Privy Council Appeal No. 29 of 1977

The Attorney-General – – – – – – – *Appellant*

v.

Thomas D'Arcy Ryan – – – – – – – *Respondent*

FROM

THE COURT OF APPEAL OF THE COMMONWEALTH OF THE BAHAMAS

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 24TH JULY 1979

Present at the Hearing:

LORD DIPLOCK
VISCOUNT DILHORNE
LORD RUSSELL OF KILLOWEN
LORD KEITH OF KINKEL
SIR CLIFFORD RICHMOND

[*Delivered by* LORD DIPLOCK]

These are proceedings brought by Mr. Ryan, the respondent to this appeal, in an endeavour to establish his entitlement to be registered as a citizen of The Bahamas under Article 5(2) of the Constitution. The appeal to this Board is brought by the Attorney-General against an order of the Court of Appeal declaring that at the inception of the proceedings Mr. Ryan " was entitled to be registered as a Citizen of the Commonwealth of the Bahamas subject to his compliance with paragraph 3 of Article 5 of the Constitution of the said Commonwealth of the Bahamas ".

Mr. Ryan is a citizen of Canada by birth. He first came to The Bahamas in 1947 at the age of twenty-two and has been ordinarily resident there ever since, except that he returned to study accountancy in Canada from 1949 to 1954 and obtained a professional qualification there. He married in Nassau in 1951 a lady who is a citizen of The Bahamas by birth. It is, and has been at least since 1966, his intention of making his permanent home in The Bahamas; and, what is most relevant to the Constitutional right that he claims to be registered as a citizen of The Bahamas, there was issued to him on 2 February 1966 by the Immigration Board a certificate that he belonged to the Bahama Islands for the purposes of the Immigration Act, 1963.

The relevant sections of the Immigration Act, 1963, were replaced by corresponding sections in the Immigration Act, 1967, and persons to whom such certificates of belonging to the Bahama Islands had been issued under either of those two Acts have since 1969 been referred to as possessing " Bahamian Status ".

The current Constitution of the Commonwealth of The Bahamas is contained in the Schedule to the Bahamas Independence Order 1973, which came into operation on 10 July 1973. By Article 2 of the Constitution it is the supreme law of The Bahamas and, subject to its provisions,

> " if any other law is inconsistent with this Constitution, this Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void ".

Chapter II of the Constitution deals with citizenship of The Bahamas. It provides that certain categories of persons shall become citizens automatically on 10 July 1973; but there are other categories, dealt with in Articles 5, 7 and 10, whose entitlement to become citizens of The Bahamas is dependent upon their making application for citizenship and obtaining registration as citizens.

By virtue of his certificate of 2 February 1966 Mr. Ryan possessed Bahamian Status immediately before the current Constitution came into force, and so fell into one of these categories. The relevant provisions of the Constitution applicable to his case are to be found in Article 5(2), (3) and (4):

" 5. (2) Any person who, on 9th July 1973, possesses Bahamian Status under the provisions of the Immigration Act 1967 and is ordinarily resident in the Bahama Islands, shall be entitled, upon making application before 10th July 1974, to be registered as a citizen of The Bahamas.

(3) Notwithstanding anything contained in paragraph (2) of this Article, a person who has attained the age of eighteen years or who is a woman who is or has been married shall not, if he is a citizen of some country other than The Bahamas, be entitled to be registered as a citizen of The Bahamas under the provisions of that paragraph unless he renounces his citizenship of that other country, takes the oath of allegiance and makes and registers such declaration as may be prescribed:

> Provided that where a person cannot renounce his citizenship of the other country under the law of that country he may instead make such declaration concerning that citizenship as may be prescribed.

(4) Any application for registration under paragraph (2) of this Article shall be subject to such exceptions or qualifications as may be prescribed in the interests of national security or public policy."

The expression " prescribed " is defined in Article 137(1) as meaning:

> " provided by or under an Act of Parliament [sc. of The Bahamas] ".

