Privy Council Appeal No. 9 of 1974

The Attorney General and The Minister of Home Affairs – *Appellants*

v.

Antigua Times Limited – – – – – – *Respondent*

FROM

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

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 19TH MAY 1975

Present at the hearing:

LORD WILBERFORCE

VISCOUNT DILHORNE

LORD EDMUND-DAVIES

LORD FRASER OF TULLYBELTON

SIR THADDEUS MCCARTHY

[*Delivered by* LORD FRASER OF TULLYBELTON]

The respondent is a company registered in Antigua. A preliminary objection was taken on behalf of the appellants in both the Courts below, and repeated before this Board, that the respondent was not entitled to initiate these proceedings under section 15 of the Constitution of Antigua, on the ground that it was not a "person" within the meaning of that section. The objection was repelled by Louisy J. in the High Court of Antigua, and his decision on this point was upheld by a majority of the Court of Appeal of the West Indies Associated States. Peterkin J.A. dissented on this point.

The respondent was the publisher of a bi-weekly newspaper called the "Antigua Times". Publication began in December 1970 and ended in December 1971 as a consequence of the passing by the Parliament of Antigua of two Acts dealing with newspapers. The respondent complains that these Acts were unconstitutional and it applied to the High Court of Antigua for redress under section 15 of the Constitution. Section 15 (1) provides 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."

The appellants contend that the word "person" occurring twice in that subsection refers only to a natural person. The respondent contends that the word includes also an artificial or legal person such as itself. The Interpretation Act 1889, which is applied to the Constitution by section 115 (15) of the Constitution, provides by section 19 that:

> "The expression 'person' shall, unless the contrary intention appears, include any body of persons corporate or unincorporate."

It is therefore necessary to consider the context in which the word "person" occurs here.

Section 15 is in Chapter I of the Constitution, which is headed "Protection of Fundamental Rights and Freedoms". The arrangement and wording of the chapter evidently owe much to the European Convention for the Protection of Human Rights and Fundamental Freedoms signed by certain members of the Council for Europe in 1950. The European Convention was itself largely based on the Universal Declaration of Human Rights adopted by the United Nations General Assembly in 1948. The Universal Declaration, as its title suggests, is concerned mainly, if not exclusively, with *human* rights, that is with rights of individual human beings, but the European Convention appears to apply also to artificial persons, at least in some of its articles. For example Article 25 provides that the Commission may receive petitions "from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in this Convention", and Article 1 of the first protocol to the Convention refers to "every natural or legal person". With that ancestry it would not be surprising if Chapter I of the Constitution of Antigua were to apply to artificial as well as to natural persons, and its heading, already quoted, which refers to "fundamental" and not to "human" rights and freedoms, gives no indication that it is limited to natural persons.

Before turning to the words of Chapter I itself there is one other general matter which their Lordships consider relevant. The Constitution of Antigua was brought into effect by Order in Council in 1967. Having regard to the important place in the economic life of society occupied by corporate bodies, it would seem natural for such a modern Constitution, dealing with *inter alia* rights to property, to use the word "person" to include corporations. As long ago as 1922 a view to that effect was expressed by Isaacs J. in *The Australasian Temperance and General Mutual Life Assurance Society Ltd. v. Howe* 31 C.L.R. 290 at 301, and in 1930 in *Leske v. S.A. Real Estate Investment Company Ltd.* 45 C.L.R. 22 at 25 Rich and Dixon JJ. said this:

> "The time has passed for supposing that the Legislature would use the word 'person' only to signify a natural person in dealing with a class of business in which the utility of the proprietary company has long been made manifest."

