or exhibit in an unfavorable light, however truly, the agencies and operations of the government. The struggle between the proponents of measures to that end and those who asserted the right of free expression was continuous and unceasing. As early as 1644 John Milton, in an 'Appeal for the Liberty of Unlicensed Printing' assailed an act of Parliament which had just been passed providing for censorship of the press previous to publication. He vigorously defended the right of every man to make public his honest views 'without previous censure'; and declared the impossibility of finding any man base enough to accept the office of censor and at the same time good enough to be allowed to perform its duties, Collett, History of the Taxes on Knowledge, Vol. I, pp.4-6. The act expired by its own terms in 1695. It was never renewed; and the liberty of the press thus became as pointed out by Wickwar (The Struggle for the Freedom of the Press p.15), merely 'a right or liberty to publish without a license what formerly could be published only with one'. But mere non-exemption from previous censorship was soon recognized as too narrow a view of the liberty of the press.

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In 1712, in response to a message from Queen Anne (Hansard's Parliamentary History of England, vol. 6 p. 1063), Parliament imposed a tax upon all newspapers and upon advertisements, Collett, vol. 1, pp. 8-10. That the main purpose of these taxes was to suppress the publication of comments and criticisms objectionable to the Crown does not admit of doubt. Stewart, Lennox and the Taxes on Knowledge, 15 Scottish Historical Review, 322-327. There followed more than a century of resistance to, and evasion of the taxes, and of agitation for their repeal. In the article last referred to (p.326), which was written in 1918, it was pointed out that these taxes constituted one of the factors that aroused the American colonists to protest against taxation for the purposes of the home government and that the revolution really began when, in 1765, that government sent stamps for newspaper duties to the American colonies.

These duties were quite commonly characterized as 'taxes on knowledge', a phrase used for the purpose of describing the effect of the exactions and at the same time condemning them. That the taxes had, and were intended to have, the effect of curtailing the circulation of newspapers and particularly the cheaper ones whose readers were generally found among the masses of the people, went almost without question, even on the part of those who defended the act. May (Constitutional History of England, 7th ed., vol. 2, p. 245) after discussing the control by 'previous censure' says ..... A new restraint was devised in the form of a stamp duty on newspapers and advertisements - avowedly for the purpose of repressing libels. This policy, being found effectual in limiting the circulation of cheap papers, was improved upon in the two following reigns, and continued in high esteem until our own time." Collegg (vol. I, p.14), says 'Any man who carried on printing, or published for a livelihood was actually at the mercy of the Commissioners of Stamps, when they chose to exert their powers'.

Quotations of similar import might be multiplied many times; but the foregoing is enough to demonstrate beyond peradventure that in the adoption of the English newspaper stamp tax and the tax on advertisements, revenue was of subordinate concern; and that the dominant and controlling aim was to prevent, or curtail the opportunity for, the acquisition of knowledge by the people in respect of their governmental affairs. It is idle to suppose that so many of the best men of England would for a century of time have waged, as they did, stubborn and often precarious warfare against those taxes if a mere matter of taxation had been involved. The aim of the struggle was not to relieve taxpayers from a burden, but to establish and preserve the right of English people to full information in respect of the doings or misdoings of their government. Upon the correctness of this conclusion the very characterization of the exactions as 'Taxes on knowledge' sheds a flood of corroborative light. In the ultimate, an informed and enlightened public opinion was the thing at stake; for, as Erskine, in his great speech in defence of Paine, has said, 'The liberty of opinion keeps governments themselves in due subjection to their duties'. (Erskine's Speeches, High's ed., vol. I, p. 525. See May's Constitutional History of England, 7th ed., vol. 2, pp. 238 - 245).

In 1785 only four years before Congress had proposed the First Amendment, the Massachusetts legislature, following the English example, imposed a stamp tax on all newspapers and magazines. The following year an advertisement tax was imposed. Both taxes met with such violent opposition that the former was repealed in 1786, and the latter in 1788. Duniway, Freedom of the Press in Massachusetts, pp.136-137.

The framers of the First Amendment were familiar with the English struggle, which then had continued for nearly eighty years and was destined to go on for another sixty-five years, at the end of which time it culminated in a lasting abandonment of the

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obnoxious taxes. The framers were likewise familiar with the then recent Massachusetts episode; and while that occurrence did much to bring about the adoption of the amendment (see Pennsylvania and the Federal Constitution, 1888, p. 181) the predominant influence must have come from the English experience. It is impossible to concede that by the words 'freedom of the press' the framers of the amendment intended to adopt merely the narrow view then reflected by the law of England that such freedom consisted only in immunity from previous censorship; for this abuse had then permanently disappeared from English practice. It is equally impossible to believe that it was not intended to bring within the reach of these words such modes of restraint as were embodied in the two forms of taxation already described. Such belief must be rejected in the face of the then well known purpose of the exactions and the general adverse sentiment of the colonies in respect of them. Undoubtedly, the range of a constitutional provision phrased in terms of the common law sometimes may be fixed by recourse to the applicable rules of that law. But the doctrine which justifies such recourse, like other canons of construction, must yield to more compelling reasons whenever they exist. (Cf. Continental Illinois Nat. Bank v. Chicago R.I. & P. Ry. Co. 294 U.S. 648, 668-669). And, obviously, it is subject to the qualification that the common law rule invoked shall be one not rejected by our ancestors as unsuited to their civil or political conditions. (Murray's Lessee v. Hoboken Land & Improvement Co., 18 How. 272) 276-277; Waring v. Clarke, 5 How.441, 454-457; Powell v. Alabama, supra, pp.60-65).

In the light of all that has now been said, it is evident that the restricted rules of the English law in respect of the freedom of the press in force when the Constitution was adopted were never accepted by the American colonists, and that by the First Amendment it was meant to preclude the national government, and by the Fourteenth Amendment to preclude the states, from

adopting any form of previous restraint upon printed publications, or their circulation, including that which had theretofore been effected by these two well-known and odious methods".

After giving this brief history the learned Judge continued thus -

"This court had occasion in Near v. Minnesota, supra, at pp. 713 et seq., to discuss at some length the subject in its general aspect. The conclusion there stated is that the object of the constitutional provisions was to prevent previous restraint on publication; and the court was careful not to limit the protection of the right to any particular way of abridging it. Liberty of the press within the meaning of the constitutional provision it was broadly said (p.716) meant 'principally although not exclusively, immunity from previous restraints or (from) censorship'.

Judge Cooley has laid down the test to be applied -

"The evils to be prevented were not the censorship of the press merely, but any action of the government by means of which it might prevent such free and general discussion of public matters as seems absolutely essential to prepare the people for an intelligent exercise of their rights as citizens". (2 Cooley's Constitutional Limitations, 8th ed., p.886).

It is not intended by anything we have said to suggest that the owners of newspapers are immune from any of the ordinary forms of taxation for support of the government. But this is not an ordinary form of tax, but one single in kind, with a long history of hostile misuse against the freedom of the press.

The predominant purpose of the grant of immunity here invoked was to preserve an untrammelled press as a vital source of public information. The newspapers, magazines and other journals of the country, it is safe

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> to say, have shed and continue to shed, more light on the public and business affairs of the nation than any other instrumentality of publicity; and since informed public opinion is the most potent of all restraints upon misgovernment, the suppression or abridgement of the publicity afforded by a free press cannot be regarded otherwise than with grave concern. The tax here involved is bad not because it takes money from the pockets of the appellees. If that were all, a wholly different question would be presented. It is bad because, in the light of its history and of its present setting, it is seen to be a deliberate and calculated device in the guise of a tax to limit the circulation of information to which the public is entitled in virtue of the constitutional guaranties. A free press stands as one of the great interpreters between the government and the people. To allow it to be fettered is to fetter ourselves.
>
> In view of the persistent search for new subjects of taxation, it is not without significance that, with the single exception of the Louisiana statute, so far as we can discover, no state during the one hundred fifty years of our national existence has undertaken to impose a tax like that now in question."

I adopt the statements in the penultimate paragraph above.

It may well be that if the brief history which I have repeated above was within the knowledge of the legislature, paragraph 2 of sub-section 1B might not have been enacted. However that may be I pass on to the next authority.

In Murdock v. Pennsylvania (City of Jeannette) 319 U.S. a case in which an ordinance provided in part:

> "That all persons canvassing for or soliciting within said Borough, orders for goods, paintings, pictures, wares, or merchandise of any kind, or persons

delivering such articles under orders, so obtained or solicited, shall be required to procure from the Burgess a licence to transact said business and shall pay to the Treasurer of said Borough therefor the following sums according to the time for which said license shall be granted."

It was held that -

(1) A municipal ordinance which, as construed and applied, requires religious colporteurs to pay a license tax as a condition to the pursuit of their activities, is invalid under the Federal Constitution as a denial of freedom of speech, press and religion.

(2) A State may not impose a charge for the enjoyment of a right granted by the Federal Constitution.

At p.112 et seq. Mr. Justice Douglas who delivered the opinion of the Court stated -

"It is contended, however, that the fact that the license tax can supress or control this activity is unimportant if it does not do so. But that is to disregard the nature of this tax. It is a license tax - a flat tax imposed on the exercise of a privilege granted by the Bill of Rights. A state may not impose a charge for the enjoyment of a right granted by the Federal Constitution. Thus it may not exact a license tax for the privilege of carrying on interstate commerce (McGoldrick v. Berwind-White Co., 309 U.S. 33, 56-58), although it may tax the property used in, or the income derived from, that commerce, so long as those taxes are not discriminatory. (Id., p.47 and cases cited). A license tax applied to activities guaranteed by the First Amendment would have the same destructive effect. It is true that the First Amendment, like the commerce clause, draws no distinction between license taxes, fixed sum taxes, and other kinds of taxes. But that is no reason why we should shut our eyes to the nature of the tax and its destructive influence. The power to impose

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a license tax on the exercise of those freedoms is indeed as potent as the power of censorship which this Court has repeatedly struck down. (Lovell v. Griffin, 303 U.S. 444; Schneider v. State, supra; Cantwell v. Connecticut, 310 U.S. 296, 306; Largent v. Tecas, 318 U.S. 418; Jamison v. Texas, supra."

"In all of these cases the issuance of the permit or license is dependent on the payment of a license tax. And the license tax is fixed in amount and unrelated to the scope of the activities of petitioners or to their realized revenues. It is not a nominal fee imposed as a regulatory measure to defray the expenses of policing the activities in question. It is in no way apportioned. It is a flat license tax levied and collected as a condition to the pursuit of activities whose enjoyment is guaranteed by the First Amendment. Accordingly, it restrains in advance those constitutional liberties of press and religion and inevitably tends to suppress their exercise. That is almost uniformly recognized as the inherent vice and evil of this flat license tax. As stated by the Supreme Court of Illinois in a case involving the same sect and an ordinance similar to the present one, a person cannot be compelled 'to purchase, through a license fee or a license tax, the privilege freely granted by the constitution'. Blue Island v. Kozul, 379 III. 511, 519, 41 N.E. 2d 515.

I refer to one more authority on this point Follet v. Town of McCormick 321 U.S. This is another case on the imposition of a licence tax. Mr. Justice Douglas at page 575 of the Opinion of the Court stated:-

"Freedom of press, freedom of speech, freedom of religion are in a preferred position." (Murdock v. Pennsylvania, supra, p.115). "We emphasized that the 'inherent vice and evil' of the flat license tax is that 'it restrains in advance those constitutional liberties' and 'inevitably tends to suppress their exercise'"

At page 577 he continued:-

> "The exaction of a tax as a condition to the exercise of the great liberties guaranteed by the First Amendment is as obnoxious (Grosjean v. American Press Co., supra; Murdock v. Pennsylvania, supra) as the imposition of a censorship or a previous restraint. Near v. Minnesota, 283 U.S.697. For, to repeat, 'the power to tax the exercise of a privilege is the power to control or suppress its enjoyment'" Murdock v. Pennsylvania, supra, p.112.

From the authorities cited on this point, it is clear that this law which provides for a licence fee does not fall within the taxing powers of the legislature and it is therefore unnecessary to consider the second arm of the proposition I have set out above. Subsection 1B(1) of section 2 makes it quite clear that before a person can publish a newspaper he has to pay an annual licence fee. On the strength of the authorities I have referred to, in my view, the exaction of a tax as a condition for the publication of a newspaper is a hindrance in the enjoyment of a person's freedom of expression as guaranteed by section 10(1) of the Constitution and is therefore unconstitutional.

It cannot be claimed on behalf of the State that subsection 1B(1) of section 2 of Act 8 of 1971 can be justified by any of the circumstances set out in subsection (2)(a) and (b) of section 10.

I now come to the third agreed proposition, and I say at once that it is not a correct proposition of law, and with all deference to counsel I disagree with it. The proposition is as follows:-

> "Any law is constitutional which provides that no person shall print or publish or cause to be printed or published any newspaper unless he shall have previously deposited with the Accountant General a sum of $10,000 in cash or a bond for the like amount from an established Bank or Insurance Company, to be drawn against in order to satisfy any judgment of the Court for libel against the editor or printer or publisher

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or proprietor of the newspaper and to be at all times maintained at the sum of $10,000."

What both counsel say in substance is that they agree with subsection (2) of section 2 of Act 9 of 1971. Subsection (2) is as follows:-

"(2) No person shall print or publish or cause to be printed or published within the State any newspaper unless he shall have previously deposited with the Accountant-General a sum of ten thousand dollars in cash to be drawn against in order to satisfy any judgment of the Supreme Court for libel given against the editor or printer or publisher or proprietor of the said newspaper or any writer therein and shall at all times maintain the said deposit at the sum of ten thousand dollars. The deposit aforesaid shall be paid into a deposit account in the name of the depositor and shall bear interest at the same rate payable at the Government Savings Bank:

Provided however that the Minister responsible for newspapers on being satisfied with the sufficiency of the security in the form of a Policy of Insurance or on a guarantee of a Bank may waive the requirement of the said deposit:

Provided further that no amount of the principal sum shall be paid from the deposit account aforesaid or against any Policy of Insurance or recovered from the guarantee of the Bank save upon the Certificate of the Registrar of the High Court as to any award of the Court."

To accept such a proposition of law is -

(a) to say that the legislature can pass such a law;

(b) To disregard the provisions of subsection 1 of section 10 of the Constitution; and

(c) to disregard local authorities on the matter.

The section provides that before any person

can print, publish or cause to be printed or published a newspaper, that person must deposit with the Accountant General the sum of $10,000 in cash. However, the Minister responsible for newspapers may, if satisfied with the sufficiency of a Policy of Insurance or a Bank guarantee, waive the requirement of the deposit of $10,000. I will deal with this provision in two parts -

(1) the deposit of $10,000; and

(2) Security in the form of a Policy of Insurance or a Bank guarantee.

The deposit of the $10,000 is a fund from which judgments for libel against the editor, printer, publisher or proprietor of a newspaper will be satisfied. What motivated this piece of legislation it was submitted is because judgments in libel actions in recent times were not satisfied as the defendants were persons of straw. Further that some newspapers in the State were scurrilous and attacked persons recklessly. Assuming there is some truth in what I have stated, and the motive of the legislature is a good one, can the legislation requiring a deposit of $10,000 stand?