These provisions of the Constitution, and the corresponding provisions dealing with the other categories of person entitled to acquire citizenship by registration, contemplate that they will be supplemented by legislation which will provide machinery for applying for and granting registration as a citizen of The Bahamas, and which may make subject to exceptions or qualifications the *prima facie* entitlement of a person who possessed Bahamian Status on 9 July 1973 to be registered as a citizen.

In fact such legislation had already been enacted by the Legislature of the Bahama Islands in anticipation of the coming into force of the new Constitution. This was done under powers conferred upon that Legislature by section 4(2) of The Bahamas Independence Order 1973. It is to be found in The Bahamas Nationality Act, 1973, of which the long title is: " An Act to provide for the Acquisition, Certification, Renunciation and Deprivation of citizenship of The Bahamas and for purposes

incidental thereto or connected therewith ". The relevant sections of this Act which deal with applications for registration as a citizen under Article 5(2), (3) and (4) of the Constitution are as follows: —

" 7. Any person claiming to be entitled to be registered as a citizen of The Bahamas under the provisions of Article 5, 7, 9 or 10 of the Constitution may make application to the Minister in the prescribed manner and, in any such case if it appears to the Minister that the applicant is entitled to such registration and that all relevant provisions of the Constitution have been complied with, he shall cause the applicant to be registered as a citizen of The Bahamas: Provided that, in any case to which those provisions of the Constitution apply, the Minister may refuse the application for registration if he is satisfied that the applicant—

(a) has within the period of five years immediately preceding the date of such application been sentenced upon his conviction of a criminal offence in any country to death or to imprisonment for a term of not less than twelve months and has not received a free pardon in respect of that offence; or

(b) is not of good behaviour; or

(c) has engaged in activities whether within or outside of The Bahamas which are prejudicial to the safety of The Bahamas or to the maintenance of law and public order in The Bahamas; or

(d) has been adjudged or otherwise declared bankrupt under the law in force in any country and has not been discharged; or

(e) not being the dependent of a citizen of The Bahamas has not sufficient means to maintain himself and is likely to become a public charge,

or if for any other sufficient reason of public policy he is satisfied that it is not conducive to the public good that the applicant should become a citizen of The Bahamas.

8. A person registered under section 5, 6 or 7 of this Act shall be a citizen of The Bahamas by registration as from the date on which he is registered.

16. The Minister shall not be required to assign any reason for the grant or refusal of any application or the making of any order under this Act the decision upon which is at his discretion; and the decision of the Minister on any such application or order shall not be subject to appeal or review in any court ".

By section 19 the Minister was empowered to make Regulations for giving effect to the provisions of the Act. Such Regulations, called The Bahamas Nationality Regulations, 1973, were made by the Minister on 31 August 1973. They provide among other things for the maintenance of registers and for the forms in which applications to the Minister for registration are to be made.

On 27 June 1974 Mr. Ryan duly lodged with the Minister an application form for registration as a citizen of The Bahamas under Article 5(2) of the Constitution. On 24 October 1974 he was invited by Mr. Walkine, an Under Secretary in the Ministry of Home Affairs, to attend at the Ministry for an interview accompanied by his wife. He did so on 7 November 1974 and was then interviewed by Mr. Walkine who asked him a number of questions about his whereabouts and occupation from 1947 onwards. It is, however, common ground that at no time was it suggested to him that he had done anything that was capable of bringing him within any of the categories of undesirable persons set out in paragraphs (a) to (e) of the

proviso to section 7 of The Bahamas Nationality Act, 1973, or anything else that might make it not conducive to the public good that he should become a citizen of The Bahamas.

Nevertheless on 16 June 1975 he received a letter from the Permanent Secretary to the Ministry, informing him laconically that his application had not been approved. No reasons for the refusal of registration were given; none has been given since. The Minister's decision to refuse registration had in fact been made on 28 May 1975.