That statement was made with reference to an Act dealing with contracts for the sale of land but it is also applicable, though with rather less force, to a Constitution such as that of Antigua which includes provisions safeguarding the ownership of property. The attention of their Lordships was drawn to a number of decisions of the Supreme Court of the United States in which the meaning of the word "person" in the Fourteenth Amendment to the American Constitution was considered. That amendment provides *inter alia* that no state shall "deprive any person of life, liberty or property without due process of law; nor deny to any person within the jurisdiction the equal protection of the laws". In *Grosjean v. American Press Co. Inc.* (1936) 297 U.S. Reports 233, at 244, Sutherland J. delivering the opinion of the Court said this:

> "But a Corporation is a 'person' within the meaning of the equal protection and due process of law clauses, which are the clauses involved here."

and he referred to authority for that proposition. In *Wheeling Steel Corporation v. Glander* (1949) 337 U.S. Reports 562 Douglas and Black JJ. (in a dissenting opinion) said that it had been implicit in all decisions of the Supreme Court since 1886 that a corporation is a "person" within the meaning of the Equal Protection Clause of the Fourteenth Amendment. These Australian and American decisions, although of course not decisive of the present question, indicate the approach taken to similar questions in those countries in recent times.

Chapter I of the Constitution of Antigua consists of sections 1–16 inclusive. Section 1 is 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:
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> (*a*) life, liberty, security of the person, the enjoyment of property and the protection of the law;
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> (*b*) freedom of conscience, of expression and of peaceful assembly and association; and
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> (*c*) respect for his private and family life,
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> 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."

That section is in very nearly the same words as section 5 of the Constitution of Malta which was considered by this Board in *Olivier v. Buttigieg* [1967] 1 A.C. 115, and the analysis of the latter section made in the judgment of the Board delivered by Lord Morris of Borth-y-Gest is equally applicable to section 1 of the Antigua Constitution. The following passage appears at pages 128–9:

> "It is to be noted that the section begins with the word 'Whereas'. Though the section must be given such declaratory force as it independently possesses, it would appear in the main to be of the nature of a preamble. It is an introduction to and in a sense a prefatory or explanatory note in regard to the sections which are to follow. It is a declaration of entitlement—coupled however with a declaration that though 'every person in Malta' is entitled to the 'fundamental rights and freedoms of the individual' as specified, yet such entitlement is 'subject to respect for the rights and freedoms of others and for the public interest'. The section appears to proceed by way of explanation of the scheme of the succeeding sections. . . . The succeeding sections show that the promised scheme was followed."

The reference to "race, place of origin, political opinions, colour, creed or sex" indicates that the section was referring primarily to human or natural persons, but there is nothing to exclude artificial persons so far as they are capable of enjoying the fundamental rights and freedoms. Counsel for the appellants argued that section 1 was

the master section of the chapter, that the subsequent provisions of the chapter were limited to having effect for protecting "the aforesaid rights and freedoms", that is, the rights and freedoms specified in paragraphs (*a*), (*b*) and (*c*) of the section, and that those rights and freedoms belonged only to human persons. Their Lordships cannot agree that the rights and freedoms are limited in that way. The nature and extent of the rights and freedoms protected must depend upon the provisions of the sections respectively protecting them. Some of these sections clearly cannot apply to corporations but others can and, in the opinion of their Lordships, do. On this matter their Lordships cannot do better than to quote the following passage from the judgment of Lewis C.J. in the Court below:

> "It is obvious that there are certain rights and freedoms in Chapter I of the Constitution which from their very nature cannot be enjoyed by a corporation, *e.g.* the right to life specified in section 2, the right to personal liberty specified in section 3, and the right to be protected from inhuman treatment mentioned in section 5; but there is nothing in principle which prevents a corporation from enjoying the rights relating to the compulsory acquisition of property (section 6), the securing of protection of the law (section 8) and protection from discrimination on various grounds specified in section 12. It would not be an affront to commonsense or reason to contend that if a corporation's property were compulsorily acquired (section 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 section 8. As regards to the right to protection from discriminatory treatment on grounds of race, place of origin, political opinion, colour or creed (section 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 section 15 of the Constitution in circumstances where it was found to have been treated in a discriminatory manner contrary to section 12 (2) and (3) by reason of political opinions of its directors. The case in question was *Camacho & Sons Ltd. and Others v. Collector of Customs* (Antigua Civil Appeal No. 6 of 1971) (unreported)."

The Chief Justice went on to explain the facts in *Camacho's* case and he concluded as follows:

> "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."

