21/79

IN THE PRIVY COUNCIL No. 4 of 1978

ON APPEAL

FROM THE COURT OF APPEAL OF BERMUDA

BETWEEN :

THE MINISTER OF HOME AFFAIRS and MINISTER OF EDUCATION — Appellants

- and -

COLLINS MACDONALD FISHER and EUNICE CARMETA FISHER — Respondents

CASE FOR THE APPELLANTS

Record

1. This is an appeal from a judgment dated the 15th July, 1977, of the Court of Appeal of Bermuda (Georges and Duffus, JJ.A., Hogan, P. dissenting) which allowed the Respondents' appeal from a judgment dated the 6th January, 1977, of the Supreme Court of Bermuda (Seaton, J.) whereby the Respondents' applications for declarations that the four illegitimate children, of the second-named Respondent namely, Cheryl Angela Morgan, Valentine Denver Morgan, Fitzroy O'Neil Stuart and Samuel Iaiah Tait, are deemed to possess and enjoy Bermudian status by virtue of S.16 (4) of the Bermuda Immigration and Protection Act, 1956 (hereinafter called "the 1956 Act") and are deemed to belong to Bermuda by virtue of S.11 (5) of the Bermuda Constitution Order 1968 (hereinafter called "the Constitution"), were refused.

p.46 ll.23-28
p.61 ll.44 - end
pp.37 - 46
47 - 62 &
23 - 36
pp.7 - 25
pp.1 - 6

(the 1956 Act is supplied separately)

2. S.16 (4) of the 1956 Act reads as follows:-

"16 ...

(4) Any person -
(a) who is a British subject; and
(b) is a legitimate or legitimated child, or a stepchild, or an adopted child who has been legally adopted in these Islands,

(The Constitution is supplied separately)

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of a person who possesses Bermudian status; and

(c) who is under the age of twenty-one years,

shall, for the purposes of this Act, be deemed to possess and enjoy Bermudian status."

S.11 (5) of the Constitution reads as follows:-

"11 ....

(5) For the purposes of this section, a person shall be deemed to belong to Bermuda if that person -

(a) possesses Bermudian status;

(b) is a citizen of the United Kingdom and Colonies by virtue of the grant by the Governor of a certificate of naturalisation under the British Nationality and Status of Aliens Act 1914 or the British Nationality Act, 1948;

(c) is the wife of a person to whom either of the foregoing paragraphs of this sub-section applies not living apart from such person under a decree of a court or a deed of separation; or

(d) under the age of eighteen years and is the child, stepchild or child adopted in a manner recognised by law of a person to whom any of the foregoing paragraphs of this subsection applies."

3. The question for decision in this appeal concerns the proper construction and application of S.11 (5) of the Constitution and whether thereunder the four said illegitimate children are deemed to belong to Bermuda. On this question, Seaton, J. in the Supreme Court and Hogan, P. dissenting in the Court of Appeal found in favour of the Appellants, whereas the majority in the Court of Appeal (Georges and Duffus, JJ.A.) found in favour of the Respondents.

p.24 ll.36 - 42
pp.35 - 36
pp.43 - 45 & 58 - 61

4. All the judges in the courts below were unanimously of the view that the four said

p.24 ll. 1 - 35

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illegitimate children are not deemed to possess and enjoy Bermudian status by virtue of S.16(4) of the 1956 Act. The Appellants respectfully submit that such unanimous view is correct. Such view is not, so far as the Appellants are concerned, in issue in this appeal. p.33 ll. 6 - 45 p.39 ll. 6 - 33 p.58 ll. 26 - 40