In the case of Express Newspapers (Private) Ltd. v. Union of India, 1959 S C R 12 (AIR 1958/ SC 578) referred to in the judgment of the Court in the case of Sakal Papers Ltd. v. India, delivered by Mudholka J., the Court stated as follows (p.14):-

> "This Court has laid down that while there is no immunity to the press from the operation of the general laws it would not be legitimate to subject the press to laws which take away or abridge the freedom of speech and expression or adopt measures calculated and intended to curtail circulation and thereby narrow the scope of dissemination of information or fetter its freedom to choose its means of exercising the right or would undermine its independence by driving it to seek Government aid. This Court further pointed out that a law which lays upon the Press excessive and prohibitive burdens which would restrict the

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circulation of a newspaper would not be saved by Art.19(2) of the Constitution."

In the same Sakal case, a case involving circulation and publication, the same Judge stated -

"It must be borne in mind that the Constitution must be interpreted in a broad way and not in a narrow and pedantic sense. Certain rights have been enshrined in our Constitution as fundamental and therefore, while considering the nature and content of those rights the Court must not be too astute to interpret the language of the Constitution in so literal a sense as to whittle them down. On the other hand the Court must interpret the Constitution in a manner which would enable the citizen to enjoy the rights guaranteed by it in the fullest measure subject, of course, to permissible restrictions. Bearing this principle in mind it would be clear that the right to freedom of speech and expression carried with it the right to publish and circulate one's ideas, opinions and views with complete freedom and by resorting to any available means of publication subject again to such restrictions as could be legitimately imposed under cl.(2) of Art.19. The first decision of this Court in which this was recognised is Ramesh Thapper v. State of Madras, 1950 SCR 594; (AIR 1950 SC 124). There, this Court held that freedom of speech and expression includes freedom of propagation of ideas and that this freedom is ensured by the freedom of circulation. In that case this Court has also pointed out that freedom of speech and expression are the foundation of all democratic organisations and are essential for the proper functioning of the processes of democracy. There and in other cases this Court pointed out that very narrow and stringent limits have been set to permissible legislative abridgement of the right of freedom of speech and expression. In State of Madras v. V.G.Row, 1952 SCR 597: (AIR 1952 SC 196), the question of the reasonableness of restrictions which could

be imposed upon a fundamental right has been considered. This Court has pointed out that the nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and scope of the evil sought to be remedied thereby, the disproportion of the imposition and the prevailing conditions at that time should all enter into the judicial verdict. In Swarkadas Shrinivas v. Sholapur Spinning and Weaving Co. Ltd. 1954 SCR 674 AIR in construing the Constitution it is the substance and the practical result of the act of the State that should be considered rather than its purely legal aspect. The correct approach in such cases should be to enquire as to what in substance is the loss or injury caused to the citizen and not merely what manner and method has been adopted by the State in placing the restriction. In Virendra v. State of Punjab 1958 SCR 308 ((S) AIR 1957 SC 896), this Court has observed at p. 319 (of SCR): (at p.900 of AIR), as follows:-

'It is certainly a serious encroachment on the valuable and cherished right of freedom of speech and expression if a newspaper is prevented from publishing its own or the views of its correspondents relating to or concerning what may be the burning topic of the day.'

Later on in the judgment the Judge stated -

"The right to freedom of speech and expression is an individual right guaranteed to every citizen by Art. 19(1)(a) of the Constitution. There is nothing in cl.(2) of Art.19 which permits the State to abridge this right on the ground of conferring benefits upon the public in general or upon a section of the public. It is not open to the State to curtail or infringe the freedom of speech of one for promoting the general welfare of a section or a group of people unless its action could be justified under a law competent under cl.(2) of Art.19".

It should be pointed out that Article 19 clauses (1)(a) and (2) which deal with protection of freedom of expression in the Constitution of India, are in effect similar to section 10 of the Antigua Constitution.

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The legislature by enacting Act 9 of 1971 has told the Antigua Times Ltd., using ordinary language, the following - "Mr. Antigua Times, you are publishing the Antigua Times Newspaper if you wish to continue publishing it in 1972, you must make a deposit of $10,000 in cash to satisfy any libel you might publish in the near or distant future."

Here is a newspaper which was being published since 1970 with no hindrance in the enjoyment of its freedom of expression guaranteed under subsection 10(1) of the Constitution, being asked to make a deposit of $10,000 to satisfy judgments for libels it might publish. The question is, can the legislature so legislate?

The case of Near v. Minnesota Ex. Rel. Olson County Attorney 283 U.S. 697 throws some light on this. In this case a Minnesota statute declared:

> "That one who engages 'in the business of regularly and customarily producing, publishing, etc., 'a malicious, scandalous and defamatory newspaper, magazine or other periodical', is guilty of a nuisance and authorizes suits, in the name of the State, in which such periodicals may be abated and their publishers enjoined from future violations. In such a suit malice may be inferred from the fact of publication. The defendant is permitted to prove, as a defence, that his publications were true and published 'with good motives and for justifiable ends'. Disobedience of an injunction is punishable as a contempt. Held, unconstitutional, as applied to publications charging neglect of duty and corruption upon the part of law-enforcing officers of the State."
>
> Further held -
>
> (1) A statute authorizing such proceedings in restraint of publication is inconsistent with the conception of the liberty of the press as historically conceived and guaranteed.
>
> (2) The chief purpose of the guaranty is to

prevent previous restraints upon publication. The libeler, however, remains criminally and civilly responsible for his libels.

(3) The fact that the liberty of the press may be abused by miscreant purveyors of scandal does not make any the less necessary the immunity from previous restraints in dealing with official misconduct.

On this point see also Oliver and Another v. Buttigieg 2 A.E.R. 1966.459.

Lest it may be thought that there are no limitations upon the immunity from previous restraint of the press, I refer to the opinion in the authority which I have just mentioned beginning at p.715 -

"The objection has also been made that the principle as to immunity from previous restraint is stated too broadly, if every such restraint is deemed to be prohibited. That is undoubtedly true; the protection even as to previous restraint is not absolutely unlimited. But the limitation has been recognised only in exceptional cases: 'When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and that no court could regard them as protected by any constitutional right'. Schenck v. United States, 249 U.S. 47,52. No one would question but that a government might prevent actual obstruction to its recruiting service or the publication of the sailing dates of transports or the number and location of troops. On similar grounds, the primary requirements of decency may be enforced against obscene publication. The security of the community life may be protected against incitements to acts of violence and the overthrow by force of orderly government. The constitutional guaranty of free speech does not 'protect a man from an injunction against uttering words that may have all the effect of force, Gompers v. Buck Stove & Range Co.,

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Judgment 15th June 1972 (continued)

221 U.S. 418, 439'. Schenck v. United States, supra. These limitations are not applicable here. Nor are we now concerned with questions as to the extent of authority to prevent publications in order to protect private rights according to the principles governing the exercise of the jurisdiction of courts of equity."

From the authorities I have referred to on this point, I am of the opinion that the deposit of $10,000 is a hindrance to the enjoyment of the freedom of expression of the plaintiffs and is therefore unconstitutional. There is nothing in subsection (2) of section 10 which permits the legislature to abridge this right on the ground of conferring a benefit upon the public in general or upon a section of the public. It is not open to the legislature to curtail or infringe the freedom of expression of one by promoting the general welfare of a section or group of people unless its action could be justified under a law competent under subsection (2) of section 10. This in substance is what subsection (2) of section 2 of Act 9 of 1971 is attempting to achieve. The infringed provision cannot be justified on the grounds referred to in subsection (2) of section 10.

As regards the security, the proviso to subsection (2) of section 2 states that the Minister responsible for newspapers may waive the requirement of a cash deposit and accept a Policy of Insurance or a Bank guarantee. This clearly gives the Minister a discretion to accept or reject the security. He cannot be given the discretion to say "yea" or "nay" and therefore in a position to reject a security offered. In my view this would amount to a previous restraint and therefore unconstitutional, based on the authorities to which I have already made reference.

For the reasons which I have stated above, I find that there has been a transgression or violation by Parliament in Acts 8 of 1971 and 9 of 1971, and

(1) I declare that Act 8 of 1971 is repugnant to subsection 1 of section 10 of the Constitution, ultra vires of the Antigua legislature and consequently void.

(2) I declare that Act 9 of 1971 is repugnant to subsection 1 of section 10 of the Constitution, ultra vires of the Antigua legislature and consequently void.

In view of the declarations I have made it is not necessary to consider the reliefs claimed at (c) and (d) of the Statement of Claim.

The plaintiffs claim an enquiry as to damages. No evidence has been led to indicate damages were suffered or what damages were suffered by them. I would have thought that an enquiry into damages would only be relevant if some evidence had been led.

In any event it does not appear to me that the Court can consider the question of damages on this application. Subsection 2 of section 15 seems to confine what the Court can do, to the matters specified therein. The relevant part of the subsection is as follows -

> "The High Court shall have original jurisdiction to hear and determine any application made by any person in pursuance of subsection (1) of this section and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of the said sections 2 to 14 (inclusive) to the protection of which the person concerned is entitled".

In the circumstances no order is made as to damages.

The plaintiffs have succeeded in their application, so the defendants will pay the taxed costs of the plaintiffs certified fit for counsel.

(Sd.) ALLAN LOUISY

Puisne Judge.

In the High Court of Justice of Antigua

No. 6

Formal Judgment 21st August 1972

No. 6

FORMAL JUDGMENT

DATED and entered this 21st day of August, 1972.

THIS ACTION having been tried before the Honourable Mr. Justice ALLAN F. LOUISY, without a jury, and the said Mr. Justice ALLAN F. LOUISY, having on the 15th day of June, 1972, ordered that judgment as hereinafter provided be entered for the Plaintiff, that is to say:-

(1) I declare that Act 8 of 1971 is repugnant to subsection 1 of section 10 of the Constitution, ultra vires of the Antigua legislature and consequently void.

(2) I declare that Act 9 of 1971 is repugnant to subsection 1 of section 10 of the Constitution, ultra vires of the Antigua legislature and consequently void.

IT IS ADJUDGED that the Defendants do pay to the Plaintiff its costs of Action to be taxed, certified fit for Counsel.

By the Court,

(Sgd) Denis A. Roberts

Registrar.

In the Court of Appeal

No. 7

Notice and Grounds of Appeal 20th July 1972

No. 7

NOTICE AND GROUNDS OF APPEAL

TAKE NOTICE that the Defendant/Appellants being dissatisfied with the decision more particularly stated inparagraph 2 hereof of the High Court contained in the judgment of Mr. Justice Louisy dated the 15th day of June, 1972 doth hereby appeal to the Court of Appeal upon the grounds set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4.

And the Appellants further state that the

names and addresses including their own of the persons directly affected by the appeal are those set out in paragraph 5.

2. The whole of judgment.

3. The grounds of appeal are as follows:-

(1) The Learned Judge was in error in holding that the Plaintiff/Respondent is "a person" within the meaning of Chapter 1 of the Constitution of Antigua and therefore entitled to the protective provisions contained in Section 15 of Chapter 1.

(2) The Learned Judge further erred in declaring that Act 8 of 1971 is repugnant to sub-section (1) of Section 10 of the Constitution of Antigua and is ultra vires of the Antigua Legislature and consequently void.

(3) The Learned Judge further erred in declaring that Act 9 of 1971 is repugnant to sub-section (1) of Section 10 of the Antigua Constitution and is ultra vires of the Antigua Legislature and therefore void.

(4) The Learned Judge erred in holding that the Plaintiff/Respondent had shown that a constitutional right had been or was being contravened in relation to it.

(5) The Learned Judge failed to direct his mind to the principle that there is a presumption in favour of the constitutional validity of a statute which is challenged as unconstitutional and that the burden lies upon him who attacks a statute to show beyond reasonable doubt that there has been a clear transgression of the constitutional principle.

4. The Court of Appeal is requested to uphold the said appeal and to deny the Plaintiff/Respondent the declarations sought.

5. The persons directly affected by the appeal are as follows:-

(1) Attorney General — Attorney General's Chambers

In the Court of Appeal

No. 7

Notice and Grounds of Appeal 20th July 1972 (continued)

(2) Minister of Home Affairs	Ministry of Home Affairs, Long Street
(3) Antigua Times Limited	Registered Office, Factory Road.

Dated this 20th day of July, 1972

(Sgd.) Louis H. Lockhart

Ag. Attorney General.

No. 8

Judgment of Lewis C.J. (Ag.) 13th June 1973

No. 8

JUDGMENT OF LEWIS C.J. (Ag.)

The respondent company is the publisher of a bi-weekly newspaper called "The Antigua Times", the publication of which began in December, 1970. In late 1971 the Parliament of Antigua enacted two laws: The Newspaper Registration (Amendment) Act, 8/1971 and the Newspaper Surety Ordinance (Amendment) Act, 9/1971 which both came into force on November 29, 1971. In consequence of the passing of these Acts the publication of the newspaper ceased as from the date the Acts became operative.

The respondent contends that these Acts are unconstitutional in that they infringe the right of freedom of expression to which by virtue of s.1 of the Constitution of Antigua the respondent is entitled; the terms of which right are specifically set out in s.10 of the said Constitution. The respondent accordingly applied to the High Court under s.15 of the Constitution for the protection of its rights and sought to obtain from the Court by way of relief (a) declarations that the said Acts were ultra vires the powers of the Parliament of Antigua, (b) an inquiry as to damages and (c) an order that such damages as may have been suffered by the respondent be paid by the appellants. The trial judge declared both Acts to be repugnant to subsection (1) of s.10 of the Constitution, ultra vires the Antigua Legislature and consequently void. He stated as regards the respondent's claim for an inquiry as to damages that no evidence had been led to

indicate what damages were suffered by the respondent, that in any event it did not appear to him that he could consider the question of damages on the application before him, and that s.15(2) of the Constitution confined the jurisdiction of the Court in granting relief to the matters specified therein and he accordingly made no order as to damages. There has been no appeal by the respondent against this ruling.

Preliminary objection

In the court below the preliminary objection was taken by counsel for the defendants, the present appellants, that the respondent is not a "person" within the meaning of s.15 of the Constitution and so is not able to invoke the provisions of this section. This objection was overruled by the trial judge and his ruling on this point is being challenged in this appeal.

In order to appreciate this objection certain sections of the Constitution of Antigua must be referred to. These sections appear in Chapter 1 of the Constitution which bears the caption Protection of Fundamental Rights and Freedoms. In this Chapter are set out (a) the fundamental rights and freedoms to which "every person in Antigua is entitled", (b) the method of protecting such rights and (c) in s.16, certain aids to the interpretation of the Chapter.

The relevant sections for the purposes of the preliminary objection are sections 1, 10 and 15. Section 1 states in general terms the fundamental rights and freedoms to which every person in Antigua is entitled, and is in the following terms:-

> "1. Whereas every person in Antigua is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely:-

In the Court of Appeal

No. 8

Judgment of Lewis C.J. (Ag.) 13th June 1973 (continued)

(a) life, liberty, security of the person, the enjoyment of property and the protection of the law;

(b) freedom of conscience, of expression and of peaceful assembly and association; and

(c) respect for his private and family life,

the subsequent provisions of this Chapter shall have effect for the purpose of affording protection to the aforesaid rights and freedoms, subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest".