On 7 April 1976 Mr. Ryan began these proceedings by Originating Summons against the Attorney-General for a declaration:

> " that upon the true construction of the Constitution of the Commonwealth of The Bahamas the Plaintiff is entitled to be registered as a citizen of the Commonwealth of the Bahamas in accordance with the provisions of the said Constitution."

The Summons was heard, with admirable promptitude, before two justices of the Supreme Court (Knowles C.J. and Graham J.) who, after a twelve-days hearing devoted to legal argument, delivered judgment on 23 June 1976. At the hearing a number of points of law were argued which were rejected in the reasons for judgment of both justices and are no longer relied upon by either party. Four questions of law, each one of considerable constitutional importance, remain for consideration by this Board:

(1) Is the Minister, before rejecting an application to be registered as a citizen of The Bahamas under Article 5(2) of the Constitution, required to give to the applicant the opportunity of a hearing which complies with the principles of natural justice; and, if so, what is the consequence of the Minister's failure to observe this requirement?

(2) Are the general words " or if for any other sufficient reason of public policy he [sc. the Minister] is satisfied that it is not conducive to the public good that the applicant should become a citizen of The Bahamas ", which appear at the end of the proviso to section 7 of The Bahamas Nationality Act, 1973, inconsistent with the Constitution and void under Article 2; and, if so, what is the consequence upon the Minister's decision to reject Mr. Ryan's application for registration as a citizen?

(3) Does the provision in section 16 of The Bahamas Nationality Act, 1973, that the decision of the Minister " shall not be subject to appeal or review in any court " oust the jurisdiction of the Supreme Court to inquire into Questions (1) and (2)?

(4) If the answer to Question (1) or (2) is that the Minister's decision of 28 May 1975 to reject Mr. Ryan's application for registration is a nullity, is Mr. Ryan entitled to a declaration that at the inception of these proceedings on 7 April 1976 he " was entitled to be registered as a Citizen of the Commonwealth of The Bahamas, subject to his compliance with paragraph (3) of Article 5 of the Constitution of the said Commonwealth of The Bahamas? "

(1) Applicability of the Principles of Natural Justice

In the Supreme Court both judges were of the opinion that Mr. Ryan had a constitutional right to a fair hearing in accordance with the principles of natural justice before his application to be registered as a citizen was rejected by the Minister; and that a failure to accord him this rendered the Minister's decision a nullity. This means that he was at least entitled to be informed of the nature of the case against acceptance of his application and to be given a reasonable opportunity of answering it. It does not mean that there must necessarily be an oral hearing conducted in accordance with procedures appropriate to trials in a court of law. What

is an appropriate and fair procedure is very much a matter for the Minister to determine in his discretion having regard to the kind of things which he is required to take into consideration—in the instant case, the various matters referred to in the proviso to section 7 of The Bahamas Nationality Act, 1973. Their Lordships, however, need not go further into this, on which ample authority is cited in the judgments of the courts below; since it is now conceded that neither at his interview with Mr. Walkine nor on any other occasion was Mr. Ryan given any indication of the grounds upon which the Minister contemplated rejecting his application for registration; so, *cadit quaestio*, he was given no opportunity of answering them.

Their Lordships agree with the judges of the Supreme Court (as did the Court of Appeal) that as an applicant for registration as a citizen of The Bahamas under Article 5(2) of the Constitution, Mr. Ryan was entitled to a fair hearing in accordance with the principles of natural justice before his application was rejected by the Minister. By virtue of sections 7 and 8 of The Bahamas Nationality Act, 1973, the Minister was a person having legal authority to determine a question affecting the rights of individuals. This being so it is a necessary implication that he is required to observe the principles of natural justice when exercising that authority; and, if he fails to do so, his purported decision is a nullity. In view of the citations of so many cases in the judgments below, their Lordships upon this branch of the law do not find it necessary to do more than to refer to *Ridge v. Baldwin* [1964] A.C.40 and particularly to the speech of Lord Reid, at pages 74 to 76.