Their Lordships agree with the opinion expressed by the Chief Justice and they have no reason to doubt that the decision in *Camacho's* case was correct. Their Lordships also agree with the opinion of Wooding C.J. in *Collymore v. The Attorney General* (1967) 12 W.I.R. 5, 20 who said with reference to the Constitution of Trinidad and Tobago that it was intended to protect natural persons primarily but that

> "some of the particular prohibitions are undoubtedly apt to protect artificial legal entities also. . . .".

The section of the Antigua Constitution which in the opinion of their Lordships is most clearly applicable to corporate bodies is section 6, Protection against compulsory acquisition of property. The opening words of subsection 1 are as follows:

> "No property of any description shall be compulsorily taken possession of, and no interest in or rights over property of any description shall be compulsorily acquired, except . . .".

The exception refers to payment of compensation. The application of that section to a body corporate could be excluded only by reading into it words such as "belonging to a natural person" after the words "no property of any description", and there appears to be no good reason for doing that. Moreover subsection (2)(*g*) of section 6 indicates in their Lordships' opinion a positive intention to include bodies corporate. Subsection (2) provides that nothing in the section shall be construed as affecting the making or operation of any law insofar as it provides for taking possession or acquisition of property for various purposes there specified, including "(*g*) by way of the vesting or administration of . . . the property of . . . bodies corporate or unincorporate in the course of being wound up;". The inference is that, but for this saving clause, the property of a body corporate in the course of being wound up would, or at least might, have been affected by the section. A similar inference arises from subsection (4) which saves any law for the compulsory taking possession or compulsory acquisition in the public interest of any property "held by a body corporate which is established for public purposes by any law and in which no moneys have been invested other than moneys provided by Parliament . . .". Section 10 (the full terms of which are set out hereafter) also deserves special mention. Subsection (1) provides for protection of freedom of expression, which is to include the freedom to receive and impart ideas and information without interference. Subsection (2) provides that nothing in any law shall be held inconsistent with or in contravention of the section to the extent that the law in question makes provision that is reasonably required for (*a*)(ii) *inter alia* "regulating telephony, telegraphy, posts, wireless broadcasting, television or other means of communication . . .". These are fields of activity in which corporations are commonly engaged and the saving would lose much of its practical value if corporations were not persons who could avail themselves of its protection.

A further consideration is that, if bodies corporate were not entitled to use the machinery of section 15, many anomalies would arise. This is a relevant consideration—*National and Grindlays Bank Ltd. v. Kentiles Ltd.* [1966] 1 W.L.R. 348. For example a natural person would lose the protection of the Constitution for his business if he formed a company to take it over. An example nearer to the present case is that section 10 (Freedom of expression) would, on the appellants' construction, draw an unexplained and irrational distinction between newspaper proprietors who were natural persons and those who were bodies corporate. Similarly section 11 (Freedom of assembly and association) which expressly includes the right to "belong to trade unions or other associations for the protection of his interests" would protect the right of a natural person to join a trade association, but not that of a body corporate.

For these reasons their Lordships are of opinion that the word "person" in this Constitution includes artificial legal persons and that the appellants' preliminary objection fails.

The respondent in its Statement of Claim sought declarations that section 1B of the Newspapers Registration (Amendment) Act, 1971, No. 8 of 1971 and section 3(2) of the Newspaper Surety Ordinance (Amendment) Act, 1971, No. 9 of 1971, contravened the provisions of Chapter I of the Constitution and, in particular, of section 10 thereof.

Its application to the High Court was made, as already explained, under section 15(1) of the Constitution. To succeed, it had to show that one of the provisions of sections 2 to 14 had been, or was being, contravened in relation to it and it does not suffice for it to establish that such a contravention might occur in the future.

Section 1B added by the Newspapers Registration (Amendment) Act, 1971, introduced two new requirements with regard to newspapers into the law of Antigua. Anyone who did not print or publish a registered newspaper fifteen days before the Act came into force, could not lawfully publish a newspaper or cause one to be published without a licence signed by the Secretary to the Cabinet and unless he had paid a licence fee of $600, the equivalent of £125·00. The licence fee was payable annually.