Section 10 which provides protection for freedom of expression reads as follows:-

"10.-(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, and for the purposes of this section the said freedom includes the freedom to hold opinions and to receive and impart ideas and information without interference with his correspondence and other means of communication.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision

(a) that is reasonably required -

(i) in the interests of defence, public safety, public order, public morality or public health; or

(ii) for the purpose of protecting the reputations, rights and freedoms of other persons, or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence,

maintaining the authority and independence of the courts, or regulating telephony, telegraphy, posts, wireless broadcasting, television or other means of communication, public exhibitions, or public entertainments; or

(b) that imposes restrictions upon public officers."

Section 15 deals with the enforcement of the protective provisions of the Constitution and the material parts thereof read -

"15.-(1) If any person alleges that any of the provisions of sections 2 to 14 (inclusive) of this Constituion has been, or is being, contravened in relation to him, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress.

(2) The High Court shall have original jurisdiction to hear and determine any application made by any person in pursuance of subsection (1) of this section and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of the said sections 2 to 14 (inclusive) to the protection of which the person concerned is entitled;

Provided that the High Court may decline to exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law."

Counsel for the appellants submitted that s.1 speaks of the fundamental rights and freedoms of the "individual", that only a human being can be considered an individual and therefore the rights referred to in Chapter 1 of the Constitution are the rights of a natural person. He also referred to s.15(1) and said that the material word in this

In the Court of Appeal

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subsection is the word "him" and it was only a natural person who could complain of a contravention of the Constitution. He next drew attention to s.115(15) of the Constitution which provides that the United Kingdom Interpretation Act 1889 shall apply with the necessary adaptations for the purpose of interpreting the Constitution. S.19 of this Act reads:

> "(19) In this Act and in every Act passed after the commencement of this Act the expression "person" shall, unless the contrary intention appears, include any body of persons corporate or un-incorporate."

He submitted that a contrary intention appears from the use of the word "individual" in two places in s.1 of the Constitution and, accordingly, the bill of rights therein was available to natural persons only and not to incorporated bodies. He referred to the case of Wills v. Tozer and others. T.L.R. 700 as being authority for the proposition that a corporation is not included in the word "person" when used in a statute if the statute contains expressions that are repugnant to that construction. It was further submitted that whether the word "person" in a statute can be treated as including a corporation must depend on a consideration of the object of the statute and the provisions included therein for carrying the object into effect, and in this connection counsel referred to The Pharmaceutical Society v. The London and Provincial Supply Association Ltd.(1880) 5 A.C. 857. Continuing his argument counsel said that the object of a bill of rights is to provide for the protection of the rights and freedoms of individuals and of certain inalienable rights of human beings, and when one looks at Chapter 1 of the Constitution of Antigua it is seen that these rights are drafted with great precision. The rights, he said, were not new but could be traced with meticulous particularity back to 1929 when the Institute of International Law drafted its Declaration of the Rights of Man. He then referred to Chapter 3 of Gaius Ezejiofor's work Protection of Human Rights under the Law and to Appendix III therein beginning at page 259 which contains a copy of the Universal Declaration of Human Rights. He submitted that the emphasis throughout in this Declaration is on the human

family, human rights, and human beings. He also referred to the European Convention for the protection of Human Rights and Fundamental Freedoms (1950) in Appendix IV of the same work at p.264 and the protocol thereto at p.269. Here, too, the emphasis, it was submitted, is on human rights and where it was intended to depart from the pattern where human rights were emphasized a special protocol to the Convention was agreed upon. See, for example Art. 1 of the protocol where reference is made to every natural or legal person.

He contended that the judgment of Lord Morris of Borth-Y-Gest in Olivier v. Buttigieg (1966) 2 All E.R. 459 supported his view that only human rights are protected under the Constitution of Antigua and he based this contention on the close resemblance between certain provisions in the Constitution of Malta (with which this judgment was concerned) and the corresponding provisions in the Constitution of Antigua. He submitted that this was the reason why the newspaper in this case was not a party to the action.

Next he referred to the case of Collymore v. The Attorney General (1968) 12 W.I.R. 5 where, he says, Wooding, C.J. throws light on the question as to who is protected by the bill of rights contained in the Constitution of Trinidad and Tobago. Sections 1 and 2 of the Constitution of Trinidad and Tobago read as follows:-

> "1. It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist without discrimination by reason of race, origin, colour, religion or sex, the following human rights and fundamental freedoms, namely,
>
> (a) the right of the individual to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law;
>
> (b) the right of the individual to equality before the law and the protection of the law;

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(c) the right of the individual to respect for his private and family life;

(d) the right of the individual to equality of treatment from any public authority in the exercise of any functions;

(e) the right to join political parties and to express political views;

(f) the right of a parent or guardian to provide a school of his own choice for the education of his child or ward;

(g) freedom of movement;

(h) freedom of conscience and religious belief and observance;

(i) freedom of thought and expression;

(j) freedom of association and assembly; and

(k) freedom of the press.

"2. Subject to the provisions of sections 3, 4 and 5 of this Constitution, no law shall abrogate, abridge or infringe or authorise the abrogation, abridgement or infringement of any of the rights and freedoms hereinbefore recognised and declared and in particular no Act of Parliament shall-

(a) authorise or effect the arbitrary detention, imprisonment or exile of any person;

(b) impose or authorise the imposition of cruel and unusual treatment or punishment;

(c) deprive a person who has been arrested or detained

(i) of the right to be informed promptly and with sufficient particularity of the reason for his arrest or detention;

(ii) of the right to retain and instruct without delay a legal adviser of his own choice and to hold communication with him;

(iii) of the right to be brought promptly before an appropriate judicial authority,

(iv) of the remedy by way of habeas corpus for the determination of the validity of his detention and for his release if the detention is not lawful;

(d) authorise a court, tribunal, commission board or other authority to compel a person to give evidence if he is denied legal representation or protection against self-crimination:

(e) deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations;

(f) deprive a person charged with a criminal offence of the right to be presumed innocent until proved guilty according to law in a fair and public hearing by an independent and impartial tribunal, or of the right to reasonable bail without just cause;

(g) deprive a person of the right to the assistance of an interpreter in any proceedings in which he is involved or in which he is a party or a witness, before a court, commission, board or other tribunal, if he does not understand or speak the language in which such proceedings are conducted; or

(h) deprive a person of the right to such procedural provisions as are necessary for the purpose of giving effect and protection to the aforesaid rights and freedoms."

In Collymore's case the learned Chief

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Justice said at page 20:

"... Section 2 of the Constitution is concerned to protect the human rights and fundamental freedoms recognised and declared by s.1. It does so by a general followed by particular prohibitions. Some of the particular prohibitions are undoubtedly apt to protect artificial legal entities also, as for example the prohibition against any Act of Parliament depriving a person of the right to a fair hearing in accordance with the fundamental principles of justice (paragraph (e)) or depriving a person charged with a criminal offence of the right to be presumed innocent until proved guilty according to law (para.(f)). But, in my opinion, the prohibitions are intended to protect natural persons primarily, I say so because (a) the rights they protect are expressly designated as human rights; (b) four of the six of them enumerated in s.1 are further defined as rights of the individual and the other two are obviously so, being (i) the right to join political parties and to express political views and (ii) the right of a parent or guardian to provide a school of his own choice for the education of his child or ward; (c) the fundamental freedoms no less than the rights are recognised and declared to have existed and are to continue to exist "without discrimination by reason of race, origin, colour, religion or sex", thereby I think clearly implying that they are freedoms of the individual; (d) four of the five of them enumerated in the section relate beyond question to the individual only; and (e) in the context of the required non-discrimination, I would interpret the fifth, "freedom of the press", as a compendious reference to those responsible for press publications."

Counsel next referred to the case of Grosjean, Superintendent of Public Accounts of Louisiana v. American Press Co. Inc. 56 Supreme Court Reporter 444. He submitted that the trial judge placed reliance on this case in support of his finding that a corporation is a person, but that it was wrongly decided. In fact, the trial judge arrived

at this decision on the preliminary objection without referring to Grosjean's case and it is clear from his judgment that he only saw this case after he had given his ruling on the preliminary point.

In delivering the judgment of the court in Grosjean's case Mr. Justice Sutherland said: at p.447 that a corporation is a "person" within the meaning of the equal protection and due process of law clauses which were the clauses involved in the appeal before the Supreme Court, and he quoted the cases of Covington & L. Turnpike Road Co., et al v. Sandford et al, 17 S.C. Reporter 198, & Smyth v. Ames 18 S.C. Reporter 418 in support of this statement. Counsel submitted however that an examination of these two cases shows that they do not support the proposition for which they were cited in Grosjean's case which in effect states that a corporation is protected from deprivation of liberty under the due process clause and so has a right to freedom of speech. Both of the said cases, it was submitted, were concerned with the right to property and the right to equal protection under the 14th amendment to the Constitution of the U.S.A., and in both cases it was held that a corporation was a "person" within the amendment forbidding deprivation of property without due process. He therefore submitted that Covington's case and Smyth's case are authority only for the limited proposition that corporations have a right to protection of property and they do not support the proposition that they have a right to freedom of speech. Counsel further argued that the liberty referred to in the 14th amendment is the liberty of natural and not artificial persons and therefore corporations cannot claim that protection. This statement he said was supported by the cases of North Western National Life Insurance Co. v. Paul Riggs 27 S.C. Reporter 126 and Western Turf Association v. Hyman Greenberg 27 S.C. Reporter 384 which were decided in 1906 and 1907 respectively before Grosjean's case which was a decision in 1936 but they were not cited in the latter case. He therefore submitted that the decision in Grosjean's case could not be relied on as it was based on two decisions which dealt with the right to protection of property and ignored the two cases mentioned immediately above which specifically decided the question that a corporation is not

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entitled to the right of freedom of speech. He also referred to the cases of Wheeling Steel Corporation v. Glander, and National Distillers Products Corporation N.Y. v. Glander (1949) 69 S.C. Reporter 1291, and the case of Hague v. The Committee for Industrial Organisation (1939) 59 S.C. Reporter 957.

Counsel remarked at the conclusion of his submissions on the American authorities, that whatever the state of the American law might be, he wished to refer to the case of Adegbenro v. Akintola & anr. (1963) 3 All E.R. 544. He cited a passage in Viscount Radcliffe's judgment in which, when making observations as to the help to be derived from referring to British constitutional practice in interpreting the Constitution of Western Nigeria he gave a word of warning as to the limited nature of the assistance to be derived from such an exercise. He said at pp.550/551 -

> "The second observation is perhaps only another way of making the same point. It is true that the Constitution of Western Nigeria, allowance made for the federal structure, does embody much of the constitutional practice and principle of the United Kingdom. That appears from a study of its terms. There are identifiable differences of scheme to be found in certain sections, but no one, it seems, questions the general similarity or the origin of many of its provisions. But, accepting that, it must be remembered that, as Lord Bryce once said, the British Constitution "works by a body of understandings which no writer can formulate"; whereas the Constitution of Western Nigeria is now contained in a written instrument in which it has been sought to formulate with precision the powers and duties of the various agencies that it holds in balance. The instrument now stands in its own right; and, while it may well be useful on occasions to draw on British practice or doctrine in interpreting a doubtful phrase whose origin can be traced or to study decisions on the Constitutions of Australia or the United States where federal issues are involved, it is in the end the wording of the constitution itself that is to be interpreted and applied,

and this wording can never be overriden by the extraneous principles of other constitutions which are not explicitly incorporated in the formulae that have been chosen as the frame of this constitution."

I propose to bear in mind and apply the remarks contained in the final portion of this statement.

Having set out at length the submissions of counsel for the appellants in support of the preliminary objection the following observations thereon become necessary. Regarding his submission as to the probable origin of the rights referred to in Chapter 1 of the Constitution I need only say that I am not persuaded that the conclusions he has drawn from the wording of the various documents set out in Gaius Ezejiofor's work Protection of Human Rights under the Law and the several appendices therein are conclusive of the proposition which he has put forward. These documents merely indicate the sources from which the rights in the Antigua Constitution may have been taken, they are useful from the point of view of comparison, but do not afford any help in the interpretation of the Constitution itself.

The occurrence of the word "individual" in two places in section 1 of the Constitution is equally unhelpful to the appellants. If they could have shown that in all contexts this word applied to human beings only then different considerations would have arisen but counsel for the respondent referred to two cases which show that this word was construed in statutes as including a corporation where the context in each case so permitted. The first case was Great Northern Railway Company v. Great Central Railway Company (1899) 10 Railway & Canal Traffic Cases 266. In this case s.9(c) of the Railway and Canal Traffic Act (1888) referred to rights given to the public or to any individual. Wright, J. in this connection said at pp. 275/276:

"It seems to me the word "individual" must be construed as extending not merely to what is commonly called an individual person, but to a company or corporation. Supposing the right to be given by a special

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Act of Parliament to a limited company, it seems to me impossible to suppose that they would not be within the word "individual". "Individual" seems to me to be any legal person who is not the general public. Supposing a trader had a right given him for asiding or anything else, and he converted his business into a limited company, it would be a strange thing to hold that because of that this Court lost its jurisdiction to enforce the rights which were given."

The other case is the Canadian case of Regina v. Sommers et al (No.4)(1948) 26 Western Weekly Reports 246, where Wilson, J. referring to section 158(e) of the Criminal Code RSC 1927, Ch.36 said at p.248 -

> "The word, any "individual", as used in this section, to my mind is clearly applicable not only to natural persons but to corporations. A corporation is in the purest sense of the word, an individual. It is persona juridica; it is recognized as a juridicial entity in the eyes of the law and it is as much an individual in respect of its acts."

As regards Collymore's case, Wooding, C.J. remarked that the prohibitions set out in s.2 of the Constitution of Trinidad and Tobago for the protection of the rights declared by s.1 thereof "are undoubtedly apt to protect artificial legal entities also", and he said this despite the fact that the rights referred to in section 1 are "human" rights. The Chief Justice also said that the prohibitions are intended to protect natural persons primarily. The use of the word "primarily" shows by implication that the protection was not confined exclusively to human beings.

In the light of these observations by the Chief Justice it does not appear to me that the appellants can claim to derive substantial support from Collymore's case for their contention.

The references by Lord Morris of Borth-Y-Gest in Olivier v. Buttigieg (supra) on various occasions to the "freedom of individuals" were merely repetitions of the words of the Malta

Constitution. He was not saying that the particular sections which were being considered in that case referred only to human beings because the point which is here being canvassed did not arise in that case. It is however obvious from a reading of this judgment that the rights which were alleged to have been contravened were those of the editor of the newspaper and not the newspaper's rights and so the parties to the action in that case had perforce to be human beings. In any event the newspaper was not apparently incorporated.

Although I have recorded in extenso the submission of counsel for the appellants in relation to Grosjean's case I do not consider it proper to offer any comment on his statement that this case was wrongly decided, and since the trial judge did not rely on it as part of his reasoning in coming to his decision on the preliminary objection, comment thereon is unnecessary for this reason also.

I now turn to the arguments of counsel for the respondent. He submitted that the word "person" in section 1 of the Antigua Constitution should be interpreted as including a corporation and wherever the rights which are specified in this section are capable of being enjoyed by corporations, corporations should be held to be entitled thereto, but wherever the rights are by reason of their very nature capable of being enjoyed only by natural persons then only natural persons will be entitled to such rights.

I am of the opinion that this is the proper approach to be adopted in the interpretation of Chapter 1 of the Constitution which must be construed like any other legal instrument. Its intention must be gathered from its terms and it must be read as a whole in order to make it consistent.