Although in the Supreme Court both judges were agreed that the Minister's decision to reject the application was a nullity upon this ground, they differed upon the answer to Question (2). The Chief Justice was not prepared to hold that the last part of the proviso to section 7 of The Bahamas Nationality Act, 1973, was void for inconsistency with Article 5(2) and (4) of the Constitution. Graham J. on the other hand would have so held. This would have left as valid grounds for refusing Mr. Ryan's application only those specified in paragraphs (a) to (e) of that proviso; and since Mr. Ryan had sworn an affidavit deposing that he had done nothing which could bring him within any of those paragraphs and the Minister had filed no evidence to contradict this, Graham J. regarded himself as entitled to find as a fact that none of those disqualifications was applicable. He would have made a declaration of Mr. Ryan's right to be registered as a citizen in terms which were subsequently adopted by the Court of Appeal. The Chief Justice, on the other hand, consistently with his view that the last part of the proviso was valid, considered that the Minister's rejection of the application might have been for some other reason of public policy which in reliance on section 16 of The Bahamas Nationality Act, 1973, he had not been willing to disclose and which, in consequence, Mr. Ryan had not been able to deal with in his affidavits that were before the court. The Chief Justice would have ordered the matter to be remitted to the Minister for him to consider Mr. Ryan's application according to law.

There was thus agreement between the two judges of the Supreme Court that the Minister's purported rejection of Mr. Ryan's application for registration as a citizen was a nullity, but disagreement as to the appropriate order to be made. Under Rule 4 of the Supreme Court (Special Jurisdiction) Rules, 1976, this had the consequence, somewhat bizarre in all the circumstances, that the plaintiff's summons was dismissed and the Minister's rejection of his application stood. So Mr. Ryan found himself in the role of appellant in the Court of Appeal.

As has already been indicated parenthetically, all three members of the Court of Appeal (Hogan P., Duffus and Blair-Kerr JJ.A.) agreed with Knowles C.J. and Graham J. upon the answer to Question (1): the Minister's purported decision was a nullity.

On the matter that had divided the two judges in the Supreme Court they agreed with Graham J. Their Lordships will accordingly turn to Question (2).

(2) **Validity of the Proviso to Section 7 of The Bahamas Nationality Act, 1973**

In answering this question their Lordships are concerned in the first place with the construction of provisions contained not in an ordinary statute but in a written Constitution. They appear in a part of the Constitution, comprising Chapters II and III, which confers upon the individual rights which cannot be withdrawn or limited by any action of the Executive and by Article 54 are deeply entrenched against interference by Parliament in the absence of a referendum, except to the extent that the Constitution itself expressly so permits. A provision—and there are many—in Chapters II and III of the Constitution, which permits Parliament, by legislation passed by a simple majority vote, to impose limitations or qualifications upon any of those entrenched rights, is not to be construed expansively so as to authorise it to deprive the individual of the substance of the right which *prima facie* is conferred on him by the Constitution, under the guise of imposing limitations or qualifications upon it.

Article 5(2) and (3) of the Constitution gives to every person who possessed Bahamian Status on 9 July 1973 a *prima facie* legal right to be registered as a citizen of The Bahamas on making timeous application and satisfying the requirements of paragraph (3). Paragraph (4), however, authorises the Parliament of The Bahamas to make that *prima facie* legal right subject to " exceptions or qualifications " in the interests of national security or public policy. Any such exception or qualification, if it is to be valid under the Constitution, must be " provided by or under an Act of Parliament ".

In their Lordships' view this entails that the exceptions and qualifications must be spelt out clearly in legislation, either primary or subordinate; they may not be left to the discretion of the Executive. The description of the circumstances the existence of which in relation to an applicant are to deprive him of his legal right to insist on being registered as a citizen must be set out in an Act of Parliament either in full detail in the Act itself or in more general terms in an Act which also confers power upon some executive authority to make subordinate legislation providing for more detailed descriptions of particular circumstances falling within those general terms. The circumstances so far as they involve matters of fact must be described in the legislation (whether it be primary or subordinate) in such terms that whether they exist or not can be determined objectively, so that a would-be applicant upon reading the legislation can know whether he falls within a category of persons whose applications for registration may lawfully be refused notwithstanding that they satisfy the requirements of Article 5(2) and (3).