Persons who printed or published a registered newspaper fifteen days before the commencement of the Act, and who have paid the licence fee of $600, are, the section provides, to be deemed to have been granted a licence. As the respondent published its newspaper fifteen days before the Act commenced, it would, if it had paid the licence fee of $600, have been deemed to have been granted a licence.

The Newspapers Registration Act of 1883, Chapter 318, required the name of the newspaper, the place where it was to be printed or published and the names and addresses of the editor, printer, publisher and proprietors to be registered before publication. No fee was payable on registration.

Mr. Le Quesne on behalf of the respondent contended that section 1B was unconstitutional in two respects: first, because it subjected the right to publish to the grant of a licence at the discretion of the Cabinet, and, secondly, because it made the exercise of the right to publish subject to the annual payment of $600. He contended that in these respects section 1B contravened section 10 of the Constitution which is in the following terms:

> "(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 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
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> (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."

If the grant of a licence signed by the Secretary to the Cabinet to anyone who wished to publish a newspaper or to cause one to be published was automatic, then it could no more be contended that the requirement of a licence was a hindrance to the enjoyment of the right to freedom of expression than that the requirement to register imposed by the Newspapers Registration Act of 1883 was such a hindrance. The Secretary to the Cabinet when signing or refusing to sign a licence no doubt acts in accordance with instructions he receives from the Cabinet and section 1B leaves the Cabinet free to discriminate between applicants for a licence as the Cabinet thinks fit, granting a licence to one and refusing it to another without having to give any reason.

Section 12 (1) of the Constitution provides that, save as provided in that section, " no law shall make any provision which is discriminatory either of itself or in its effect.". This subsection does not apply to any law so far as that law makes provision with respect to persons who do not belong to Antigua. Section 1B, though not discriminatory of itself, is so widely drawn that it permits the Cabinet to discriminate not only between persons who belong and persons who do not belong to Antigua but also between persons who belong to Antigua.

The respondent cannot complain that it was discriminated against as it did not have to apply for a licence, having published its paper fifteen days before the Act came into force. It cannot establish that the imposition of the obligation to obtain a licence before publishing a newspaper constitutes a contravention of the Constitution which either has taken place or is taking place in relation to it. The only part of section 1B which affected it was the requirement to pay $600 as the annual fee for the licence deemed on payment of that sum to have been granted to it.

Their Lordships, while they recognise that the answer to the question whether the requirement to obtain a licence from the Secretary to the Cabinet contravenes the Constitution is not free from difficulty, involving consideration not only of section 10 (1) but also of section 10 (2) and other sections of the Constitution, consider that on the facts of this case, the question is hypothetical and does not arise for decision. They therefore express no opinion on it.

In relation to section 1B it remains to consider whether the requirement of the payment of $600, both by those who are granted licences and by those who are deemed to have been granted licences, amounts to a contravention of the Constitution.

At the trial counsel agreed three propositions of law and that agreement may have influenced the evidence called at the trial. Despite this agreement, it appears from the judgment of Lewis C.J. in the Court of Appeal, that counsel for the respondent there submitted that it was incompetent for parties by concessions or agreement to tie the hands of the Court in the determination of the question whether there had been an infringment of the Constitution. Lewis C.J. said that he completely agreed with that submission. In their Lordships' view, a Court which has to decide a question of construction whether it be of a statute or of a Constitution, cannot be fettered in the exercise of its judgment by any agreement between counsel. In their view Louisy J., the trial Judge was right to refuse to be bound by the three agreed propositions of law.

The first related to the obtaining of a licence and as the respondent did not have to obtain one, it is not necessary to refer to it or to comment on it.

The second was 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."

Louisy J. rejected this proposition and formulated 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."

He held that section 1B did not fall within the taxing powers of the legislature and was unconstitutional. He based his conclusion on three American decisions and cited the dictum of Mr. Justice Douglas in *Murdock v. Pennsylvania* (*City of Jeannette*) (1942) 319 U.S. Reports 105, 113 that " A state may not impose a charge for the enjoyment of a right granted by the Federal Constitution." Lewis C.J. in the Court of Appeal also cited this observation. He and St. Bernard J.A. attached importance to the requirement that the licence fees should be paid before publication, Lewis C.J. regarding that as inhibitory " because in effect they prevent a newspaper . . . . from coming into being at all ". Peterkin J.A. dissented.