5. The principal facts giving rise to this appeal are set out in the judgment of Seaton, J. and may be summarised as follows. The first-named Respondent, Collins MacDonald Fisher, was born on the 11th October, 1945 in Bermuda of a Bermudian mother and thus has Bermudian status. He lives and works in Bermuda. The second-named Respondent, Eunice Carmeta Fisher, was born on the 20th May, 1944, in Jamaica: she is a citizen of Jamaica and a British subject. On the 6th May, 1972, the Respondents were married and have been living together in Bermuda since the 30th July, 1975. By virtue of S.16 (2) of the 1956 Act the second-named Respondent is deemed to possess and enjoy Bermudian status. Before the Respondents' marriage, the four said children on behalf of whom declarations were sought herein were born to the second-named Respondent in Jamaica: they are all under 18 years of age and were all born illegitimate, each taking as is the custom in Jamaica the surnames of their respective putative fathers. A child of the Respondents' marriage was born on the 22nd September, 1972 in Jamaica and it is accepted that he possesses Bermudian status. p.10 l.6 - p.14 l.15 p.10 ll. 8 - 11 p.10 ll.12 14 p.10 ll. 14 - 17 p.10 ll.17 - 20 p.10 ll.20 - 24 p.10 ll. 25 - 32 p.10 ll.32 - 41

6. On the 31st July, 1975, the second-named Respondent with her five children arrived in Bermuda on a flight from Jamaica. The children were admitted as residents their departure date being stated to be open. The children were placed in schools in Bermuda until the school year 1976-1977 when the principal of the Secondary School attended by the two elder children informed the first-named Respondent that the Minister of Immigration and Labour had instructed him to refuse permission for the children to remain at school. The Respondents then withdrew all the children from school and took the matter up with the Minister and other authorities including a petition to the Governor. On the 22nd October, 1976, the Minister of Immigration and Labour declined to grant permission for the four illegitimate children and two other persons (not now the subject of any dispute) to reside in p.10 ll.42 - 45. p.10 l.46 - p.11 l.3. p.11 ll.13 - 17 p.11 ll.20 - 25 p.11 ll.25 - 30 p.12 ll.6 - 24

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Bermuda and stated that they should leave Bermuda on or before the 30th October, 1976. That refusal resulted in the institution of two sets of proceedings by the Respondents, namely, Civil

p.12 l.25 - p.13 l.46

Action No. 248 of 1976 applying for a prerogative order for the issue of Writs of Certiorari and mandamus and Civil Action No. 251 of 1976 applying for declarations that the four children are deemed to possess and enjoy Bermudian status and to belong to Bermuda.

p.9 ll.4 - 13

7. By consent the two actions were heard together, the prayers for declarations as to the status of the four children made in both actions raising issues sufficient to dispose of the whole case.

pp.7 - 25

8. In his judgment dated the 16th January, 1977, Seaton, J. first summarised the relief sought in

p.7 l.18 - p.9 l. 13

the two actions and then dealt with the appropriate procedure for relief by way of originating summons. The learned Judge said that the sole question was

p.9 ll.14 - 43

whether the four children were entitled to remain in Bermuda, a question which could be answered by

p.9 l.44 - p.10 l.5

giving the declarations sought under the 1956 Act and the Constitution. Seaton, J. then summaries the facts of the case. The learned Judge then

p.10 l.6 - p.14 l.15

referred to S.25 of the 1956 Act which declared that it is unlawful for any person other than one possessing Bermudian status or a bona fide visitor

p.14 ll.16 - 25

to remain in or reside in Bermuda without the specific permission of the Minister of Labour and Immigration and said that as the four children were not bona fide visitors it was necessary to see

p.14 ll.30 - 40.

whether they possessed Bermudian status. The learned Judge then set out the provisions of S.16 (4) of the 1956 Act and said that it was not disputed that the four children were British

p.14 ll. 41-44

subjects and under the age of 21 years and thus fulfilled the requirements of S.16(4) (a) and S.