Where in the case of a particular applicant circumstances described in the legislation as constituting an exception or qualification do exist, it is not contrary to the Constitution to confer on the Executive a discretion to allow the registration of the applicant notwithstanding that he has no legal right to demand it. Likewise it is not contrary to the Constitution to confer upon an executive authority or administrative tribunal jurisdiction to determine whether the circumstances described in the legislation exist in relation to any particular applicant, provided that in making the determination the principles of natural justice are observed. What Article 5(4) does not permit Parliament to do is to make the right of persons with Bahamian Status to be registered as citizens of The Bahamas subject to the discretion of the executive branch of the Government. Yet that,

in their Lordships' view, is the effect of the words which form the last part of the proviso to section 7 of The Bahamas Nationality Act, 1973. In contradistinction to paragraphs (a) to (e) of the proviso, what they do in substance is to leave to the Minister sole discretion to refuse registration to any applicant whose admission to citizenship would in his opinion not be conducive to the public good; for his freedom under section 16 from any obligation to give any reason for his refusal of registration makes him, in effect, the sole judge of what constitutes " any other sufficient reason " for refusing the application.

Their Lordships accordingly agree with the Court of Appeal and with Graham J. that the last part of the proviso to section 7 of The Bahamas Nationality Act, 1973, (which follows on paragraph (e)) is *ultra vires* the Constitution and void.

If the Minister in rejecting Mr. Ryan's application was relying on this part of the proviso rather than upon any of the paragraphs (a) to (e) he would have been taking into consideration matters which he ought not to have considered and this would be a further reason for holding that his decision to refuse the application was a nullity; but since he has not revealed to the court whether this was so or not, this does not provide another ground for setting aside his refusal additional to his failure to comply with the principles of natural justice by letting Mr. Ryan know at the hearing of his application what the case against him was. It underlines the importance of that ground.

(3) **The Effect of the Ouster Clause**

The relevant ouster provisions of section 16 of The Bahamas Nationality Act, 1973, are:

> " the decision of the Minister on any such application [sc. for registration as a citizen of The Bahamas] . . . shall not be subject to appeal or review in any court."

" Appeal " in the context of an ouster clause means re-examination by a superior judicial authority of both findings of fact and conclusions of law as to the legal consequences of those facts made by an inferior tribunal in the exercise of a jurisdiction conferred upon it by statute to decide questions affecting the legal rights of others, and the substitution of the superior judicial authority's own findings of fact and conclusions of law for those of the inferior tribunal. In " review " the function of the superior judicial authority is limited to re-examining the inferior tribunal's conclusions of law as to the legal consequences of the facts as they have been found by the inferior tribunal. It is by now well-established law that to come within the prohibition of appeal or review by an ouster clause of this type, the decision must be one which the decision-making authority, under this Act the Minister, had jurisdiction to make. If in purporting to make it he has gone outside his jurisdiction, it is *ultra vires* and is not a " decision " under the Act. The Supreme Court, in the exercise of its supervisory jurisdiction over inferior tribunals, which include executive authorities exercising quasi-judicial powers, may, in appropriate proceedings, either set it aside or declare it to be a nullity. *Anisminic Ltd. v. Foreign Compensation Commission* [1969] 2 A.C. 147.

It has long been settled law that a decision affecting the legal rights of an individual which is arrived at by a procedure which offends against the principles of natural justice is outside the jurisdiction of the decision-making authority. As Lord Selborne said as long ago as 1885:

> " There would be no decision within the meaning of the statute if there were anything . . . done contrary to the essence of justice." *Spackman v. Plumstead District Board of Works* 10 A.C. 229 at p. 240. See also *Ridge v. Baldwin* (*ubi sup.*).

