

42, 1954

# In the Privy Council.

## ON APPEAL

FROM THE COURT OF APPEAL FOR THE WINDWARD ISLANDS AND LEEWARD ISLANDS.

UNIVERSITY OF LONDON  
...C.1.  
23 MAR 1955  
INSTITUTE OF ADVANCED  
LEGAL STUDIES

BETWEEN

EBENEZER THEODORE JOSHUA . . . . .

AND

THE QUEEN . . . . . *Respondent.*

10

## Case for the Respondent.

38041

RECORD.

1. This is an appeal from a judgment, dated the 7th July, 1953, of the Court of Appeal for the Windward Islands and Leeward Islands (Jackson, C.J., Date and Manning, JJ.), dismissing an appeal from a conviction and judgment, dated the 16th January, 1953, of the Supreme Court of the Windward Islands and Leeward Islands (Cools-Lartigue, J., and a jury), whereby the Appellant was convicted of effecting a public mischief and was discharged conditionally upon entering into a recognizance to be of good behaviour and to appear for sentence when called on at any time within two years. pp. 34-38.  
pp. 26-27.

20 2. The Appellant was indicted on three counts, the first and third charging sedition and the second charging a public mischief. On the first count the jury failed to agree, and were discharged from returning a verdict; on the third count the Appellant was acquitted. The second count read as follows:— pp. 1-2.  
p. 26, l. 41—  
p. 27, l. 6.  
p. 1, l. 23—  
p. 2, l. 11.

“ STATEMENT OF OFFENCE.

Effecting a public mischief, contrary to the Common Law.

PARTICULARS OF OFFENCE.

30 Ebenezer Theodore Joshua on the 26th day of November, 1952, at Kingstown in the Colony of Saint Vincent, did by means of certain false statements in a public speech to the effect that the police were scheming politically and storing up a veritable arsenal at headquarters to shoot down the people when they decide to fight for their rights, agitate and excite certain section of the public against the police, to the prejudice and expense of the community.”

The common law of England relating to criminal matters prevails in St. Vincent.

3. The trial took place before Cools-Lartigue, J., and a jury on the 14th, 15th and 16th January, 1953. The following evidence relevant to the second count was given for the Respondent :—

pp. 4-5.

(i) Albert Forde, a police constable, said he had taken shorthand notes of a speech made by the Appellant in the Market Square at Kingstown on the 26th November, 1952, and of other speeches made by the Appellant on the 12th and 20th November. He produced the original notes and the transcript of each of these speeches. The transcript of the speech of the 26th November included the following passages :—

10

pp. 64-65.

“ My Friends, I have to make some comments tonight on the recent attitude of our Policemen. They have been doing some things quite recently that are obliged to make me comment against them. I am satisfied and convinced that just as I told Lt.-Col. Randolph in his Office, the Policemen in this colony are taking sides and are scheming politically against certain people in this colony. I was also told that Charles and the others are walking about making a lot of threats. For this reason, the Policemen are storing up a veritable arsenal in the Headquarters. They are storing up this arsenal to shoot you down when you decide to fight for your rights. I have on many occasions pointed out the seriousness of making the people of this island bitter against one another and it is again happening in our midst. That is why they are storing up this arsenal and with that, Charles, Slater and all the rest are joining in the plot. They have a veritable arsenal to shoot you down like dogs. I told that to Mr. Randolph. It was quite clear to me when I said that the Police are taking sides and I drew his attention to the fact. The Police Force are taking political sides with these stooges in this island. Who told Policeman Findlay that he could be the Chairman of any political meetings in this island, just as he did the other night ? I want to know who told Policeman Findlay that he could ascend on any political rostrum and take sides with any political brute in our midst. When Findlay and the other Policemen come to our political meetings, they are there purely for the object of allowing the proceedings to be conducted in an orderly fashion. They should not be allowed to go up on the political platforms and take part in the political meetings as Chairmen. When these men continue all this dirty work in the Force, suppressing certain honest men for the benefit of all the other political dogs in our midst, they still don't get any reward for it. They are thrown out of the Force in the same ridiculous fashion as if they did not do anything extraordinary, so what is the use of their taking political sides for certain people ? You want to tell me that a man is working for the Police and should be allowed to come into a political meeting and go up on the political rostrum and do as he likes ? We must not be contented with this state of affairs in our midst. The Public must not be treated like that. The Police must stop taking sides and when invited to any political meeting, they must act as Policemen. These men we have to deal with are dogs and they can never serve the

20

30

40

50

people as they should. I have noticed certain things the Policemen are doing in our midst, and I am taking very serious notice of it."