p.14 l.44 - p.15 l.4

16 (4) (c) of the 1956 Act. As to the requirement of S.16 (4) (b), the four children were admittedly born illegitimate and had not been legitimated or adopted in any manner recognised by law: the question therefore arose as to whether the four children were the step-children of the first-named Respondent, a person with Bermudian status. The learned Judge referred to the provision in the

p.15 ll.8 - 21

Immigration Act 1937 Amendment Act, 1938 (hereinafter called "the 1938 Act") whereby the expressions "child" and "stepchild" were defined "for the removal of doubt" so as to exclude an

illegitimate child, and to the submission on behalf of the Respondents that such definition was applicable to the 1938 Act alone and that the words "child" and "step-child" now fell to be construed according to common everyday usage. Seaton, J. referred to the common law principle whereby the word "child" is construed to mean "legitimate child". After referring to a decided case and to the British Nationality Act, 1948, S.32 (2), the Matrimonial Causes Act, 1937, S.52 and to the Bermudian Matrimonial Causes Act, 1974 where the word "child" had been defined both so as to include and exclude an illegitimate child, the learned Judge said that whether or not the word "child", where not expressly defined in a statute, included an illegitimate child depended upon the intention of the legislature in so far as that intention may be inferred from the purpose of the legislation and other provisions of the particular statute. Seaton, J. said that in drafting the 1956 Act the legislators must be deemed to have known the history of the earlier legislation and referred to S.5 of the Immigration Act, 1937 (hereinafter called "the 1937 Act"), to the Deportation (British Subject) Act, 1937 and to the 1938 Act. The learned Judge referred to the 1956 Act and in particular to S.100 (c) thereof for the inclusion in the category of persons not to be subject to deportation orders illegitimate children of a woman possessing Bermudian status and ordinarily resident in Bermuda and posed the question whether the omission from S.16 (4) of the 1956 Act of such specific provision affecting "in the case of a woman, her illegitimate child" was deliberate.

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p.15 ll.22 - 33
p.15 ll.34 - 37
p.15 l.37 - p.16 l.17
p.16 ll.18 - 20
p.16 ll.21 - 29
p.16 ll.30 - 36
p.16 l.36 - p.17 l.26
p.17 l.27 - p.18 l.21
p.18 ll.16 - 21

9. Seaton, J. then considered the Constitution which made detailed provision for the protection of fundamental rights and freedoms and the specific provisions of S.11 (1) and (2) (d). After setting out the provisions of S.15 (1) and (2) (a) of the Constitution, the learned Judge said that Counsel for the Respondents had submitted that the four children were entitled to protection of their freedom of movement, i.e. their right to reside in Bermuda because they "belong to Bermuda and had relied on S.11 (5) of the Constitution the relevant provisions of which Seaton, J. then set out. Seaton, J. summarised the Respondents' argument and referred to the Appellants' submission that the word "child" in S.11 (5) of the Constitution referred only to

p.18 l.21 - p.23 l. 38
p.18 ll.35 - 43
p.18 l.43 - p.19 l.2
p.19 ll.3 - 29
p.19 ll.30 - 34
p.19 l.38 - p.20 l.7
p.20 ll.8 - 26