Their Lordships, in agreement with all the judges in the courts below, would therefore conclude that the ouster clause in section 16 of The Bahamas Nationality Act, 1973, does not prevent the court from inquiring into the validity of the Minister's decision on the ground that it was made without jurisdiction and is *ultra vires*.

(4) **The Form of the Declaration**

It is here alone that their Lordships find themselves in disagreement with the Court of Appeal. They have considerable sympathy with the reasons which led the Court of Appeal to make a declaration that Mr. Ryan was entitled at the inception of the proceedings to be registered as a citizen of The Bahamas. It might be said with some justification that the Minister brought this upon himself by the tactical stance that has been adopted on his behalf throughout this litigation. In reliance on section 16 of The Bahamas Nationality Act, 1973, he has claimed his " right to silence " and has steadfastly refused to reveal to the court his reasons for refusing Mr. Ryan's application—presumably for fear of thereby creating a precedent.

Their Lordships, however, recognise that to adopt this attitude, even at the risk of forfeiting the sympathy of the court, was the only course which was consistent with the two main propositions of law that were initially advanced on his behalf in the Supreme Court and persisted in to the very end both before the Court of Appeal and before this Board. These were, first, that he had a wide discretion to refuse Mr. Ryan's application to be registered as a citizen if, for any reason at all, he thought this to be desirable from the point of view of public policy; and, secondly, that the discretion to refuse the application was a purely administrative discretion untrammelled by any principles of natural justice and, accordingly, that Mr. Ryan was not entitled to be told the reasons which actuated the Minister in coming to his decision, let alone to be given an opportunity to attempt to answer them before the decision was reached.

As propositions of law, the first depended largely upon the presence at the end of the proviso to section 7 of The Bahamas Nationality Act, 1973, of the provision which their Lordships, in agreement with the Court of Appeal and Graham J., have held to be inconsistent with the Constitution and consequently void; with the result that the only valid grounds upon which the Minister could have rejected Mr. Ryan's application would have been if he were satisfied positively that one or other of the circumstances described in paragraphs (a) to (e) of the proviso did in fact exist in relation to Mr. Ryan, there being no onus upon Mr. Ryan to satisfy the Minister that they did not. Nevertheless, the Court of Appeal did not know, and neither do their Lordships, whether the Minister's refusal of the application was based on one of the grounds specified in paragraphs (a) to (e) or was made in reliance upon some " other sufficient reason of public policy " under that part of the proviso which has now been held to be invalid.

The Court of Appeal and Graham J. were impressed by the fact that Mr. Ryan had filed in the proceedings an affidavit specifically denying as respects each of the grounds specified in paragraphs (a) to (e) that it applied to him, and no evidence to contradict these denials was adduced by the Minister. Graham J. went so far as to find as a fact that none of the paragraphs (a) to (e) applied to Mr. Ryan; but this appears to have been based upon a misunderstanding of the attitude that had been adopted by counsel for the Minister, which was that the Minister was under no legal obligation to reveal to anyone his reasons for refusing the application and that counsel had no instructions as to whether the Minister had purported to act under any of the paragraphs (a) to (e) of the proviso or

had purported to act under the last (invalid) part of the proviso. The Court of Appeal took a similar line to Graham J. The President summarised his reasons for granting the declaration of Mr. Ryan's entitlement to citizenship of The Bahamas as follows:

> " *On the facts disclosed to this court* no reasonable Minister acting with a due sense of his responsibilities under the legislation would, at the inception of these proceedings, have been justified in refusing the [plaintiff's] application for registration as a citizen ". (Emphasis supplied.)

