

O N A P P E A L  
FROM THE COURT OF APPEAL, JAMAICA

B E T W E E N :  
THE DIRECTOR OF PUBLIC PROSECUTIONS      APPELLANT

- and -

DONALD WHITE

CASE FOR THE RESPONDENT

CHARLES RUSSELL & CO.,  
Hale Court,  
Lincolns Inn,  
London WC2A 3UL.

Solicitors for the Appellant

PHILIP CONWAY THOMAS & CO.  
~~WILSON FREEMAN~~, 61, CATHERINE PLACE,  
~~67, Westminister Palace Gardens,~~  
London, SW1E 4RL. 6HB.

Solicitors for the Respondent

IN THE PRIVY COUNCILNo. 21 of 1976ON APPEAL FROMTHE COURT OF APPEAL OF JAMAICAB E T W E E N:THE DIRECTOR OF PUBLIC PROSECUTIONS - Appellant

- and -

DONALD WHITE

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CASE FOR THE RESPONDENT

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RECORD

1. This is an appeal from a judgment of the Court of Appeal of Jamaica (Sir Joseph Luckhoo, J.A., President, Robinson and Zacca, JJ.A) dated the 9th April, 1976, which quashed the Respondent's convictions in the Circuit Court for the Parish of Kingston, Jamaica Lopez. J. and a jury) upon indictment of shooting with intent, contrary to section 16 of the Offences Against the Person Law (Cap. 268) (Count 1) and the illegal possession of a firearm, contrary to section 20(1)(b) and 20(4)(c)(ii) of the Firearms Act, 1967 (Count ~~1~~).

2. The principal issue arising on this appeal is as follows:-

Whether the Court of Appeal having held the purported trial to be a mistrial or nullity it should have proceeded not only to quash a conviction, but either (a) to enter a verdict of acquittal or (b) order a new trial.

3. It is respectfully submitted that the decisions of the West Indian Court of Appeal referred to in the Judgments of the Court of Appeal were correct in so far as those Judgments concluded that the trials in those cases were mistrials and nullities.

4. It is respectfully submitted that the alternatives referred to in Section 14(2) of the Judicature (Appellate Jurisdiction) Act, apply only in cases where the purported trial has not been a mistrial or nullity. It is further respectfully submitted that to hold that the said section applies in the cases of mistrials or nullities, would be holding that in such cases, the court would be forced to make orders which would be meaningless and senseless.

5. It is further respectfully submitted that in cases where there has been a mistrial or nullity a further trial would be the first trial, in law.

6. The Respondent therefore respectfully submitted that this Appeal should be dismissed for the following reason:--

Because the occasion for the Court of Appeal to exercise its duties or functions under Section 14(2) do not arise where that Court has held that the trial is a mistrial or a nullity.

*HM of*  
*Berthan Macaulay*  
Berthan Macaulay, Q.C.  
Margarette Macaulay.

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~~6/8 Westminster Palace Gardens,~~  
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Solicitors for the Respondent