It is obvious that there are certain rights and freedoms in Chapter 1 of the Constitution which from their very nature cannot be enjoyed by a corporation, e.g. the right to life specified in s.2, the right to personal liberty specified in s.3 and the right to be protected from inhuman treatment mentioned in s.5; but there is nothing

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in principle which prevents a corporation from enjoying the rights relating to the compulsory acquisition of property (s.6), the securing of protection of the law (s.8) and protection from discrimination on various grounds specified in s.12. It would not be an affront to commonsense or reason to contend that if a corporation's property were compulsorily acquired (s.6) the corporation should, in like manner as a natural person, be entitled to compensation. Nor could it be convincingly maintained that a corporation, like a human being, if charged with a criminal offence would not be entitled to the right of a fair hearing in accordance with the fundamental principles of justice as prescribed in s.8. As regards the right to protection from discriminatory treatment on grounds of race, place of origin, political opinion, colour or creed (s.12), this court delivered a judgment on December 13, 1971 which established the principle that a corporation was entitled to enforce the protective provisions of s.15 of the Constitution in circumstances where it was found to have been treated in a discriminatory manner contrary to s.12(2) and (3) by reason of political opinions of its directors. The case in question was Gamacho & Sons Ltd. and ors. v. Collector of Customs, (Antigua Civil Appeal No.6 of 1971)(unreported). The appellants in this appeal were the company and its two directors and only shareholders Rose and Robert Camacho. They moved the High Court for relief under s.15(1) of the Constitution alleging that they had been discriminated against under s.12 and their complaint was that the Collector of Customs had failed to apply his mind to consideration of two applications for import licences made by the appellant company, that he had refused the licences on the instructions and under the dictation of the Minister of Trade, Industry and Commerce and that the Minister had instructed him to refuse the licences because the appellants Rose and Robert Camacho were political supporters of the former Premier and Leader of the Opposition Party whom they had actively assisted in a recent election campaign. It will be observed that the application for the licences were made by the Company. The letter of refusal sent by the Collector of Customs was addressed to the Company and read "Camacho and Sons, Long Street, Application for licence declined." There can be

no doubt therefore that the refusal affected the company's rights primarily and in a lesser degree those of its two directors who were its only shareholders. The directors swore affidavits in support of the application for relief which were unchallenged. In his affidavit the male appellant said that "the rights of the company and its shareholders guaranteed by the Constitution and the laws of Antigua are being unlawfully and maliciously trampled upon to their detriment loss and damage". This court held, confirming the order of the trial judge, that an order of mandamus should issue to compel the Collector of Customs to consider and determine according to law the company's applications for licences, but it reversed his finding that the appellants had not been treated in a discriminatory manner and made a declaration to the effect that the refusal of the Collector of Customs to issue the licences to the company in the light of the facts stated in the directors' affidavits and in the circumstances of the case constituted discriminatory treatment and was a contravention of s.12(2) of the Constitution in relation to the appellants. It was contended by counsel for the appellants that the point which is here being discussed did not arise and was not argued in Camacho's case. I agree, but the Court of Appeal assumed (and I consider rightly) that the point could not be successfully contested. It would be a scandalous defect in the law if a company could be treated in the manner in which the company in Camacho's case was treated and the law could not afford it any redress.

In my view there are no considerations of principle which lead inevitably to the conclusion for which the appellants have contended.

For these reasons I would uphold the trial judge's decision on the preliminary point and declare that the respondent company is a "person" within the meaning of Chapter 1 of the Constitution of Antigua and is therefore entitled to enforce the protective provisions contained in s.15.

Judge's duty as regards agreed propositions

Before adverting to the subject of the constitutionality of the two Acts 8/1971 and 9/1971,

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I consider it necessary to make a few remarks on the situation which has arisen as a result of the agreed propositions which were submitted to the court below by both counsel at the trial. My comments will also extend to a certain passage in the evidence in cross-examination of the witness Reuben Harris. In my judgment, the agreement by counsel on the propositions which they put before the trial judge did not absolve him from the responsibility of himself coming to a decision on the said propositions, and this he very properly did. As far as the witness Reuben Harris is concerned, when he said in cross-examination that "I agree in principle with licence fee", this statement was not binding on the trial judge because one of the very questions which he had to decide in determining the validity of Act 8/1971 was whether it was constitutionally proper for the legislature to impose a licence fee as a condition for publishing a newspaper. This was a legal question and it was not competent for the witness to usurp the function of the court and express an opinion thereon, and when he did express this opinion it could not be regarded as an admission which was binding on him. I stress this point in particular because when the question of the effect of the proviso to section 1 B(1) of Act 8/1971 was being argued it was said that "in view of the fact that it was the plaintiff's case that a licence fee was not unconstitutional then the only question that remained to be decided was whether or not the amount of the fee was penal in nature and so unconstitutional."

For the reason which I have given above it was not in my opinion open to counsel for the appellants to urge this argument and thus to imply that the Court was precluded by the witness's statement from deciding the question as to the power of the legislature to impose a licence fee.

In this context counsel for the respondent in dealing with the role of the courts under the Constitution submitted that where the question of the constitutionality of legislation arises it is incompetent for parties by concessions or by agreements to tie the hands of the court because the court is cast in the special role as guardian of the Constitution and is required to determine for itself whether the constitution has been infringed

or not. He quoted Dr. Iman's The Indian Supreme Court and the Constitution as the source of his authority for this statement.

I am in complete agreement with this submission.

Constitutionality of Act 8/1971 considered

The next question which arises for consideration is whether or not the Newspapers Registration (Amendment) Act No. 8/1971 is constitutional. The answer to this question involves an inquiry into the provisions of the Newspapers Registration Act Cap.318 in order to determine its principal objects. The latter Act is somewhat cumbersome but it is not difficult to ascertain its principal objects which are relevant to this appeal. They are (a) to provide information by means of a declaration sworn by the editor, printer, publisher or proprietor of a newspaper as to the title of the newspaper, a description of the building where it is intended to be printed or published and the name and address of the editor, printer, publisher and proprietor thereof. This declaration for which no fee is payable on the making thereof is to be delivered to the Registrar of the Supreme Court at his office and filed therein before the newspaper can be edited, printed or published, and (b) to empower the Registrar to enter the information contained in the declaration in a book which is open to inspection by members of the public on payment of a fee of 24 cents.

The purpose of these provisions is obvious. They are designed to ensure that responsibility for any breach of the criminal or civil law arising out of any matter published in a newspaper is easily and readily brought home to the offending party whose name and address will be known. This is indeed a salutary provision as no community could be expected to tolerate the publication of a newspaper under the conditions of anonymity. It is significant that the long title of this Act as set out on page XI of the Chronological Table of the Laws of Antigua at the beginning of Volume I is "An Act for preventing the mischiefs arising from the printing and publishing newspapers and papers of a like nature by persons unknown."

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A somewhat similar view as to the purpose of registration of newspapers is to be found in the publication called Freedom in Australia by Enid Campbell and Harry Whitmore. In Chapter 8 of this book which deals with the press in Australia the learned authors say:

> "In all states, newspapers or printing presses, or both are required to be registered. This registration is not a form of control, and is designed merely to make possible the assignment of responsibility for purposes of civil or criminal liability. Indeed in New South Wales and Victoria, the strong tradition of a free press was even sufficient to prevent inclusion of a newspaper publishers in the registration provisions of the Obscene and Indecent Publications Act. Newspapers have no fear of the loss of registration if they do publish material which is found to be obscene; other penalties may, of course, be imposed."

It would thus appear that in the sphere of fundamental rights the requirement that newspapers should be registered has never been regarded as a hindrance or interference with the right of freedom of expression.

After a declaration has been filed under the Newspapers Registration Act Cap.318 those responsible for the publication of a newspaper are free subject to the law of obscenity, sedition, blasphemy, defamation, contempt and the like, to print whatever they wish without having to obtain any previous licence or permission. This was the position in Antigua prior to the coming into effect of Act 8/1971. This Act amended the Newspaper Registration Act Cap.318 by inserting after section 1 the following sections:

> "1A. In this Act the word "newspaper" shall have the same meaning as defined in section 2 of the Newspaper Surety Ordinance.
>
> 1B. (1) No person shall publish or cause to be published any newspaper unless he has obtained a licence from the Cabinet in respect of the newspaper published or caused

to be published by him and has paid the annual licence fee prescribed by this Act:

Provided that every person who prints or publishes a newspaper registered under the provisions of the Principal Act fifteen days before the commencement hereof and has paid the annual licence fee prescribed by this Act shall be deemed to have been granted a licence.

(2) A licence issued under this section shall be signed by the Secretary to the Cabinet and the person named in the licence as the publisher of the newspaper specified therein shall on or before the 2nd day of January in every year pay into the Treasury the sum of six hundred dollars.

(3) If the publisher of a newspaper to whom a licence has been granted fails to pay the said sum of six hundred dollars on or before the 2nd day of January in every year the licence shall be invalid until such payment has been made.

(4) If any person shall publish or cause to be published any newspaper without holding a valid licence under this section he shall be guilty of an offence and shall on summary conviction be liable to a fine of five hundred dollars for every day on which such newspaper is published."

Act 8/1971 introduced for the first time two new requirements into the law governing the publication of newspapers in Antigua in that it made it compulsory for any person before he could publish a newspaper in this State to (a) obtain a licence, and (b) pay therefor a licence fee of $600 per annum; and sanctions were provided for failure to observe these requirements. The right of persons conducting newspapers to publish what they please within the limits of the law as set out above, which existed prior to the coming into operation of Act 8/1971 was thus seriously affected by the new conditions imposed by this Act. This right, the right of freedom of expression, enjoyed by the press is a fundamental right conferred by s.10 of the Constitution and the requirement of a licence

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or the payment of a fee as a condition precedent to the enjoyment thereof is prima facie a hindrance therewith within the meaning of s.10(1) of the Constitution. Moreover, the requirement that a licence fee must be paid before this right can be exercised is also objectionable as a hindrance to the enjoyment of this right because a person cannot be required to purchase that which the Constitution has freely granted. This statement finds support in Murdoch v. Pennsylvania (1943) 319 U.S. 105 where Douglas J., in delivering the judgment of the court said at 113:

> "A state may not impose a charge on the enjoyment of a right granted by the Federal Constitution."

There is of course a presumption in favour of the constitutionality of an impugned ordinance. Cummings J., in Lilleyman v. I.R. Commissioners (1964) 13 W.I.R. 224 at 232 put the matter thus:

> "It is trite law that a presumption of constitutionality is normally applied in favour of an impugned ordinance but as Basu in Vol. 1 of his Commentary on the Constitution of India states at p.185:
>
> > "The American decision of the 'preferred position group' embodies a salutary principle, which is applicable in India, namely that, if any law prima facie appears to hit any of the fundamental rights specifically guaranteed by the Constitution, the burden shifts to the State to establish that it is constitutionally justifiable."

This was also the view taken by Mukherjea, J. in delivering the judgment of the court in Saghir Ahmad v. The State of U.P. and ors. (1954) Supreme Court Reports 707 at 726 where he said:

> "There is undoubtedly a presumption in favour of the constitutionality of a legislation. But when the enactment on the face of it is found to violate a fundamental right guaranteed under Art.19(1)(g) of the Constitution, it must be held invalid unless those who support the legislation can

bring it within the purview of the exception laid down in clause (6) of the Article. If the respondents do not place any materials before the Court to establish that the legislation comes within the permissible limits of clause (6) it is surely not for the appellants to prove negatively that the legislation was not reasonable ....."

Clause 19(1) of the Indian Constitution deals with the rights to certain freedoms and sets out in sub-clauses (a) to (g) thereof specific rights. Sub-clause (a) refers to the right to freedom of speech and expression and sub-clause (g) to the right to practise any profession or to carry on any occupation, trade or business. Clause 19(2) contains exceptions to the various rights set out in Clause 19(1), sub-clauses (a) to (g). Clause 19(1)(a) of the Constitution of India corresponds to section 10(1)(a) of the Antigua Constitution in the broad sense that it protects the right of freedom of expression. Clause 19(2)(a) corresponds to Antigua s.10(2) in that it permits derogations from this right. The Indian and Antiguan Constitutions are similar to this extent that as regards these rights the limitations thereon are written into the two constitutions.

Once it has been established that Act 8/1971 is prima facie a violation of section 10 of the Constitution (and in my view this is apparent on the face of this enactment itself) then the burden shifts to the appellants (a) to show that this Act comes within the permissible limits imposed by s.10(2) of the Constitution, and (b) to place before the court all relevant facts and materials to show that its enactment was reasonably required.

Counsel for the appellants submitted that the power to licence is a necessary adjunct to government and is recognized in s.10(2) of the Constitution because a system of licensing is a natural method of regulation. In order to emphasize the point he had in mind, counsel then referred to s.4 of the Telecommunications Act Cap.218 which requires a person to obtain a licence before establishing a telecommunications station or before installing working or operating any telecommunications apparatus in the State. He further submitted that s.1B(1) of Act 8/1971 which

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requires a licence to be obtained before a person may publish a newspaper is regulatory in scope and intent and is within the express contemplation of the provisions of s.10(2)(a)(ii) of the Constitution. It was also contended that there is no logical distinction between the use of a newspaper, broadcasting, or other means of communication, and public meetings, in relation to the right of freedom of expression as they are all means of exercising this right. The test of the validity of Act 8/1971, it was submitted, was whether its provisions merely regulated the exercise of the right of freedom of speech, or whether they went further and imposed a form of censorship or restriction on circulation. The answer, counsel said, was that the provisions of the Act had nothing to do with censorship or circulation, and all that they did was to provide a competent authority which must exercise its power to grant the licence constitutionally.

The gist of this argument as I understand it is that a newspaper falls within the ambit of the words "or other means of communication" in s.10(2)(a)(ii) of the Constitution and therefore the restriction contained in Act 8/1971 is permissible. I am unable to accept this submission. These words in my view ought to be construed ejusdem generis with the words immediately preceding them which relate to certain specific forms of communication, and if this is done the words "or other means of communication" would not be apt to include newspapers. Moreover, the press is subject to the ordinary restraints imposed by the law relating to defamation, obscenity, sedition, blasphemy, contempt and so on. These restraints regulate to some extent the manner in which the right to freedom may be exercised, but Act 8/1971 goes much further in that it prevents the right from being exercised at all except under licence. It also super-imposed the two new requirements, already mentioned, on Cap.318 which dealt with an entirely different matter viz:, the registration of newspapers which was not in itself a restriction of the right of freedom of expression.

The Telecommunication Act and the subsidiary legislation made thereunder are an example par excellence of regulatory legislation. S.4 of this Act to which counsel referred is but a small part

of the regulatory machinery of the Act, and his choice of this Act as an example of regulatory legislation was singularly appropriate but when compared with Act 8/1971 it clearly shows that the latter was anything but regulatory.

The provisions of Act 8/1971 are not regulatory. They are inhibitory, because, in effect, they prevent a newspaper, the essential function of which is to disseminate information, from coming into being at all. The dissemination of information by a newspaper is directly dependent on circulation and if this dissemination is rendered impossible, as it will be unless a licence to publish is first obtained, then circulation is not merely restricted but absolutely prohibited. It is to be observed that the trial judge's opinion as to the reason why both Acts were passed was because it was desired to control the press. He said at p.82:

> "It is clear from the circumstances which provoked the passing of the Acts that Government wished to exercise a certain measure of control over the press".