This assumes that all the factual material that was before the Minister when, as deposed to by Mr. Turnquest, he studied the " whole of the file " relating to Mr. Ryan's application, was also before the court. Had that been so, the President would have applied the proper test of " reasonableness " in administrative law as laid down in the classic judgment of Lord Greene M.R. in *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* [1948] 1 K.B. 223 at p. 229, and it would be right to make the declaration, since any decision other than one to grant the application would be a nullity. But unfortunately it was not so. The only contents of the file that were before the court were Mr. Ryan's application form and the notes made by Mr. Walkine of his interview with Mr. Ryan and his wife on 7 November 1974. For all their Lordships know, " the whole file " may have contained material which contradicted or conflicted with Mr. Ryan's subsequent denials on affidavit that any of the paragraphs (a) to (e) of the proviso applied to him. The Minister, consistently with the submissions as to the law to which his counsel have adhered throughout this litigation, has refused to reveal whether there was any such material or not.

No doubt when the Minister determines Mr. Ryan's application of 27 June 1974 according to law, which he has not done yet, he will be obliged, if he is contemplating refusing the application, to inform Mr. Ryan of the grounds on which he relies as justifying this course and giving to Mr. Ryan a reasonable opportunity of answering or refuting them; but The Bahamas Nationality Act, 1973, involves no conflict with any provision of the Constitution in conferring as it does, upon the Minister, sole jurisdiction to the exclusion of all courts of law to determine whether, in relation to any applicant, there exist facts which justify refusing his application for citizenship upon any of the grounds specified in paragraphs (a) to (e) of the proviso to section 7. Provided that the Minister has not misconstrued the provisions of the statute which confer the power, has observed the principles of natural justice in the procedure he has adopted in the course of reaching his decision and has not acted upon material that is devoid of probative value his findings of fact are not subject to be upset by any court of law.

Their Lordships are thus reluctantly driven to the conclusion that Mr. Ryan's application must go back to the Minister to be decided by him according to law. The procedure to be adopted in dealing with the application must be in accordance with the principles of natural justice as they have been stated earlier in this judgment; and the Minister will be under a legal obligation to cause Mr. Ryan to be registered as a citizen upon his complying with Article 5(3) of the Constitution, unless the Minister is satisfied upon evidential material of probative value that Mr. Ryan has been guilty of conduct which brings him within one or other of paragraphs (a) to (e) of the proviso to section 7 of The Bahamas Nationality Act, 1973.

In view of Mr. Ryan's affidavit in these proceedings it seems most unlikely that there is any other evidential material on which the Minister could reasonably be satisfied of this; and their Lordships would express the hope that after the long delay caused by this litigation, Mr. Ryan's

application can be granted promptly without the need for any further hearing. Nevertheless they do not think that it would be proper to go so far as to deprive the Minister of his statutory jurisdiction to base upon proper evidential material, if it should exist, findings of fact relevant to the matters referred to in paragraphs (a) to (e); and that is what a declaration that Mr. Ryan is entitled to registration as a citizen would do.

Their Lordships accordingly propose humbly to advise Her Majesty that for the single declaration made by the Court of Appeal, the following declarations as to the several questions of law that have been raised by these proceedings should be made:

(1) A declaration that the Minister's decision of 28 May 1975 to refuse the plaintiff's application dated 27 June 1974 for registration as a citizen of The Bahamas is null and void.

(2) A declaration that the final words of the proviso to section 7 of The Bahamas Nationality Act, 1973, viz:

> " or if for any other sufficient reason of public policy he is satisfied that it is not conducive to the public good that the applicant should become a citizen of The Bahamas "

are inconsistent with the Constitution of the Commonwealth of The Bahamas and are void.

(3) A declaration that the plaintiff is entitled to have his application for registration as a citizen of The Bahamas dated 27 June 1974 reconsidered by the Minister according to law, as it has been stated in their Lordships' reasons for their humble advice to Her Majesty in this appeal.

Although technically this involves allowing this appeal to the extent of varying the terms of the declaration made by the Court of Appeal, it has in substance been a victory for the plaintiff/respondent. The defendant/appellant must pay to him his costs of the appeal to this Board. The Court of Appeal's order awarding him his costs there and below will not be disturbed.

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In the Privy Council

THE ATTORNEY-GENERAL

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THOMAS D'ARCY RYAN

DELIVERED BY
LORD DIPLOCK

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