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children born legitimate. The learned Judge compared S.16 (4) of the 1956 Act with S.11 (5) of the Constitution and referred to the submissions first on behalf of the Respondents that the omission of the words "legitimate or legitimated" from S.11 (5) reflected the liberal attitude of the present age on the question of illegitimacy and, secondly, on behalf of the Appellants that to interpret the word "child" differently in SS.16 (4) and 11 (5) would lead to ridiculous results. Seaton, J. then considered the significance of the words in S.11 (5) of the Constitution "deemed to belong to Bermuda". The learned Judge then said that there was no suggestion that any distinction was to be drawn in the Constitution between native-born Bermudians born legitimate and those born illegitimate and referred to S.18 (1) of the 1956 Act which provided that any person born in Bermuda possessed status whether born legitimate or illegitimate, providing that at least one of his parents at the time of his birth possessed Bermudian status and both parents were domiciled in Bermuda. Seaton, J. said that it was humane and reasonable policy to keep families together and that such policy must have been the rationale for the provision in S.11 (5) (d) of the Constitution that the step-children and adopted children of persons possessing Bermudian status must be deemed to belong to Bermuda. The learned Judge posed the question whether it was harsh and unreasonable to require that if they are to fall within S.11 (5) (d) the children or step-children of persons possessing Bermudian status should be born legitimate. In Seaton, J.'s view, the court was bound to give the words used in the Constitution the construction which they would ordinarily bear, unless some other construction was indicated. After referring to the Shorter Oxford Dictionary and to an American Dictionary to which he had been referred by Counsel, the learned Judge concluded that the proper construction of the word "step-child" was such as to exclude illegitimate children. The learned Judge could find no indication that the words "child" and "step-child" in S.11 (5) of the Constitution were intended to have any meaning except that which they ordinarily bear in legal language. Accordingly, Seaton, J. found that the four children were not deemed to possess and enjoy Bermudian status nor were they deemed to belong to Bermuda and ordered the Appellants to pay one-half of the Respondents' costs.

p.20 l.27 - p.21 l.5.

p.21 l.6 - p.23 l.12

p.23 ll.12 - 20.

p.23 ll.25 - 32

p.23 ll.35 - 39

P.23 ll. 43 - 48

P.23 last line - p.24 l.19

p.24 ll.32 - 36

p.24 ll.36 - 41

p.24 l.42 - p.25 l.1

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10. In Civil Appeals Nos. 2 and 3 of 1977, the Respondents appealed to the Court of Appeal of Bermuda against Seaton, J.'s refusal to grant the declarations sought and in Civil Appeal No. 5 of 1977 the Appellants appealed against Seaton, J.'s order as to costs. The appeals were heard before Hogan, P., Georges and Duffus, JJ.A. It appears that Civil Appeal No. 2 of 1977 was unanimously dismissed although no specific reference to it was made by Georges, J.A. Civil Appeal No. 3 of 1977 which was treated by the Court of Appeal as raising the substance of the Respondents' application for declarations on behalf of the four children was allowed by a majority (Hogan, P. dissenting). The Court of Appeal unanimously held that the four children were not deemed to possess and enjoy Bermudian status but by a majority held that the four children were deemed to belong to Bermuda. The Appellants' appeal as to costs was allowed by a majority (Georges, J.A. dissenting).

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p.36 ll.24 - 26
p.49 ll.28 - 37
p.50 ll.10 - 22
p.33 ll.6 - 45
p.39 ll.6-33 & p.58 ll.26 - 40
p.36 ll.27 - 43
p.62 ll.10 -20 & p.45 l. 40 - p.46 l.22

11. In his dissenting judgment in Civil Appeal No. 3 of 1977, Hogan, P. first summarised the essential facts and the basic findings of Seaton, J. as to the proper construction of the word "step-child" in S.16 (4) of the 1956 Act and of the words "child" and "step-child" in S.11 (5) of the Constitution. After setting out the core of the Respondents' argument, Hogan, P. referred to the well-established rule of construction that the word "child" in a statute prima facie means a legitimate child. Hogan, P. referred to certain decided cases and expressed the view that the test to be applied was that set out by Lord Tucker in Galloway v. Galloway (1955) A.C. 299, 323 as follows:-

pp. 29-36
p.30 ll.8 - 20
p.30 ll.21 - 33
p.30 l.37 - p.31 l.1
p.31 l.2 - p.32 l.15
(1955) A.C. 299,323.
p.32 ll.4 - 15

> "... I do not think it necessary to refer to the authorities which established beyond question that prima facie the words "child" or "children" in an Act of Parliament mean a legitimate child or legitimate children, and that illegitimate children can only be included by express words or necessary implication from the context."