\* \* \* \* \*

10 " These fellows are only making a semblance of a Government here. They are only fooling you about industrialisation and the like. Don't you see that I am sacrificing myself for your cause? Don't you see I am doing it all to help you? I am here to save you. Do you remember me speaking in this Market Place and asking certain questions? I am asking about all these number of wrongs going on in our midst; the police taking political sides, heaping up a large arsenal to shoot you and destroy you; the Councillors whom you elected not caring for you and things of that nature. All those are the wrongs we must fight against in this place from time to time." pp. 66-67.

\* \* \* \* \*

20 "I cannot understand the attitude of the Police here. I cannot understand the attitude of the Police who have now decided to take sides. How can the Officers allow the Policemen to play these political games that they are now indulging in? Findlay has no right in these political games. It is a lot of wickedness going on here. But there are a lot of things you have to put up with in the fight for freedom." p. 69, ll. 29-37.

(ii) Arthur Hughes Jenkins, the Superintendent of Police, said that on his instructions records were kept of every meeting held in Kingstown by the Appellant. He had heard the speech made by the Appellant on the 26th November. It contained references to the police; one reference, repeated in various forms, was to this effect:— p. 5-7.  
p. 6, ll. 8-18.

30 "The Police are scheming politically with the others and are storing up a veritable arsenal of armaments to shoot you down with when you fight for your rights."

There was no truth in the allegation that the police were storing up arms. Arms were kept primarily for the protection of the colony, because the police were liable to be called out for full military service. p. 6, ll. 21-26.

40 (iii) Ivan Charles, a police corporal, said he had attended a political meeting in the Market Square on the 26th November, and had heard the Appellant speak. The Appellant had said (*inter alia*) that the police were scheming politically, and were storing up a veritable arsenal at headquarters to shoot down the people when they got up and fought for their rights. p. 7.

(iv) Gordon Findlay, a police constable, said that on the 14th November, 1952, he had gone to a public meeting on duty, to keep order. During the meeting the chairman had called upon him to restore order. He had then gone near to the rostrum, but not on to it. p. 8.

pp. 10-11.

4. The Appellant neither gave evidence nor made a statement, and called no witnesses. His counsel submitted that comment about the conduct of a public officer could not be said to tend to create public mischief. The learned Judge rejected this submission.

pp. 12-15.

pp. 15-23.

pp. 23-25.

p. 25, ll. 7-25.

5. In his charge to the jury, Cools-Lartigue, J., first dealt with general matters, such as the jury's duty not to be influenced by prejudice or personal feeling, and then discussed the charges of sedition. Coming to the charge of effecting a public mischief, the learned Judge reminded the jury of the evidence of what the Appellant had said on the 26th November. Colonel Jenkins had said the police had no arsenal to shoot down the people. They possessed arms principally for the purpose of protecting the colony. This piece of evidence had been criticised. Counsel had suggested that Col. Jenkins had a "down" on the Appellant, and the Colonel had denied it. These were all matters for the jury to consider. No evidence had been given to show that the Appellant did not use the words alleged. All acts tending to the prejudice of the community were indictable as public mischiefs. It had been held that false reports to the police, causing them to take action, constituted a public mischief; so a fortiori the words alleged in the second count of the indictment tended to the public mischief. It was for the jury to find whether the Appellant committed the acts alleged, i.e., spoke the words; for the Judge to rule whether the acts, if proved, constituted the effecting of a public mischief. Holding that the words alleged could only be construed as an attempt to bring the police into disrepute, and to cause a section of the community to suspect, disrespect and hate them, the learned Judge directed the jury that, if the Appellant uttered the words alleged, he was guilty of effecting a public mischief. Counsel had submitted that the words meant that if the people used violence in fighting for their rights they would be shot by the police, but the learned Judge could not agree with that interpretation. In conclusion, he directed the jury about the benefit of the doubt.

p. 25, ll. 26-47.

p. 25, l. 47—  
p. 26, l. 4.

p. 26, ll. 4-13.

p. 26, ll. 13-17.

p. 26, ll. 18-38.

pp. 26-27.