Section 10 (2) of the Constitution of Antigua, however, expressly provides that nothing contained in or done under the authority of certain laws is to be held to be inconsistent with or in contravention of the section. If, therefore, section 1B is a law reasonably required for one of the purposes specified in section 10 (2) (*a*), then, though its provisions could otherwise have been regarded as a hindrance to the enjoyment of freedom of expression, it is not to be treated, nor is anything done under it to be treated, as contravening the section.

One argument advanced was that section 1B was reasonably required " for the purpose of . . . . . regulating . . . other means of communication " (s. 10 (2) (*a*) (ii)). It was contended that newspapers were other means of communication. Those words also appear in section 10 (1) and there it does not appear likely that they were intended to cover newspapers. It would be unusual if the same set of words appearing in consecutive subsections of a section bore different meanings and, if section (10) (2) (*a*) (ii) had been intended to include newspapers, it is indeed curious that they were not specifically mentioned. It may be that " other means of communication " in that subsection was intended to cover only other channels of communication similar to those expressly mentioned in the preceding words.

Their Lordships do not, however, find it necessary to come to a conclusion on this for in their opinion the imposition of the licence fee to be paid annually by all publishers of newspapers was correctly regarded by Louisy J. as a tax. Taxation is not referred to in section 10. The only provisions of Chapter I of the Constitution that do so are section 6 (2) (*a*) and section 12 (4) (*d*). Section 6 (2) (*a*) merely provides that the taking of possession or acquisition of any property, interest or right in satisfaction of any tax or rate or due is not to be affected by the provisions of that section which refer to the compulsory acquisition of property; and section 12 (4) (*d*) enables the Government, any local authority and any body for local purposes to discriminate in the imposition of taxation or appropriation of revenue without contravening the Constitution.

Revenue requires to be raised in the interests of defence and for securing public safety, public order, public morality and public health and if this tax was reasonably required to raise revenue for these purposes or for any of them, then section 1B is not to be treated as contravening the Constitution.

In some cases it may be possible for a Court to decide from a mere perusal of an Act whether it was or was not reasonably required. In other cases the Act will not provide the answer to that question. In such cases has evidence to be brought before the Court of the reasons for the Act and to show that it was reasonably required? Their Lordships think that the proper approach to the question is to presume, until the contrary appears or is shown, that all Acts passed by the Parliament of Antigua were reasonably required. This presumption will be rebutted if the statutory provisions in question are, to use the words of Louisy J., " 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 ". If the amount of the licence fee was so manifestly excessive as to lead to the conclusion that the real reason for its imposition was not the raising of revenue but the preventing of the publication of newspapers, then that would justify the conclusion that the law was not reasonably required for the raising of revenue.

In their Lordships' opinion the presumption that the Newspapers Registration (Amendment) Act, 1971 was reasonably required has not been rebutted and they do not regard the amount of the licence fee as manifestly excessive and of such a character as to lead to the conclusion that section 1B was not enacted to raise revenue but for some other purpose.

Was the revenue to be raised by the licence fees required in the interests of defence or for securing public safety, public order, public morality or public health? Though there may be some taxing statutes which state the purposes for which the revenue raised will be applied, ordinarily they do not. The purposes stated cover a very wide field of government expenditure and in the absence of any indication to the contrary, their Lordships think it right to presume that the revenue derived from the licence fees was to be applied to these purposes. That being so, in their opinion section 1B, in so far as it requires the payment of a licence fee, is a provision which comes within section 10 (2) of the Constitution and which cannot therefore be treated as contravening it, even though it requires the payment of the licence fee in the first place before publication of a newspaper.

Section 3 of the Newspaper Surety Ordinance of 1909, Cap. 319, made it unlawful for anyone to print or publish a newspaper unless he had first given a bond for $960, the equivalent of £200, for the payment of any penalty imposed on the printer, publisher or proprietor of the paper in respect of the publication of any blasphemous or seditious libel, and for the payment of any damages and costs awarded for libel.