The learned President then considered the word "step-child" and concluded that the ordinary meaning thereof confined the expression to

p.32 ll.17 - 27

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children of a former marriage. The learned President then looked at the context, S.16 (4) of the 1956 Act, in which the word "step-child" appeared, to see if there was anything which would displace the ordinary meaning. After analysing S.16 (4) Hogan, P. concluded that the immediate context required adherence to the traditional meaning of "child" and "step-child": the learned President could see nothing in the wider context of the Act inconsistent with that view. In the learned President's view the absence from the 1956 Act of the 1938 Act's definition "for the removal of doubt" did not carry the matter further.

p.32 l.34 - p.33 l.30

p.33 ll.6 - 30

p.33 ll.31 - 45

12. The learned President then turned to S.11 of the Constitution. After setting out the relevant terms of the section, Hogan, P. then applied Lord Tucker's test in Galloway (supra) and said that he could find nothing in the Constitution which would require a departure from the meaning normally attached to the word "child" or "step-child". The learned President then compared S.11 of the Constitution with Article 2 of the European Convention on Human Rights and expressed the provisional view that S.11 of the Constitution did not create rights in everyone in the world, for example, to enter Bermuda subject only to the limitations imposed by other legislation which was restricted in scope but merely prohibited, except within prescribed limits, any interference with freedom of movement defined as the totality of rights conferred, aliunde, to enter Bermuda etc. Hogan, P. held that the words "child" and "step-child" in S.11 (5) did not include an illegitimate child or stepchild and accordingly said that he would dismiss the Respondents' appeals. As to the Appellants' appeal against the order for costs, Hogan, P. said that there was no reason why costs should not have followed the event but in accordance with the Appellants' indication that they would be satisfied with no order as to costs in the Court below said that he would have made no order.

p.33 last line - p.36 l.23 p.34

p.35 ll.10 - 25

p.35 ll.26 - p.36 l.19

p.36 ll.20 - 23

p.36 ll.24 - 26

13. In his judgment Georges, J.A., first summarised the issue in the appeal and then the facts. In his view the words of S.16 (4) of the 1956 Act made clear the intention of the draftsman to include only legitimate relationships.

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p.37 ll.7 - 13

p.37 ll.14 - p.38 l.20

p.39 ll.6 - 33

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14. Georges, J.A. then considered S.11 of the Constitution and noted that the category of persons who were "deemed to belong to Bermuda" was wider than the category of persons who had Bermudian status under S.16 (4) of the 1956 Act. In the learned Judge's view the significant differences between the concepts of "status" and of "belonging to" justified a different approach to the interpretation of S.11. Georges, J.A. then relied upon a dissenting judgment of Lord Denning, MR in Sydall v. Castings Limited (1967) 1 Q.B. 302, 310G to 311F to support the proposition that the word "child" should be given its natural meaning to include all children. After referring to a test of construction formulated by Vaughan Williams, L.J. in Woolwich Union v. Fulham Union (1906) 2 K.B. 240, 246, Georges, J.A. said that the rule of construction whereby the words "child" or "children" in a statute prima facie meant a legitimate child or legitimate children was a technical rule of law in respect of which there should be no straining to make it applicable in circumstances where it was not clear that it should be applied. After referring to Galloway (supra) and the criticism there of the test formulated by Vaughan Williams, L.J., Georges, J.A. said that he preferred Vaughan Williams, LJ.'s test as, he said, Lord Tucker's test in Galloway (supra) was not essentially part of the ratio decidendi.