This is by no means an unreasonable inference in the circumstances.

There is a further burden on the appellants. They have to show that the enactment of Act 8/1971 was reasonably required in the circumstances. In order to do this they must place before the court all relevant facts and materials which they contend rendered the passing of the Act obligatory so that the court may be able to determine for itself whether its enactment was reasonably required or not.

Here no evidence whatever was given by or on behalf of the appellants to show why the enactment of Act 8/1971 was required. It has not been shown that by reason of a situation which had developed in Antigua the passing of this Act became necessary. It appears to me that the appellants' advisers recognized that a burden lay on the appellants to establish that the Act came within the permissive limits of s.10(2) of the Constitution and to place material before the court in support of this contention. This was not done,

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and it is not for the respondent to prove negatively that the Act was not reasonably required and that it did not fall within the aforesaid permissive limits. My reason for saying that the appellants advisers recognised this burden is the fact that an application was made by them in the court below to lead evidence by affidavit on the ground that the second appellant was not available to give evidence in person. In the event this application was successfully resisted, but the incident showed a tacit admission by the appellants that they appreciated they were under a duty to make available to the court such relevant and necessary material as would enable it to determine the constitutionality of the Act.

Accordingly, I hold, that the appellants having failed to discharge the burden which lay on them of proving that Act 8 of 1971 comes within the permissible limits imposed by s.10(2) of the Constitution this Act must be declared to be unconstitutional.

Effect of proviso to s. 1B(1) of Act 8/1971

It was submitted that the respondent had not shown that a constitutional right had been or was being contravened in relation to it in so far as it was required to obtain a licence to publish its newspaper, because the evidence disclosed that it had printed and published a newspaper which had been registered under the provisions of the principal Act (Cap.318) 15 days before the commencement of the amending Act 8/1971 (which was conceded); and therefore, it was said, that by virtue of the proviso to s. 1B(1) of the amending Act it was not required to apply for a licence; and that all it had to do was to pay the annual licence fee of $600.

This submission is fallacious. The practical result of the declaration that Act 8/1971 is unconstitutional is that the respondent is entitled to exercise the freedom specified in s.10 of the Constitution without the necessity of obtaining a licence. In other words, it is not within the competence of the legislature to insist on the observance of this requirement by the respondent either by so providing in express terms as in s. 1B(1) of this Act or by adopting the

device of adding a proviso to this section. Any means adopted to make the enjoyment of the right conditional on the obtaining of a licence would be unconstitutional in the circumstances. The enjoyment of the freedom of expression by the respondent is a matter of legal right and not a matter of grace (which is really the effect of the proviso) I therefore hold that the proviso is ineffective in so far as the respondent is concerned and is not applicable to it.

Constitutionality of Act 9/1971 considered

Prior to the coming into force of the Newspaper Surety Ordinance (Amendment) Act No. 9/1971 (hereinafter referred to as "Act 9/1971") anyone desiring to print or publish a newspaper in Antigua was required to enter into a bond. Provision to this effect is to be found in s.3 of the Newspaper Surety Ordinance Cap.319 (referred to hereinafter as "the principal law"). Act 9/1971 amended this section by re-numbering it "3(1)" and adding a second subsection thereto so that the relevant provision of the principal law now reads:

> "3(1) No person shall print or publish or cause to be printed or published within the Colony any newspaper unless he shall have previously given and executed and registered in the office of the Registrar of Deeds a bond in the sum of nine hundred and sixty dollars with one or more sureties as may be required and approved by the Attorney-General, conditioned that the printer, publisher or proprietor of the said newspaper shall pay to Her Majesty the Queen, Her heirs and successors, every penalty which may at any time be imposed upon or adjudged against him or them upon any conviction for printing or publishing any blasphemous or seditious or other libel at any time after the execution of such bond and also any damages and costs on any judgment for the plaintiff in any action for libel against such printer, publisher or proprietor, and all other penalties whatsoever which may be imposed upon or adjudged by the court against him or them under the provisions of this Ordinance.

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(2) No person shall print or publish or cause to be printed or published within the State any newspaper unless he shall have previously deposited with the Accountant General a sum of ten thousand dollars in cash to be drawn against in or to satisfy any judgment of the Supreme Court for libel given against the editor or printer or publisher or proprietor of the said newspaper or any writer thein and shall at all times maintain the said deposit at the sum of ten thousand dollars. The deposit aforesaid shall be paid into a deposit account in the name of the depositor and shall bear interest at the same rate payable at the Government Savings Bank:

Provided however that the Minister responsible for newspapers on being satisfied with the sufficiency of the security in the form of a Policy of Insurance or on a guarantee of a Bank may waive the requirement of the said deposit:

Provided further that no amount of the principal sum shall be paid from the deposit account aforesaid or against any Policy of Insurance or recovered from the guarantee of the Bank save upon the Certificate of the Registrar of the High Court as to any award of the Court."

The principal law in s.10 also prescribes a penalty to which anyone would be liable who printed or published, or caused to be printed or published, or sold or offered for sale any newspaper without entering into a bond. This section was also amended by Act 9/1971 by renumbering it "10(1)" and adding a second subsection thereto, so that s.10 of the principal law as amended now reads:

"10(1) If any person shall print or publish or cause to be printed or published or sell or offer for sale any newspaper without having first complied with the provisions of this Ordinance as to bond, every such person or the secretary of any company, as the case may be, shall be liable on summary conviction to a penalty not exceeding one hundred and twenty dollars for each and every such act done and committed.

(2) If any persons shall contravene the provisions of subsection(2) of section 3, every such person or company, as the case may be, shall be liable on summary conviction to a penalty not exceeding five hundred dollars for every such act done and committed."

In adding new subsections to sections 3 and 10 respectively of the principal law the draftsman acted advisedly and deliberately, and no question to my mind arises as to the possible repeal by implication of the provisions of the principal law as included in these sections. The effect of the amendment to s.3 of the principal law introduced by Act 9/1971 is to create a further condition with which a person must comply before he can print or publish a newspaper viz:, a condition making it obligatory for him to deposit with the Accountant General a sum of $10,000 in cash. Power is however given to "the Minister responsible for newspapers" to accept, in lieu of the deposit in cash, security in the form of a Policy of Insurance or a guarantee from a bank if he is satisfied with the sufficiency of such security.

In considering the constitutionality of Act 9/1971 it would not in my opinion be valid to assume that any weight is added to the presumption in favour of its constitutionality by reason of the fact that legislation with a similar purpose as contained in the principal law existed since 1909. The constitutional validity of Act 9/1971, must be determined solely in the light of its relationship to s.10 of the Constitution, and the same principles will apply in determining this question as were applied in the case of Act 8/1971.

Now what on the face of it does Act 9/1971 seek to do? It imposes on the respondent in its capacity as a publisher of a newspaper an obligation to deposit a sum of $10,000 before it can exercise a right freely granted to it by the Constitution. This prima facie constitutes a hindrance to its enjoyment of the right of freedom specifically guaranteed by s.10 of the Constitution. The evidence of the witness Reuben Harris supports the view that the requirement of the deposit is a hindrance to the

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respondent's enjoyment of this right in that it caused the closure of its newspaper. In this connection he said in examination-in-chief at p.38:

> "Decision was taken unfortunately to close the newspaper. The reason in the first place is that the Board found that a licensing fee of $600 p.a. plus a bond in cash of $10,000 one had to think of bond in terms of cash, were exorbitant and it was reckoned it would have taken the Antigua Times Ltd. about 6 months with a circulation of 350,000 newspapers to break even with that amount".

And in cross-examination at p.41 he said:

> "Closed newspapers because of licence fee of $600 and $10,000 deposit".

His opinion, looking at the matter from the point of view of the amount involved for the deposit was that $10,000 was exorbitant and this was not necessarily an unreasonable view in the circumstances. As he saw it this amount had to be "in terms of cash", and when one bears in mind his statement that the respondent company was capitalised at $20,000, it would not be an unjustifiable conclusion from his evidence to say that the requirement of the deposit not merely hindered but actually rendered impossible the respondent's enjoyment of its right in that it resulted, as he maintained in the closure of its newspaper. This is the <u>prima facie</u> case made out by the respondent on the evidence of its witness Reuben Harris and it stands uncontradicted. In these circumstances the presumption of constitutionality recedes and the burden of proof shifts to the appellants to establish that Act 9/1971 is constitutionally justifiable. This they must do by showing (a)that it falls within the permissible exceptions in s.10(2) of the Constitution, and (b) that its enactment was reasonably required. Counsel submitted as regards the first requirement that it did so fall because it was a law which "makes provisions that is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons", within the meaning of this expression in the said subsection.

In the context of the law of defamation a law

which merely provides a fund (as Act 9/1971 does) from which judgments in libel actions against the editor, printer, publisher or proprietor of a newspaper or any writer therein may be satisfied, in reality affords no form of protection to the reputations of persons libelled, nor is it easy to envisage what rights and freedoms under the Constitution this Act can possibly be intended to protect. The law has for a considerable time provided a method of protection for persons who allege that their reputations have been damaged by libellous statements, and this is the right to bring an action against the libeller. The action, if carried to a successful conclusion would generally result in an award of damages which a plaintiff will normally expect to be satisfied; but the satisfaction of the judgment is not essential to the protection of his reputation, it is merely incidental to the exercise of the right of action, and it is the right of action itself which gives the true protection to the injured person's reputation.

It may perhaps be of interest to observe that Act 9/1971 makes provision for the satisfaction of judgments in cases of libel only. The legislature does not apparently think that judgments in cases of slander are sufficiently important to be included within the provisions of this Act.

There is another matter which should be mentioned. It relates to the discretion conferred by the first proviso to subsection (2) of section 3 of the principal law on "the Minister responsible for newspapers". It provides that if he is satisfied with the sufficiency of the surety in the form of a policy of insurance or a guarantee from a bank he may waive the requirement for the deposit of $10,000 in cash. This, as will be observed, is an unregulated and unfettered discretion, and the question which arises is what effect does it have on the constitutionality of Act 9/1971? An issue involving a similar point arose in the case of Arthur Francis v. The Chief of Police, Privy Council Appeal No. 9 of 1972, the decision in which was delivered on February 5,1973. One of the questions raised in this appeal was whether s.5(2) of the Public Meetings and Processions Act 1969 of St. Christopher, Nevis and Anguilla which provided that "the Chief of Police

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may in his discretion grant permission to any person to use a noisy instrument for the purpose of any public meeting or public procession upon such terms and conditions and subject to such restrictions as he may think fit" was unconstitutional because it failed to lay down guide lines for the Chief of Police as to the exercise of his discretion.

Lord Pearson who delivered the opinion of the Board said in the last paragraph thereof:

> "The final question is whether section 5 of the Act is so defective as to be unconstitutional because it does not expressly lay down guide lines for the exercise of the Chief of Police of his licensing power. Whether or not it might have been better to have some express provision as to the way in which his discretion should be exercised, he is not without guidance. It is plain from the preamble to the Act and from its provisions as a whole that its object is to facilitate the preservation of public order. That being the object of the Act he must exercise his powers bona fide for the achievement of that object. Roncarelli v. Duplessis (supra) per Rand J. (with whom Judson J. concurred) at p.705 per Martland J. (with whom Kerwin C.J. and Locke J. concurred) at p.742 and per Abbott J. at p. 729. Section 5 is not defective, or at any rate not seriously defective, in this respect. It does not contravene the Constitution."

Here there is no definite statement that legislation which fails to contain guide lines for the exercise of a discretionary power is for that reason unconstitutional, but there appears to be a strong indication in the language used that it may be so, and this view receives support in the Indian case of Dwarka Prasad v. State of U.P. & Ors. (1954) S.C.R. 803, reported in Basu's Cases on the Constitution of India (1952)-54 at p.221. This case, it is true, dealt, inter alia, with the vesting of an uncontrolled power to grant or withhold licences in public officers, but the principle under discussion is the same.

Mukherjea J. said at p.223:

"A law or order, which confers arbitrary and uncontrolled power upon the executive in the matter of regulating trade or business in normally available commodities cannot but be held to be unreasonable. As has been held by this court in Chintamon v. The State of Madhya Pradesh (1950-51) C.C. 64 the phrase "reasonable restriction" connotes that the limitation imposed upon a person in enjoyment of a right should not be arbitrary or of an excessive nature beyond what is required in the interests of the public. Legislation, which arbitrarily or excessively invades the right, cannot be said to contain the quality of reasonableness, and unless it strikes a proper balance between the freedom guaranteed under Article 19(1)(g) and the social control permitted by Clause (6) of Article 19, it must be held to be wanting in reasonableness."

It is not known what policy considerations the Minister may impose upon himself in exercising or refusing to exercise his discretion and because of this, certain guide lines are in my opinion necessary to ensure a proper exercise thereof, e.g., provisions as to the conditions under which the Minister would be obliged to exercise his discretion to accept the security offered, or provision for an administrative review of the Minister's decision e.g., by way of appeal to some other administrative body, or a provision granting to a person the right to be heard before a decision adverse to him is made, and so on. Even though it may be assumed that the Minister may not abuse his discretion yet where, as in this case, the object of the legislation is prima facie violative of a fundamental right, and in addition the Minister is without guidance, the possibility of an erroneous exercise of his discretion is greatly increased and in such circumstances I would hold that in so far as there is an absence of guide lines in the Act this defect renders it unconstitutional.

As to the second requirement: was the Act reasonably required? No evidence was given by or on behalf of the appellants as to the circumstances which led to the enactment of the legislation. They obviously knew that such evidence was necessary as they sought by cross-examination

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to get this evidence from the respondent's witness Reuben Harris, and so to place on the respondent a responsibility which in law rested on themselves. The sum total of the evidence placed before the court on this issue is contained in the following passage in the cross-examination of the witness:

> "I don't agree newspaper reporting has fallen to low level in Antigua. I am not aware that any newspaper has attacked anyone recklessly. I saw yesterday's Workers Voice, I did not read it. According to my opinion I cannot say newspapers have been scurrilous. There have not been more than 3 libel actions in (it was agreed that the word "in" should be "since") 1962. I am aware that there are 3 libel actions taken against the Workers Voice. I don't know if damages paid. I heard not paid."

The trend of this cross-examination is clear. It was being suggested to the witness that there had been libel actions in which the damages had not been paid. The witness admitted that there had not been more than 3 such actions since 1962. As he was giving evidence in 1972, 3 libel actions in 10 years does not seem a matter to cause much concern. But this is not important. What is important is the fact that the witness did not know if damages had been paid. He said he heard they had not been paid, so the very point with which the appellants wished to have established and which was the raison d'etre for the legislation was left unresolved.

I am accordingly of the opinion that the appellants have failed to establish that Act 9/1971 falls within any of the permissible exceptions in s.10(2) of the Constitution and that it was reasonably required. I therefore agree with the trial Judge's decision that this Act is unconstitutional.

Presumption of constitutionality

One of the grounds of appeal urged on behalf of the appellants reads as follows:-

> "The learned judge failed to direct his mind to the principle that there is a

presumption in favour of the constitutional validity of a statute which is challenged as unconstitutional and that the burden lies upon him who attacks the statute to show beyond reasonable doubt that there has been a clear transgression of the constitutional principle".