The Newspaper Surety Ordinance (Amendment) Act, 1971, added a new subsection, which was numbered 3 (2), to this section. It made it unlawful to print or publish a newspaper unless in addition to the bond for $960, $10,000 had first been deposited with the Accountant General to satisfy any judgment of the Supreme Court for libel. The subsection provided that the deposit should at all times be maintained at that figure and that it should be placed in a deposit account and bear interest at the rate payable at the Government Savings Bank.

This was subject to the following proviso: —

> " 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."

So the printer and publisher of a newspaper can either deposit $10,000 and be paid interest on it, or, if he prefers it, take out a policy of insurance or obtain a bank guarantee. The premium on such a policy will of course cost him far less than the amount of the deposit.

It was maintained by the respondent, and accepted by Louisy J., Lewis C.J. and Peterkin J.A., that under the proviso the Minister had uncontrolled discretion to waive or not to waive the requirement of the deposit. Their Lordships do not agree. In their opinion the Minister, if satisfied with the sufficiency of the security offered, must waive the payment of the deposit. The word " may " in the proviso, the context shows, must be construed in that way. The Minister is not given an unregulated and unfettered discretion without guidelines. His discretion is limited to determination of the sufficiency of the security offered.

The third proposition of law agreed between counsel was that: —

> " 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."

This appears to amount to a concession by counsel for the respondent at the trial that its claim that section 3 (2) contravened the Constitution could not be sustained. Louisy J. refused to accept this proposition and he and all the members of the Court of Appeal held that the requirement of a deposit of $10,000 to meet damages for libel was a hindrance to a newspaper's freedom of expression.

It can be argued that any expenditure, required by law from those responsible for the publication of a newspaper, is a hindrance to its freedom of expression in that such expenditure must reduce the resources of the paper which might otherwise be available for increasing its circulation. Such an argument might be advanced in relation to the provision of a bond for $960 under the 1909 Ordinance.

In relation to section 3 (2), the question to be determined is, in their Lordships' opinion, whether that subsection was reasonably required for the purpose of protecting the reputations and rights of others. If it was, then by virtue of section 10 (2) of the Constitution, nothing in it or done under its authority is to be treated as contravening the Constitution.

In their Lordships' opinion section 3 (2) clearly had as its purpose the protection of the reputations and rights of others. They do not agree with Lewis C.J. that it is the right of action for libel which gives the true protection to the injured person's reputation. Damages are awarded to a libelled person to compensate him for the injury he has suffered. Unless there is a reasonable prospect of his obtaining the damages awarded to him and of payment of his costs, he may be deterred from instituting

proceedings. A mere right of action is not likely to be regarded by him as an adequate protection of his reputation. Further, the fact that the deposit will be used to satisfy a judgment for libel and that, if it is, it must be replenished by them, is an inducement to the publishers of a newspaper to take care not to libel and to damage unjustifiably the reputation of others.

The effect of section 3 (2) was to increase the amount available for the payment of damages above that fixed by the 1909 Ordinance. Was that increase reasonably required? It is not necessary to repeat what has already been said as to the determination of that question. No valid reason appears for holding that the presumption that this Act of the Legislature of Antigua was reasonably required, is rebutted.

In the circumstances section 3 (2) of the Newspaper Surety Ordinance of 1909, inserted in that Ordinance by the Newspaper Surety Ordinance (Amendment) Act, 1971, in their Lordships' opinion comes within and is covered by section 10 (2) of the Constitution and cannot therefore be treated as contravening the Constitution.

For these reasons their Lordships will humbly advise Her Majesty that this appeal should be allowed.

The respondent must pay the appellants' costs before this Board and in both Courts below.

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In the Privy Council

THE ATTORNEY GENERAL AND THE MINISTER OF HOME AFFAIRS

v.

ANTIGUA TIMES LIMITED

DELIVERED BY
LORD FRASER OF TULLYBELTON

Printed by HER MAJESTY'S STATIONERY OFFICE
1975