Record: p.39 l.34 - p.45 l.39; p.40 ll.36 - 39; p.40 ll.9 - 13; p.41 l.23 - p.42 l.27; (1967) 1 Q.B. 302, 310G - 311F; (1906) 2 K.B. 240 246; p.42 l.32 - p.43 l.2; p.43 ll.3 - 11; p.43 ll. 12 - 16; p.43 ll.19 - 34

Accordingly, Georges, J.A. proceeded to ascertain whether a wider meaning could be given to the word "child" more consonant with the objects of the Constitution. Georges, J.A. considered that as the Constitution sought to protect "Fundamental Rights and Freedoms of the Individual", technical rules of law should not be invoked to exclude persons from their ambit. The learned Judge considered the absence of any qualification of the word "child" such as appeared in S.16 (4) of the 1956 Act was significant. The learned Judge then set out the terms of S.100 (C) of the 1956 Act and compared the same with S.11 of the Constitution, noting that in S.100 (C) specific reference was made to the illegitimate child of a woman. It appeared to the learned Judge that S.11 of the Constitution elevated the mere immunity from deportation in S.100 (C) into an immunity against any restriction upon freedom of movement including the right to enter Bermuda. Rather than exclude the illegitimate child of a woman from the category of persons whose rights were being enhanced, it seemed far more probable to Georges, J.A. that

Record: p.42 l.41 - p.43 l.2; p. 43 ll.35 - 42; p.43 last line - p.44 l.7; p.44 ll.11 - 34; p.44 l.45 - p.45 l. 4; p.45 ll.5 - 18

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the intention of the draftsman of the Constitution was to enhance the right of all the categories of persons mentioned in S.100 (C) of the 1956 Act. In Georges, J.A.'s view the draftsman effected this by the use of the word "child": it would not have occurred to the draftsman in the context of fundamental rights and freedoms that the word "child" would have been "liable to a restrictive and discriminatory interpretation because of a technical rule of English law". The learned Judge noted that his interpretation of S.11 (5) of the Constitution provided for a wider category of persons who "belong to Bermuda" than those immune from deportation under S.100 (C) of the 1956 Act and would include an illegitimate child of a male with Bermudian status. Georges, J.A. concluded that this was not a sufficient reason for applying what he called the technical rule to exclude the illegitimate child of a woman who has Bermudian status. In the learned Judge's view the four children were deemed to belong to Bermuda. Accordingly, George, J.A. said that he would allow the Respondents' appeal and declare that the four children belonged to Bermuda within the meaning of S.11 (5) of the Constitution. Georges, J.A. was in favour of dismissing the Appellant's appeal as to costs.

p.45 11.12 - 18

p.45 11.19 - 31

p.45 11.25 - 31

p.45 11.32 - 39

p.45 1.46 - p.46 1. 28

15. In his judgment Duffus, J.A. first summarised the facts and the nature of the appeals before the Court. The learned Judge then set out the provisions of S.16 (4) of the 1956 Act and S.11 of the Constitution. The learned Judge considered first the interpretation of S.16 (4) of the 1956 Act and the Respondents' submission that the four children were the stepchildren of the first-named Respondent and thus each child qualified under S.16 (4) (b) of the 1956 Act as a "stepchild" of a person with Bermudian status. Duffus, J.A. then considered the meaning of the word "child" and said that prima facie the word denoted a legitimate child. The learned Judge then cited certain passages from Galloway (supra) and concluded that prima facie it did appear that the word "child" meant a legitimate child, ecept where the statute itself required a different interpretation. The ordinary meaning of "stepchild" is the son or daughter of a person's spouse in a previous marriage and this did not include the illegitimate children of the spouse. Having considered the 1937 Act and the 1938 Act, the learned Judge said that in his view the interpretation of the word "stepchild" depended on the meaning of "child" and

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p.47.1.9 - p.49 1. 10

p.49 1.11 - p.50 1.25

p.50 1.26 - p.52 1.10

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p.52 11.11 - 37

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p.53 1.7 - p.55 1.25

p.55 11.26 - 30

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p.56 1.10 - p.57 1.4

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"stepchild" having regard to the 1956 Act as a whole. The learned Judge then set out SS.18 (3) and 100 of the 1956 Act and noted how S.100 had relied on the usually accepted link of an illegitimate child through its mother. In the learned Judge's view S.16 (4) of the 1956 Act having excluded an illegitimate child from benefitting through its mother it was highly improbable that the Legislature would have intended to benefit the illegitimate child under the guise of a stepchild. In Duffus, J.A.'s view the word "stepchild" must have its ordinary English meaning which did not refer to the illegitimate children of a spouse. p.57 l.11 - p.58 l.17 p.58 ll.26 - 29 p.58 ll.30 - 35 p.58 ll.36 - 40