It is true that the trial judge did not say very much about this principle in his judgment and perhaps this is why it is alleged that he "failed to direct his mind" to it, but there is no doubt that he had it in mind. He said at page 68:

"Counsel contended that every statute is presumed to be within the Constitution unless otherwise proved.

He referred to an authority in support of his submission. I will in the course of this judgment, refer to this authority."

The authority which counsel cited in support of his proposition was Lilleyman v. I.R.Commissioners (supra), and the trial judge did in the course of his judgment refer to this case though admittedly in a somewhat different context.

This ground of appeal deals with the question of the burden of proof and in the course of my examination of the constitutionality of Acts 8 and 9 of 1971 respectively, I have already stated what my views are on this subject. They are based on the dicta of Cummings J. in Lilleyman's case (supra) and of Mukherjea J. in Saghir Ahmad v. The State of U.P. and ors. (supra), which I have adopted and applied in this appeal. Counsel for the appellants referred to pages 68 et seq of the record where the trial judge in his judgment mentioned the principle of the presumption of constitutionality of an enactment, and he said that nowhere in this context is it stated by the judge that the respondent had made out a prima facie case that the impugned Acts were unconstitutional. He also commented that the respondent's pleading is a bald one to the effect that the Acts are unconstitutional and nothing more. What I understand counsel to be saying in effect is that in these circumstances the presumption of constitutionality in his favour remains

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unaffected, and the onus has not shifted to his clients to establish the constitutionality of the two Acts. There is nothing in the trial judge's judgment to indicate that he has placed the onus of proof on the appellants. He certainly has not said so nor have the appellants themselves so alleged. This being the case, I am unable to see what grounds the appellants have for complaining.

It must have been proved to the trial judge's satisfaction that both Acts were unconstitutional for he so held, and if the burden of proof did not fall on the appellants (and this appears to be the logical conclusion to be drawn from their argument) then by parity of reasoning it could only fall on the respondent; although in this case too there is no express statement by the trial judge to this effect, and in my view he would have been wrong had he so stated. In this situation also there is no ground on which the appellants can complain that their interests have been adversely affected.

While there may be some basis for saying that the trial judge did not deal adequately with the principle of the presumption of constitutionality of an impugned statute, it is not enough for the appellants merely to point this out, they must go further and show that his failure to do so caused them to suffer prejudice. They have not established this, and accordingly I am of the opinion that this ground of appeal fails.

For these reasons I would dismiss the appeal with costs.

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JUDGMENT OF ST. BERNARD J.A.

Parliament of the State of Antigua on the 5th day of November, 1971 passed two amending Acts, namely, the Newspapers Registration (Amendment) Act, 1971, and the Newspaper Surety Ordinance (Amendment) Act, 1971. These Acts, No. 8 of 1971 and No. 9 of 1971 respectively, were assented to by the Governor on the 29th November, 1971, and became law on that date.

Section 2 of the Newspapers Registration (Amendment) Act amends the Principal Act by

inserting two sections - sections 1A and 1B respectively immediately after section 1. Section 1A defines "newspaper" as having the same meaning as is given in section 2 of the Newspaper Surety Ordinance Cap. 319, while section 1 B prohibits the publication of any newspaper by any person without a licence obtained from the cabinet and provides for the payment of an annual licence fee of six hundred dollars. Any persons, however, who prints or publishes a newspaper registered under the provisions of the Principal Act fifteen days before the commencement of the amending Act and has paid the annual licence fee is deemed to have been granted a licence. Prior to this amendment no licence was required and there was no fee imposed before the publication of a newspaper.

Section 2 of the Newspaper Surety Ordinance (Amendment) Act, 1971, amends section 3 of the principal Act by adding a new subsection as subsection (2). This subsection restricts the publication of any newspaper unless the publisher has deposited with the Accountant General the sum of ten thousand dollars in order to satisfy any judgment in the Supreme Court for libel against the editor, printer, publisher, proprietor of such newspaper or any writer therein. The sum deposited bears interest at the same rate as that payable at the Government Savings Bank. This deposit may be waived by the minister responsible for newspapers on his being satisfied that the newspaper carries sufficient security in the form of a policy of insurance or a guarantee from a bank.

The respondent, Antigua Times Limited, challenged the constitutional validity of both amending Acts and applied to the High Court for redress under section 15 of the Antigua Constitution (hereinafter referred to as "the Constitution") alleging that its freedom of expression guaranteed under section 10 of the Constitution was contravened in relation to it. The matter was tried on the 24th and 25th May, 1972, and judgment was delivered on the 15th June, 1972. The trial judge held that the respondent was a person within the meaning of Chapter 1 of the Constitution and that the provisions of sections 10 and 15 applied to it. He further held that Act No. 8 of 1971 and Act No. 9 of 1971 were

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repugnant to subsection (1) of section 10 of the Constitution and were therefore ultra vires the Antigua legislature and consequently void.

The first question to be determined in this appeal is whether the respondent is a person within the meaning of Chapter 1 of the Constitution and is therefore competent to apply under section 15 for enforcement of the protective provisions set out in Chapter 1. If this question is answered in the affirmative then the second question is whether the fundamental rights and freedoms of the individual set out in section 10 of the Constitution have been infringed in relation to the respondent so as to render either or both of the amending Acts unconstitutional.

Counsel for the appellant submitted that the fundamental rights and freedoms of the individual set out in section 1 of the Constitution referred only to natural persons as only human beings could be referred to as individuals. He stated that although the definition of the word "person" in section 19 of the Interpretation Act 1889 (English) which applied to the Constitution included a body corporate yet that meaning must not be applied whenever a contrary intention appeared in a statute. He submitted that a contrary intention existed in respect of the word "person" in section 1 of the Constitution, in that the word "individual" appeared in two places therein and since a company could not be an individual the rights conferred in Chapter 1 of the Constitution were rights available to natural persons only and not to corporate bodies. He referred to subsection (8) of section 16 of the Constitution which deals with persons who are regarded as belonging to Antigua and stated that it was clear that this provision indicated a contrary intention and that the object of the Bill of Rights set out in Chapter 1 was to provide for the rights and freedoms of human beings. Further, he said, that if this were not so there would not be any need for two sets of protective provisions in the Constitution namely, sections 15 and 102 respectively. Counsel supported his contention by reference to several authorities - (English, American, Indian and West Indian).

In Pharmaceutical Society vs. The London and

Provincial Supply Association, Ltd. (1880) 5 A.C. 857, the court held that for the word "person" to be included as meaning a corporation must depend on a consideration of the object of the statute and the enactments passed with a view to carrying that object into effect. In Wills v. Tozer and another (1904) 20 T.L.R. 700 the same principle was applied and the court held that the word "person" in section 36 of the Teigermouth Harbour Act, 1853, did not include a corporation.

Counsel referred to sections 1 and 2 of Chapter 1 of the Trinidad and Tobago Constitution and stated that the judgment of Wooding C.J. in Collymore and Abraham v. The Attorney General (1967) 12 W.I.R. 5 at page 20 threw light on the question who was protected by the Bill of Rights set out in that Constitution which was similar in some respects to the Constitution. The passage is as follows:-

> "Section 2 of the Constitution is concerned to protect the human and fundamental freedoms recognised as declared by s.1. It does so by a general followed by particular prohibitions. Some of the particular prohibitions are undoubtedly apt to protect artificial legal entities also, as for example the prohibition against any Act of Parliament depriving a person the right to a fair hearing in accordance with the fundamental principles of justice (paragraph (e)) or depriving a person charged with a criminal offence of the right to be presumed innocent until proved guilty according to law (para. (f)). But, in my opinion, the prohibitions are intended to protect natural persons primarily. I say so because (a) the rights they protect are expressly designated as human rights; (b) four of the six of them enumerated in s.1 are further defined as rights of the individual and the other two are obviously so, being (i) the right to join political parties and to express political views and (ii) the right of a parent or guardian to provide a school of his own choice for the education of his child or ward; (c) the fundamental freedoms no less than the rights are recognised and declared to have existed

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and are to continue to exist "without discrimination by reason of race, origin, colour, religion or sex", thereby I think clearly implying that they are freedoms of the individual."

It is to be observed that the learned Chief Justice in the Collymore case used the words "to protect natural persons 'primarily' and not 'exclusively'". He also said that some of the prohibitions are undoubtedly apt to protect artificial legal entities.

In my opinion the above cases show that the word "person" in a statute, prima facie, includes a legal person but where the object and the provisions of the statute indicate that the interpretation to be applied is restricted to natural persons then the word must be construed in that sense and interpreted accordingly. The object of the statute and its provisions are the guidelines as these will show whether the presumption that arises is rebutted by a contrary intention.

Counsel submitted that the decision in the American case of Grosjean, Supervisor of Public Accounts of Louisiana v. American Press Co. In. (1936) 56 Sup. Court Reporter, 444, in which it was held that a corporation was not a "citizen" within the privileges and immunities clause of the Fourteenth Amendment but was a "person" within the equal protection and due process clauses of such Amendment, was wrong and that it ignored the settled state of American law at the time it was decided. An examination of the cases Covington and L. Turnpike Road Co. et al. v. Sandford et al (1896) 17 Supreme Court Reporter, 198 and Smyth, Attorney General v. Ames and others (1898) 18 Supreme Court Reporter 418, showed that they did not support the proposition for which they were cited in the Grosjean case. Both cases, he submitted, decided that a corporation was a person within the meaning of the constitutional provisions forbidding the deprivation of property without due process of law, and was authority for that limited proposition only. He referred to the cases of North-Western National Life Insurance Coy. v. Paul Riggs and Eugene De Harb (1906) 27 Supreme Ct. Reporter, 126, and Western Turf Association v.

Hyman Greenburg (1907) 27 Supreme Court Reporter, 384 where it was stated by Mr. Justice Harlan, who delivered the opinion of the court in both cases that the liberty guaranteed by the 14th amendment against deprivation without due process of law was the liberty of natural and not artificial persons. This proposition was also stated in the cases of Hague v. Committee for Industrial Organisation (1939) 59 Supreme Court Reporter, 957 and Wheeler Steel Corporation v. Glander (1949) 69 Supreme Court Reporter 1291.

The American cases referred to may be of assistance but in last resort, in my view, it is the intention gathered from the object and the provisions of the Constitution that must be the guide in interpreting whether or not the word "person" includes a corporation. In Adegbenro v. Akintola and another (1963) 3 All E.R. 544 at page 550, Viscount Radcliffe, in delivering the judgment of the Privy Council, stated -

> "It is true that the Constitution of Western Nigeria, allowance made for the federal structure, does embody much of the constitutional practice and principle of the United Kingdom. That appears from a study of its terms. There are identifiable differences of scheme to be found in certain sections, but no one, it seems, questions the general similarity or the origin of many of its provisions. But, accepting that, it must be remembered that, as Lord Bryce once said, the British constitution "works by a body of understandings which no writer can formulate"; whereas the Constitution of Western Nigeria is now contained in a written instrument in which it has been sought to formulate with precision the powers and duties of the various agencies that it holds in balance. That instrument now stands in its own right; and, while it may well be useful on occasions to draw on British practice or doctrine in interpreting a doubtful phrase whose origin can be traced or to study decisions on the constitutions of Australia or the United States where federal issues are involved, it is in the end the wording of the constitution itself that is to be interpreted and applied, and

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this wording can never be over-riden by the extraneous principles of other constitutions which are not explicitly incorporated in the formulae that have been chosen as the frame of this constitution."

The principle set out in the above passage may be applied to the Constitution of Antigua. I agree with the submission of counsel for the respondent that the word "person" in line one of section 1 ought to be construed as including a corporation whenever the right specified in that section is capable of being enjoyed by the corporation; but where the right is, peculiarly by its very nature, capable of being enjoyed only by natural persons then only natural persons will be entitled to the enjoyment of such rights. Section 1 speaks of the entitlement of every individual to life, liberty, security of the person, the enjoyment of property and the protection of the law. Although the words "fundamental rights and freedoms of the individual" are used and, normally, the word "individual" is referable to natural persons only, yet the right to liberty, security of the person, the enjoyment of property and the protection of the law is capable of being enjoyed by corporate bodies. It seems reasonable therefore to infer that the word "individual" as used in this section includes a corporation and should not be interpreted as indicating a contrary intention. In Great Northern Railway v. Great Central Railway (1899) 10 Ry and Canal Cases 266, the Court interpreted the word "individual" in section 9 of the Railway and Canal Act (1888) as including a corporation. The Canadian case of Regina v. Sommers (1964) West. Weekly Report 246 (Supreme Court British Columbia) also supports the view that the word "individual" may be interpreted as including a corporation where it would be absurd to restrict its meaning to natural persons only. Subsection (1) of section 6 of the Constitution prohibits the compulsory acquisition of property save under the provisions of a law which prescribes the principles under which compensation may be determined and for the enforcement of certain rights. Paragraph (g) of subsection (2) of this section refers to the property of certain persons including the property of bodies corporate or incorporate in the course of being wound up, and subsection (4) provides that nothing in this

section shall be construed as affecting the making or operation of any law for the compulsory acquisition in the public interest of any interest in or right over property, where that property, interest or right is held by a body corporate which is established for public purposes etc. The right conferred under this section falls within one of the "fundamental rights and freedoms of the "individual" guaranteed by section 1 of the Constitution and to construe the word "person" in Chapter 1 as meaning a natural person only would deprive a corporation of the right as conferred by section 6, to compensation for its property compulsorily acquired. I would construe the word "person" in section 1 of the Constitution as including a corporation and hold that the respondent was competent to apply to the High Court for redress under section 15 thereof.

In regard to the second question the trial judge found that both the amending Acts were unconstitutional and were repugnant to subsection (1) of section 10 of the Constitution. Counsel for the appellant submitted that the trial judge did not give sufficient emphasis to the presumption in favour of the constituional validity of the amending legislation. He contended that the onus of proof lay upon the person who attacked a statute to show that there was a clear transgression of the constitutional provisions and, unless the violation was patent, the court should presume the existence of facts which can be reasonably conceived to sustain the constitutionality of the legislation. Counsel further contended that by reason of the manner in which section 10 of the Constitution was framed the legal burden of proof was on the respondent to show that the impugned law violated the rights guaranteed by the Constitution. If the respondent showed a prima facie violation then the onus shifted to the appellant to show that the legislation came within the permissible limits imposed by subsection (2) of section 10 of the Constitution. Counsel for the respondent submitted that section 10 of the Constitution in its structure was the same as section 19 of the Indian Constitution. Section 19 contained certain fundamental rights in subsection (1)(a) - (g) and certain limitations in subsection (2) - (6). In India a person seeking constitutional redress under section 19

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had only to establish that he had the alleged right and that there was a prima facie invasion of that right whereupon the state was required to justify the restrictions imposed, showing that it came within the ambit of one of the permissible restrictions and placing material before the court to justify the reasonableness of the restriction. If there was a prima facie violation and the state failed to discharge the burden cast upon it, then the constitutional right of the person prevailed and the legislation would be considered unconstitutional. In support of his contention counsel cited the case of Saghir Ahmad v. State of U.P. (1954) All India Report 707.