6. The jury returned their verdict, and judgment was given, as set out in paragraphs 1 and 2 of this Case.

p. 29.

7. The Appellant appealed to the Court of Appeal for the Windward Islands and Leeward Islands. His notice of appeal, dated the 24th January, 1953, raised the following points of law: (i) that the indictment was bad for various reasons; (ii) that the learned Judge had misdirected the jury about the relevance to the first and third counts of evidence supporting the second count; (iii) that the evidence supporting the second count did not constitute the offence of public mischief; (iv) that the verdict on the second count was unreasonable in view of the verdict on the first and third counts.

pp. 34-38.

pp. 34-36.

p. 36, l. 22—  
p. 37, l. 8.

p. 37, ll. 8-26.

8. The judgment of the Court of Appeal (Jackson, C.J., Date and Manning, JJ.) was delivered on the 7th June, 1953. Having set out the indictment and described the course of the trial, the learned Judges held that no complaint could be based on the suggestion that the words which formed the subject of the second count were also part of the words which formed the subject of the first count. In fact, the two counts were founded on different parts of the one speech, and Cools-Lartigue, J., had specifically and clearly directed the jury as to the particulars on the second count. The learned Judges quoted the statement of Lord Caldecote,

L.C.J., in *R. v. Young* (1944), 30 Cr. App. R. 57, 60, that “ offences which tend to the prejudice or which cause expense to the public justify charges under the common law of misdemeanour of causing a public mischief.” They quoted Cools-Lartigue, J.’s direction that the Appellant, if he uttered the words alleged, was guilty of effecting a public mischief, and said it was settled law that the question whether an act might tend to the public mischief was for the Judge, and was not an issue of fact on which evidence might be given. It did not matter that there had been no evidence of expense to the community, because the offence could be constituted either by prejudice or by expense to the public. The words “ and expense ” in the second count were surplusage. The direction of the learned Judge was right. Accordingly, the appeal was dismissed.

9. The Respondent respectfully submits that it has been settled for one hundred and fifty years that any act tending to the prejudice of the community, whether committed by one person or by a number of persons in concert, constitutes the misdemeanour of causing a public nuisance. The elements of this offence were rightly stated by the learned Judge in his charge to the jury. The learned Judge was also right, in the Respondent’s respectful submission, in ruling that it was for him, and not for the jury, to decide whether the words, if spoken by the Appellant, amounted to the effecting of a public nuisance. He did not withdraw from the jury the question whether the words were true or false ; after recalling that the police denied the Appellant’s accusations and Col. Jenkins said they had no arsenal to shoot down the people, he (Cools-Lartigue, J.) told the jury that these were matters for them to consider. The direction about the truth or falsity of the words was not, however, of great importance ; for the Crown evidence on this point was not challenged in cross-examination, and no evidence was given for the defence.

10. The question of the effect of the Appellant’s words was also, in the Respondent’s respectful submission, rightly held by the learned Judge to be a question for him. The question whether an act tends to the prejudice of the public is always a question for the judge ; and the offence of public mischief depends not on the intention of the accused but on the natural effect of his actions. When the alleged offence consists of the speaking of words, the effect of the act must depend on the natural and ordinary meaning of the words ; therefore, if the jury find the words to have been spoken, the judge must decide whether those words in their natural and ordinary meaning tend to the prejudice of the public. In this case, the Respondent respectfully submits, the learned Judge was abundantly justified in holding that the words set out in the second count of the indictment tended to the prejudice of the public.

11. The Respondent respectfully submits that the Appellant’s conviction was right and this appeal ought to be dismissed, for the following (amongst other)

### REASONS

- (1) BECAUSE the evidence showed the Appellant to be guilty of effecting a public nuisance.
- (2) BECAUSE the learned Judge stated rightly to the jury the elements of the offence and the issues which they had to decide.

In the Privy Council

---

---

ON APPEAL

*from the Court of Appeal for the Windward  
Islands and Leeward Islands.*

---

---

BETWEEN

**EBENEZER THEODORE  
JOSHUA . . . . .** *Appellant*

AND

**THE QUEEN . . . . .** *Respondent.*

---

---

**Case for the Respondent**

---

---

**CHARLES RUSSELL & CO.,**  
37 Norfolk Street,  
London, W.C.2,  
*Solicitors for the Respondent.*