16. Duffus, J.A. then considered the Respondents' claim that the four children were deemed to belong to Bermuda within S.11 (5) of the Constitution. The learned Judge set out the requirements of S.11 (5) and said that the question was whether the four children came within the meaning of the word "child" in S.11 (5) (d). Duffus, J.A. said that according to the English authorities prima facie the word "child" meant a "legitimate child, but that it was necessary to consider the Constitution as a whole to see whether the prima facie meaning was displaced by the context requiring it to embrace a wide category than that of legitimate children". The learned Judge then set out certain arguments leading to his conclusion that S.11 (5) included illegitimate children. First, Duffus, J.A. referred to the fact that S.11 appeared in the Constitution and not in a statute dealing with a specific subject and that the section appeared in the chapter setting out fundamental rights and freedoms of the individual and dealt with all persons in Bermuda. The learned Judge then set out S. 1 of the Constitution and said that S.11 applied to all persons in Bermuda with power in S.11 (2) (d) to impose restrictions upon or to expel persons who did not belong to Bermuda. Secondly, Duffus, J.A. referred to the fact that S.11 (5) (d) only referred to persons under the age of 18 years and said that it was really a section to protect children from being deported or having their movements restricted if they were the children of a person possessing Bermudian status. There was no qualification of the word "child" as appeared in the Immigration Acts. Thirdly, Duffus, J.A. said that there was no provision in the Constitution for an illegitimate child or any differentiation between a legitimate and an illegitimate child. He said that it could p.58 l.41 - p.62 l.3 p.59 ll.3 - 24 p.59 ll.25 - 34 p.59 l.35 - p.61 l.42 p.59 ll.36 - 43 p.60 ll.1 - 29 p.60 ll.30 - 34 p.60 ll.35 - 42 p.60 ll.42 - end p.60 last line - p.61 l.4.

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p.61 ll.4 - 11 be argued that it would be a denial of human rights if an illegitimate child was to be treated

p.61 ll.11 - 23 differently from a legitimate child. Lastly, Duffus J.A. referred to the fact that the four children with their mother formed a family unit and that the mother having married a Bermudian had the duty to live with her husband . He said that it would be inhumane to separate the four children from her and to prevent her from carrying out her parental responsibilities to her young children. In Duffus, J.A.'s view the word "child" in S.11 (5) (d) set in this wider field should be given its full and natural meaning and not the narrower legal interpretation and thus included the four children as the illegitimate children under the age of 18 years of a woman who was of Bermudian status and who lived with her children in Bermuda. The learned Judge said that this interpretation would conform with the provisions of S.100 (C) of the 1956 Act which would, inter alia, prevent the deportation of the illegitimate children of a woman possessing Bermudian status and ordinarily resident in Bermuda. Duffus, J.A. was therefore in favour of allowing the Respondents' appeal (Civil Appeal No. 3 of 1977) and making the appropriate declaration under S.11 (5) of the Constitution. The learned Judge dismissed Civil Appeal No. 2 of 1977 and allowed the Appellants' appeal as to costs.

p.61 ll.27 (& insert) - 31

p.61 ll.37 - 42

p.61 ll.43 - end

p.62 ll.10 - 20

17. On the 15th December, 1977, the Court of Appeal (Hogan, P. Duffus and Blair-Kerr, J.J.A.), granted leave to the Appellants to appeal to the Privy Council.