In my opinion the burden of proof under section 1 of the Constitution is as set out in the argument of counsel for the respondent and supported by the judgment of Mukherjea J. In the Saghir Ahmad's case at p. 726. If the respondent is able to show a prima facie infringement of his right thereunder - he may do this by simply showing that the impugned legislation on the face of it violates his right - then the burden is on the appellant to show that the legislation falls within the provisions of subsection (2) of section 10 and that it is reasonably required.

I must now consider whether there was an infringement of the respondent's freedom of expression as guaranteed by subsection (1) of section 10 of the Constitution and, if there was, whether that infringement was a violation on the face of the impugned legislation. If these two questions are answered in the affirmative then the burden is on the appellant to show that the legislation falls within the permissible limits set out in sub-paragraph (ii) of paragraph (a) of subsection (2), and that the legislation was reasonably required.

Subsection (1) of section 1B of Act 8/1971 requires a licence to be obtained before a person may publish a newspaper and subsection (2) thereof provides for the payment of an annual licence fee of six hundred dollars on or before the 2nd day of January in every year. Counsel for the appellant contended that these requirements were regulatory and fell within the expressed contemplation of the provisions of sub-paragraph (ii) of

paragraph (a) of subsection (2) of section 10 of the Constitution. He submitted that there was no logical distinction between the publication of newspapers, broadcasting, telecommunications and public meetings in relation to the right of freedom of expression as they were all ways of exercising the same right. He referred to the provisions of the Telecommunications Act, Chapter 218, of the Laws of Antigua as an instance of regulatory laws which did not infringe the fundamental right guaranteed by the Constitution. He stated that the test was whether the provisions of Act 8/1971 did not merely regulate the exercise of the right but went further and imposed a form of censorship or restriction or circulation. In his view all the Act did was to provide a competent authority to exercise the power to grant licences constitutionally. The licence fee of six hundred dollars was regulatory and was not a tax which restricted circulation.

On the face of it, in my opinion, the requirement of a licence fee of six hundred dollars prior to the publication of a newspaper is an infringement of the right of freedom of expression and therefore the legislation must be carefully examined to ascertain whether such a fee falls within sub-paragraph (ii) of paragraph (a) of subsection (2) of section 10 as a fee necessary for the purpose of regulating the licensing of newspapers in a State. Licensing, including the payment of licence fees are within the competence of the legislature but where such licensing or payment of such fees interfere with the right guaranteed under section 10, the State must show that these provisions are reasonably required and must discharge that burden by placing before the court all relevant facts and circumstances which call for the enactment of such provisions. The American decisions in Murdock v. Pennsylvania (city of Jeanette) 1943, 319 U.S. and Lovell v. City of Griffin (1938) U.S. 444 support the view that the requirement of the payment of a licence fee prior to publication of a newspaper is an infringement of the freedom of expression. In the first case Mr. Justice Douglas who delivered the opinion of the court said as follows at page 114 -

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> "it is a flat license tax levied and collected as a condition to the pursuit of activities where enjoyment is guaranteed by the First Amendment. Accordingly, it restrains in advance those constitutional liberties of the press and religion and inevitably tends to suppress their exercise .....
>
> A person cannot be compelled to purchase through a license fee or a licence tax, the privilege freely granted by the Constitution."

In the second case an ordinance restricted the right to distribute literature in the city of Griffin without a permit from the City Manager. The court held that the ordinance was invalid on its face as its character was such that it struck at the very foundation on the freedom of the press by subjecting it to licence and censorship.

The First Amendment of the American Bill of Rights has no provision corresponding to subsection (2) of section 10 of the Constitution and therefore "the American judges look for the inherent limitations which there must be in the fundamental freedoms of the individual if the freedom of others and the interest of the community are not to be infringed" (Francis v. Chief of Police; Privy Council Appeal No. 9/72). In Antigua subsection (2) of section 10 sets out the permissible limits within which the legislature may infringe the fundamental rights and freedoms of the individual and the legislature must be examined to see whether such hindering or interference is justifiable. The above decisions must therefore be considered in the light of this difference in pattern of the American Bill of Rights and the Constitution.

Dr. Ramachandran in his work, Fundamental Rights and Constitutional Remedies, Vol. 1, 1970 ed. at page 941 in dealing with the difference between a permit and a licence stated -

> "There is a distinction between a permit and a licence. The latter imposes appropriate conditions for the conduct of the licensed business. A permit is an administrative grant for carrying business. The law may

> confer an absolute discretion to the authority of granting a permit. There can be no permits in the sphere of Fundamental Rights which is inherent in a citizen ....."

and at the same page he stated -

> "A licence is a symbol of state regulation and the licence fee is intended to cover the expenses involved ....."

At page 939, in dealing with licence fees he said -

> "There is a marked difference between a tax and a license fee. The licence fee is not intended to raise revenues as in the case of a tax, A licence fee may be charged to meet all probable expenses to be incurred for the regulation of the particular trade or business or calling."

When the provisions of section 1B of Act 8 of 1971 are considered in the light of the definitions given by Dr. Romachandran between a licence and a permit, and a licence fee and a tax it will be observed that there is nothing regulatory in the provisions of the Act. What is called "a licence from the Cabinet" is really a permission from the Cabinet prior to the publication of a newspaper. This requirement is a restraint on the freedom of expression. A licence is intended to lay down appropriate conditions for the conduct of a business, while a permit is an administrative grant for carrying on a business. Further the provisions of the amending Act are totally unrelated to the provisions of the Principal Act which deals with the registration of newspapers for the purpose of assigning responsibility for civil or criminal liability. The licence granted by the Cabinet is not a licence in connection with the registration of newspapers nor is it in any manner connected with the carrying on of the business of a newspaper. The requirement of the payment of a licence fee of six hundred dollars is not a fee prescribed with the intention of meeting the expenses involved in regulating the conduct of the business of a newspaper; neither is it a registration fee. In my opinion this fee imposed by subsection (2) of section 1B of Act 8/71 is in effect a tax imposed on the freedom of expression

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guaranteed by section 10 of the Constitution and therefore an infringement of that section. Even if it were to be assumed that the licence fee prescribed was a fee intended to meet the expenses for regulating the business of the press, then no evidence was adduced to prove that the fee was reasonably required and was justifiable in the circumstances. I hold that Act 8/71 is repugnant to the Constitution and ultra vires.

In regard to the constitutionality of Act 9/71 counsel for the appellant submitted that the trial judge ignored the fact that it was not contended by the respondent that the legislature was not competent to require a deposit or a bond. The case for the respondent, he stated, was that that requirement was constitutional but the sum of ten thousand dollars was exorbitant and therefore penal. In this regard he referred to the evidence of Reuben Harris, a director and deputy chairman of the Company.

The evidence of Reuben Harris indicated that the Company was challenging only the financial provisions of the two amending Acts as being penal in amounts. The statement of claim, however, asked for a declaration that both Acts were ultra vires and the challenging of the financial provisions of the Acts as penal was a pleading in the alternative. The question whether an Act is repugnant to the Constitution is, in my view, a matter of law and not one of fact and the evidence of the witness Harris does not stop the respondent from pursuing his claim as set out in paragraph 6(a) and (b) of the statement of claim nor bind the hands of the court.

Counsel for the respondents submitted that the requirement of a deposit of ten thousand dollars or the furnishing of security in lieu thereof constituted, on the face of it, a hindrance to the enjoyment of the freedom of expression. It was, he stated, a condition precedent to the exercise of a constitutional right and was a serious restraint on the freedom of expression. He submitted further that this type of legislation dealt with matters in fururo and was not the sort of legislation which fell within subsection (2) of section 10 and was unreasonable. He contended further that the State had not shown

that the provisions were reasonably required to meet any situation that had arisen in the State as no material was placed before the court to discharge that burden.

Act 9/71 amends section 3 of the principal Act by renumbering the section 3(1) and adding a new subsection as subsection (2). Section 3 of the principal Act provides for a bond in the sum of nine hundred and sixty dollars with one or more sureties as may be required and approved by the Attorney General as security for the payment of any penalty upon any conviction for publishing any blasphemous or seditious or other libel, and also for damages and costs on any judgment for the plaintiff in any action for libel against the publisher. The new subsection provides for a deposit of ten thousand dollars to be deposited with the Accountant General or security in the form of a policy of insurance or a guarantee of a bank for the purpose of satisfying any judgment in the Supreme Court for libel against the printer or publisher or proprietor of a newspaper. It will be observed that the section was not repealed and replaced by a new section so that there are now two subsections dealing with conditions which must be satisfied prior to the publication of a newspaper. The requirement of a deposit of ten thousand dollars or the furnishing of security in lieu thereof is a condition precedent to the exercise of a constitutional right guaranteed by section 10 of the Constitution and, as such, prima facie, the provisions of the amending Act constitute a limitation upon the right of publishing a newspaper. This limitation upon the right of the freedom of expression does not appear to be unreasonable but since it is a restraint on that right it is for the State to show that such preventive measures fall within the permissible limits imposed by subsection 2(a)(ii) of that section and further that they are reasonably required by placing before the Court all the relevant facts and circumstances which made such legislation necessary. The appellant gave no evidence at the trial and the evidence of the witness Reuben Harris did not show a state of affairs had arisen which made such legislation justifiable. The Court, therefore, had no evidence before it to determine whether or not the legislation was justified and, in those circumstances, in my opinion, the trial judge was right

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in declaring that Act 9/71 was repugnant to sub-section (1) of section 10 of the Constitution, ultra vires and void.

I would dismiss the appeal with costs.

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No. 10

JUDGMENT OF PETERKIN J.A. (Ag.)

The Antigua Times Ltd., the Plaintiff in the action and Respondent in this appeal, is a Company registered under the Companies Act of Antigua, and publishers of a newspaper called "The Antigua Times". In the year 1971 the Parliament of Antigua enacted two laws, the Newspapers Registration (Amendment) Act, and the Newspaper Surety Ordinance (Amendment) Act. They both came into force on 29th November, 1971. The Respondent contended in the trial that the Acts were unconstitutional in that they infringed the right of freedom of expression set out at section 1(b), and provided for in section 10 of Chapter 1 of the Antigua Constitution to which the Respondent claimed he was entitled. The Respondent alleged a contravention of this right, and applied to the High Court for redress under section 15.

The Learned Trial Judge in a considered judgment declared both Acts to be repugnant to sub-section 1 of section 10 of the Constitution, ultra vires the Antigua Legislature, and consequently void. The Appellants, the Defendants in the action, being dissatisfied with the decision, have appealed. They have set out five grounds of appeal.

The first ground of appeal concerns the overruling by the trial judge of a preliminary objection taken by Counsel for the Defendants, namely, that the Plaintiff was not a "person" within the meaning of section 15 and so was not qualified to apply for redress or the enforcement of the protective provisions of sections 2 to 14 (inclusive) of the Constitution. The argument here, within a narrow compass, is that only a

human being can be considered an individual, and that the rights referred to in Chapter 1 are rights of the "individual", i.e. natural persons. It becomes necessary at this stage to refer to the relevant sections of the Constitution in order that the point taken might be appreciated.

First of all, section 15(1) reads as follows:

"If any person alleges that any of the provisions of sections 2 to 14 (inclusive) of this Constitution has been or is being, contravened in relation to him, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress."

Then, section 1 with its marginal note "Fundamental rights and freedoms of the individual", reads as follows:-

"Whereas every person in Antigua is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely:-

(a) life, liberty, security of the person, the enjoyment of property and the protection of the law;

(b) freedom of conscience, of expression and of peaceful assembly and association; and

(c) respect for his private and family life,

the subsequent provisions of this Chapter shall have effect for the purpose of affording protection to the aforesaid rights and freedoms, subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice

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the rights and freedoms of others or the public interest."

The protective provision alleged by the Respondent to have been contravened is contained in section 10, the marginal note to which reads, "Protection of freedom of expression".

I turn next to section 115(15) of the Antigua Constitution, which is the interpretation section. It reads as follows:-

> "The Interpretation Act 1889 shall apply, with the necessary adaptations, for the purpose of interpreting this Constitution and otherwise in relation thereto as it applies for the purpose of interpreting and in relation to Acts of the Parliament of the United Kingdom."

Section 19 of this Act reads:-

> "In this Act and in every Act passed after the commencement of this Act, the expression "person" shall, unless the contrary intention appears, include any body of persons corporate or incorporate."

Learned Counsel in forceful addresses to the Court have both put forward various arguments as to whether or not a contrary intention does appear in the context, and they both referred to American decisions in the course of their arguments. The author of Craies on Statute Law at page 507 of the 7th edition, in dealing with rules for the interpretation of written constitutions, states:-

> "In D'Bunden v Pedder it was laid down by the High Court of Australia that where the Constitution Act contained provisions indistinguishable in substance, though varying in form, from provisions in the Constitution of the United States, which had received judicial interpretation by the Supreme Court of the United States, it was proper to consult and to treat as a welcome aid, but not as an infallible guide, the relevant decisions of that Court."

The general rules adopted for construing a written Constitution embodied in a Statute are the same as for construing any other statute. In dealing with the aspect of a "contrary intention", Lord Pearce states as follows in the judgment of the Privy Council in Sin Poh Amalgamated (H.K.) Limited v. Attorney General of Hong Kong and another, 1965 Weekly Law Reports, 62 at page 66:-

> "To discover whether a contrary intention is implied one must, I think, look, not at the form of particular expressions, but at the substance and tenor of the legislation as a whole."

And this takes me to the judgment of Wooding, C.J. in the case of Collymore and Abraham v. The Attorney General, (Trinidad & Tobago Court of Appeal), reported in Volume 12, W.I.R., page 5. There the Appellants sought to contend that the Act, the constitutionality of which they were contesting, imposed or authorised the imposition of cruel and unusual treatment or punishment on a trade union which section 2(b) of the Constitution prohibited. Wooding, C.J. said at page 20 as follows:-

> "The fourth ground is that ss.34(3), 36(5) and 37(3) of the Act are in conflict with S 2(b) of the Constitution in so far as the same provide for the cancellation of a trade union's registration for the commission of the offences therein referred to. It was said that the Act has thereby imposed or authorised the imposition of cruel and unusual treatment or punishment which s.2(b) of the Constitution prohibits. I do not agree that it is in any sense cruel to cancel the registration of a trade union for an offence against the law. The severity of the punishment is presumably a measure of the gravity of the offence in the view of Parliament. But, that apart, the contention is, I think, basically unsound. Section 2 of the Constitution is concerned to protect the human rights and fundamental freedoms recognised and declared by s.1. It does so by a general followed by particular prohibitions. Some of the particular

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prohibitions are undoubtedly apt to protect artificial legal entities also, as for example the probibition against any Act of Parliament depriving a person of the right to a fair hearing in accordance with the fundamental principles of justice (paragraph (e)) or depriving a person charged with a criminal offence of the right to be presumed innocent until proved guilty according to law (para. (f)). But, in my opinion, the prohibitions are intended to protect natural persons primarily. I say so because (a) the rights they protect are expressly designated as human rights; (b) four of the six of them enumerated in s.1 are further defined as rights of the individual and the other two are obviously so, being (i) the right to join political parties and to express political views and (ii) the right of a parent or guardian to provide a school of his own choice for the education of his child or ward; (c) the fundamental freedoms no less than the rights are recognised and declared to have existed and are to continue to exist "Without discrimination by reason of race, origin, colour, religion or sex", thereby I think clearly implying that they are freedoms of the individual; (d) four of the five of them enumerated in the section relate beyond question to the individual only; and (e) in the context of the required non-discrimination, I would interpret the fifth, "freedom of the press", as a compendious reference to those responsible for press publications. All the more then because of what I conceive to be the primary purpose of s.2, but also because I think it accords with its essential meaning, I would interpret "cruel" in its relation to the treatment or punishment prohibited by s.2(b) as not merely severe or harsh but as inhumane and inflictive of human suffering."