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18. The Appellants respectfully submit that this appeal should be allowed and that the judgments of Seaton, J. in the Supreme Court and of Hogan, P. in the Court of Appeal are correct. It is respectfully submitted that all four judgments in the courts below are right in their interpretation of S.16 (4) of the 1956 Act and in their conclusion that the four children did not fall within S.16 (4) whether as stepchildren or otherwise. It is respectfully submitted that the courts in Bermuda are bound to apply the common law rule of construction that the prima facie meaning of the word "child" in a statute does not include an illegitimate child unless illegitimate children can be included by express words or necessary implication from the context. The context of the 1956 Act required the application of the prima facie meaing having regard not only to the

particular words of S.16 but to the fact that where the 1956 Act intended to include illegitimate children it did so in express terms, as, for example, in S.100 (C).

19. It is respectfully submitted that Seaton, J. and Hogan, P. correctly approached the interpretation of S.11 (5) of the Constitution. It is respectfully submitted that the common law rule of construction as to the prima facie meaning of the word "child" applied and that Georges, J.A. was in error in his view that it was necessary in some way to justify an application of the common law rule before it could apply. The Legislature dis not qualify the word "child" in S.11 (5) nor did it include illegitimate children expressly as it had done, for example, in S.100 (C) of the 1956 Act. It is respectfully submitted that the fact that S.11 appears in a Constitution and in a chapter setting out fundamental rights and freedoms is not sufficient to displace the prima facie meaning of the word "child". It is respectfully submitted that the context of S.11 including as it does in S.11 (2) (d) a reference, inter alia, to the 1956 Act is such that a consistent approach to the meaning of the word "child" should be sought. There is no warrant in the context of 1956 Act and of the Constitution, having correctly adopted the prima facie meaning of the word "child" as a legitimate child, for then extending the meaning of the word in S.11 of the Constitution to include illegitimate children.

20. The Appellants, while not conceding that S.100 (C) of the 1956 Act would result in the immunity from deportation from Bermuda of the four children, propose to and will treat them as if they properly fall within the provisions of that section.

21. This appeal raises issues of considerable general importance in Bermuda as it is apprehended that a decision dismissing the appeal would result in non-Bermudian women who have illegitimate children born outside Bermuda and who either have married or are proposing to marry Bermudian men being entitled upon marriage to bring their said children to Bermuda as of right to take advantage of the favourable economic climate in the Island. The same advantage would result to the illegitimate children born outside Bermuda of a non-Bermudian father who then married a Bermudian woman. It is respectfully submitted that the words of S.11 (5)

are not apt to include illegitimate children and that in all the circumstances upon a proper construction of the section illegitimate children do not fall within the same.

22. The Appellants respectfully submit that the majority judgment of the Court of Appeal granting the declarations sought by the Respondents is wrong and ought to be set aside and this appeal ought to be allowed with costs for the following (among other) 10

R E A S O N S

1. BECAUSE the four children are not deemed to possess and enjoy Bermudian status nor are they deemed to belong to Bermuda;

2. BECAUSE the prima facie meaning of the word "child" in S.11 (5) of the Constitution is not displaced or extended by necessary implication from the context in which it appears;

3. BECAUSE upon a proper construction of the words "child" and "stepchild" in S.11 (5) of the Constitution illegitimate children are not included therein; 20

4. BECAUSE of the other reasons set out in the judgments of Seaton, J. and Hogan, P.

COLIN ROSS-MUNRO, Q.C.

STUART N. McKINNON.

IN THE PRIVY COUNCIL No. 4 of 1978

ON APPEAL

FROM THE COURT OF APPEAL BERMUDA

BETWEEN:

THE MINISTER OF HOME AFFAIRS and
MINISTER OF EDUCATION Appellants

- and -

COLLINS MACDONALD FISHER and
EUNICE CARMETA FISHER Respondents

CASE FOR THE APPELLANTS

CHARLES RUSSELL & CO.,
Hale Court,
Lincoln's Inn,
London WC2A 3UL.