Even where the Trinidad Constitution specifically provided for freedom of the press, it was interpreted as being "a compendious reference to those responsible for press publications". I am aware that the Antigua Constitution does not designate the rights as "human rights". But by

the same token it does not specifically provide for "freedom of the press", whereas the Trinidad & Tobago Constitution does. I think that the argument of Wooding, C.J. applies with equal force to the present case. In particular, I say so because the rights are defined in the Antigua Constitution as fundamental rights and freedoms of the "individual", and are declared to exist "whatever his race, place of origin, political opinions, colour, creed or sex."

I am of the opinion that a contrary intention has been shown to exist sufficient to exclude the operation of the Act, and consequently that the prohibitions are intended to protect natural persons only.

I must at this stage refer to the case of Camacho and Sons Limited and Others v Collector of Customs, (Antigua Civil Appeal No. 6 of 1971 - unreported), mentioned by Counsel. In this case the Court of Appeal made a declaration to the effect that the refusal of the Collector of Customs to issue certain licences to the Company constituted discriminatory treatment and was in contravention of section 12(2) of the Antigua Constitution in relation to the Appellants. I would, with respect, point out the following:-

(a) It is conceded that this point was never argued before the Court of Appeal in the Camacho case.

(b) In addition to the Company, there were two individuals as Plaintiffs before the Court in that case,

(c) The expression "discriminatory" is defined in sub-section (3) of section 12 of the Constitution as follows:-

"In this section, the expression 'discriminatory' means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made

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> subject or are accorded privileges or advantages which are not accorded to persons of another such description."

For the reasons stated, I am of the opinion that the Plaintiff/Respondent/Co. is therefore not entitled to the protective provisions mentioned in section 15 of Chapter I, and that the Appellants should succeed on this ground of appeal.

For the purposes of the remaining arguments, however, I am going to proceed on the basis that the Plaintiff/Respondent is so entitled.

Before proceeding to deal with the two grounds of appeal concerning the two Acts impugned, I wish to refer to the two grounds of appeal stated at sub-paragraphs 4 and 5 of paragraph 3.

Sub-paragraph 5 deals with the principle that there is a presumption in favour of the constitutional validity of a Statute. The allegation is that the learned trial Judge failed to direct his mind to it. The complaint here is true in a limited sense. The trial Judge did not say very much about this principle in his judgment, and there is therefore some basis for saying that he did not deal adequately with it. But there is nothing in the judgment to indicate that he took a contrary view, or that he failed completely to consider it.

Sub-paragraph 4 alleges as follows:-

> "The Learned Judge erred in holding that the Plaintiff/Respondent had shown that a constitutional right had been or was being contravened in relation to it."

What needs to be stressed here in my opinion is that section 15(1) states that if any person alleges that any of the provisions of sections 2 to 14 (inclusive) has been, or is being, contravened in relation to him, that person may apply to the High Court for redress. In short, the section does not permit anyone to take up the cudgels on behalf of someone else. Nor is the Court to be asked to declare exhypothesis. He must allege and show that there has been a contravention "in relation to him", i.e., on the facts and

circumstances of his own particular case, before he may obtain redress from the Court.

I turn at this stage to the facts and circumstances of the Plaintiff's case, because before the Court can declare the two Acts pleaded to be ultra vires the legislature, the Plaintiff must allege and show that the provisions of section 10 which provides for the protection of freedom of expression have been contravened in relation to the Company. This brings me to the evidence of the only witness to testify in the trial, namely, Reuben Henry Harris, and to what may be referred to as the agreed propositions.

The evidence should be allowed to speak for itself. The witness describes himself as the second largest shareholder in the Plaintiff Company and its deputy chairman. Parts of his evidence read as follows:-

"The sum of $600 fee is exorbitant because when one examines the Miscellaneous Revenue Provisions Act, No. 29 of 1969, one sees there a chart of the various licences which are paid by more lucrative businesses than a newspaper."

"Antigua Times if paid fee had a licence. Even if I did not have to apply for a licence, I say Act is unconstitutional to ask newspaper to get leave."

"If my Company had paid licence it would not have to apply for a licence."

"I know that all the Islands pay registration fee. In Barbados $240 E.C., in Jamaica £20 Jamaica pounds, Guyana pays, I don't remember amount. Trinidad pays $100 p.a. I am in agreement with principle of insurance against libel. I am not aware of $15,000 amount for libel in Barbados. I agree in principle with licence fee, not application for licence. A normal fee. $600 not a normal fee."

"Whether or not cutting my nose to spite my face, it is a type of sacrifice Antigua Times Ltd. is prepared to make to ensure

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constitutional rights of the people of Antigua."

The agreed propositions are, in my opinion, of even greater importance, because, whatever issues may hitherto have been at large at the trial stage have, by agreement of Counsel, been considerably narrowed. There can be no doubt that as a matter of agreement the parties the onus of proof of any particular fact, or of its non-existence, may be placed on either party in accordance with the agreement made between them. Learned Queen's Counsel on both sides, after considerable thought no doubt, came to an agreement on certain issues, and submitted them to the trial Judge in the form of agreed propositions. They should be allowed to speak for themselves.

I am in entire agreement with the first two. The propositions are as follows:-

(1) Any law the effect of which is that the Cabinet has the right to decide what person shall and what person shall not obtain a licence for a newspaper pub lished or caused to be published by him or what person shall and what person shall not be allowed to register such newspaper by declaration is unconstitutional.

(2) Any law is constitutional which provides for a fee for registration of a newspaper such fee being of a moderate figure in keeping with the established practice in the Caribbean.

(3) Any law is constitutional which provides that no person shall print or publish or cause to be printed or published any newspaper unless he shall have previously deposited with the Accountant General a sum of $10,000 in cash or a bond for the like amount from an established Bank or Insurance Company, to be drawn against in order to satisfy any judgment of the Court for libel against the editor or printer or publisher or proprietor of the newspaper and to be at all times maintained at the sum of $10,000.

Indeed, it is interesting to see the final submissions made by Counsel on behalf of the Plaintiff Company (the Respondent in the Appeal). They appear in the judgment at page 64 of the Record, and are as follows:-

"(1) The requirement in subsection 1B(1) of Act No.8 of 1971 of a licence to be granted by the Cabinet or the requirement of a licence before a person can publish a newspaper is a hindrance to publication.

"(2) It is unconstitutional to impose upon a newspaper the payment of a sum of money which is penal - in this case $600 per annum (Section 1B(2) of Act No. 8 of 1971). However, a reasonable or moderate fee would be alright.

"(3) The proviso to subsection (2) of Act No. 9 of 1971 is penal and an infringement of the constitutional guarantee in section 10(1) of the Constitution."

It is clear that the trial Judge was not being asked to adjudicate merely on the pleadings as they stood, but on the pleadings in the light of the evidence and, in particular, the agreed propositions. One of the functions of Counsel in a civil action is to make admissions, and Counsel has a very wide authority. Counsel has complete authority over the suit, the mode of conducting it, and all that is incident to it, and may compromise any matter in the action. It is binding in the action, including an appeal. I propose, therefore, to deal with the submissions as put by Counsel at the trial stage. The Court can only be asked to adjudicate on the allegations and proof of contraventions as they relate to the Plaintiff's case.

I turn now to the submissions of Counsel on behalf of the Plaintiff Company. I would point out that he made but 3 submissions only.

The first submission should of course be read in conjunction with the proviso to subsection 1B(1) of No. 8 of 1971. I agree with it. But the proviso is as follows:-

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"Provided that every person who prints or publishes a newspaper registered under the provisions of the Principal Act fifteen days before the commencement hereof and has paid the annual licence fee prescribed by this Act shall be deemed to have been granted a licence."

There can be no doubt about the Plaintiff's position here. Even the Plaintiff's witness stated that if the Company paid the required fee it would not have to apply for a licence. The Plaintiff's paper was in circulation more than 15 days before the coming into operation of the Act. On payment of the licence fee the "Antigua Times" shall be "deemed to have been granted a licence." So while I am able to state that I agree entirely with the first proposition as conceded and submitted by Counsel, and with the submission made thereunder, it is my opinion that the proviso to subsection 1B(1) applies to the "Antigua Times" and consequently that the Plaintiff Company has failed here to show that any provision of the Constitution has been or is being contravened in relation to it.

The second submission is based on the second proposition with which I am in agreement. It deals with the quantum only of what is termed a licence fee, and what in my opinion is in reality a registration fee. It was regarded as such by Counsel.

The Plaintiff's only witness agreed in principle with a licence fee, and learned Counsel on both sides at the trial conceded, inter alia, in the agreed ppropositions which they put before the Court that any law is constitutional which provides for a fee for registration of a newspaper, such fee being of a moderate figure in keeping with the established practice in the Caribbean. Section 1B(2) has nothing whatever to do with censorship or circulation. The learned trial Judge in dealing with the question of the quantum of the fee has this to say in his judgment at page 92 of the Record:-

"Once it is found that there is conferred upon the legislature a power to impose a charge with respect to the registration of

a newspaper and that the provisions of the legislation fall within and are authorised by the power, the Court cannot look into the question of the size of the fee. The question of "Quantum" is a matter of policy which is strictly within the discretion of the law-making body."

With this I would agree, but, with respect, I would add the following rider, namely, provided that such charge were not on the face of it manifestly excessive. If it were such, then it would in my opinion constitute a hindrance to publication.

The question here is then whether or not an annual registration fee of $600 can be considered as being manifestly excessive. I do not think it serves any useful purpose to compare it, as the witness did, with the provisions of the Miscellaneous Revenue Provisions Act, (No. 29 of 1969). The evidence mentions Barbados as requiring a registration fee of $240, and Jamaica and Trinidad as requiring a registration fee of £20 and $100 respectively, but does not go on to say how long ago these sums were legislated for. The learned trial Judge has made no finding on this issue but, in any event, the Court should not in my view interfere unless it is shown to be manifestly excessive, and the onus is on the Plaintiff to show this. Counsel has submitted that it is imposed as a purely regulatory measure and that the Plaintiff Company has failed to show that, in the context of modern living, it is manifestly excessive. With this I would agree.

The third submission made by Counsel on behalf of the Plaintiff Company relates to Act No. 9 of 1971. The Act imposes on a person wishing to publish a newspaper an obligation to deposit a sum of $10,000 before he can exercise the right to publish which is freely granted to him by the Constitution. Prima facie I should have thought that this would constitute a hindrance to his enjoyment of the right of freedom guaranteed by section 10 of the Constitution. In these circumstances, the burden of proof would I should think, shift to the Defendant/Appellants to establish that Act No. 9 of 1971 is constitutionally justifiable. This they must do by showing that it

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Judgment of Peterkin, J.A. (Ag.) 13th June 1973 (continued)

falls within the permissible exceptions of section 10(2), and that the enactment was reasonably required.

As a matter of interest, the position in English Law is stated by the author of Law of The Constitution, by A.V. Dicey, 10th edition, pages 248 and 249. In dealing with the so-called liberty of the press, and the general principle that no man is punishable except for a distinct breach of the law, the author states as follows:-

> "... It is also opposed in spirit to any regulation requiring from the publisher of an intending newspaper a preliminary deposit of a certain sum of money, for the sake either of ensuring that newspapers should be published only by solvent persons, or that if a newspaper should contain libels there shall be a certainty of obtaining damages from the proprietor. No sensible person will argue that to demand a deposit from the owner of a newspaper, or to impose other limitations upon the right of publishing periodicals, is of necessity inexpedient or unjust. All that is here insisted upon is, that such checks and preventive measures are inconsistent with the pervading principle of English Law, that men are to be interfered with or punished, not because they may or will break the law, but only when they have committed some definite assignable legal offence ....."

But the submission here deals only with the proviso to subsection (2). The allegation here is that the proviso is penal, and an infringement of the constitutional guarantee in section 10(1) of the Constitution.

The proviso gives a discretion to the Minister responsible for newspapers by providing that if he is satisfied with the sufficiency of the security in the form of a policy on insurance or guarantee from a Bank, he may waive the requirement for a deposit of $10,000 in cash.

I have had the opportunity of reading the judgment of the Acting Chief Justice on this aspect of the matter. I agree with his argument

and conclusion that this is an unregulated and unfettered discretion, and, that in so far as there is absence of guidelines in the Act, this defect renders it unconstitutional.

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However, for the reasons which I have indicated in the earlier stages of the judgment, I would allow this appeal.

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FORMAL JUDGMENT

Formal Judgment 13th June 1973

February 20, 21, 22, 23, 26, 27 and June 13, 1973.

UPON READING the notice of appeal on behalf of the above named Defendants/Appellants dated the 20th day of July, 1972, and the judgment hereinafter mentioned:

AND UPON READING the record of appeal filed herein:

AND UPON HEARING Messrs. H. Da Costa, Q.C., and N. Hill, Q.C., of Counsel for the Defendants/Appellants and Mr. T. Hosein, Q.C., of Counsel for the Plaintiff/Respondent:

IT IS ORDERED that the judgment of the Honourable Mr. Justice Allan Louisy dated the 15th day of June, 1972 be affirmed and that this appeal be and the same is hereby dismissed with costs. Peterkin, J.A. (Ag.) dissenting.

By the Court,

(Sgd) D.A. Roberts

Deputy Registrar

In the Court of Appeal

No.12

Order granting final leave to Appeal to Her Majesty in Council 22nd April 1974

No. 12

ORDER granting final leave to appeal to Her Majesty in Council

BETWEEN:

THE ATTORNEY GENERAL AND THE MINISTER OF HOME AFFAIRS — DEFENDANTS/APPELLANTS

AND

ANTIGUA TIMES LIMITED — PLAINTIFF/RESPONDENT

Before: The Honourable the Acting Chief Justice
The Honourable Mr. Justice Elvin St. Bernard
The Honourable Mr. Justice Neville Peterkin (Ag.)

ORDER

Dated April 22, 1974.

This application for final leave to appeal to Her Majesty in Council having come on for hearing this day and after hearing Mr. John Eli Fuller of Counsel for the Defendants/Appellants and Mr. Franklyn Algernon Clarke of Counsel for the Plaintiff/Respondent and on referring to the Affidavit of Gerald Anderson Watt, Attorney General, sworn to on the 9th day of February, 1974, and filed herein IT IS HEREBY ORDERED that final leave to appeal to Her Majesty in Council be granted.

(Sgd.) Denis A. Roberts

Deputy Registrar of the Court of Appeal, Antigua.

IN THE PRIVY COUNCIL No. 9 of 1974

ON APPEAL

FROM THE COURT OF APPEAL OF THE WEST INDIES ASSOCIATED STATES SUPREME COURT (ANTIGUA)

BETWEEN:

THE ATTORNEY GENERAL

- and -

THE MINISTER OF HOME AFFAIRS (Defendants) Appellants

- and -

ANTIGUA TIMES LIMITED (Plaintiffs) Respondents

RECORD OF PROCEEDINGS

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