28/81

IN THE PRIVY COUNCIL No. 47 of 1980

ON APPEAL

FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

BETWEEN:

ENDELL THOMAS — Appellant

- and -

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO — Respondent

CASE FOR THE RESPONDENT

Record

1. This is an appeal from a Judgment and Order of Court of Appeal of Trinidad and Tobago dated the 19th January 1979 whereby the said Court of Appeal allowed an appeal from the Judgment and Order of the High Court of Trinidad and Tobago dated 17th December 1976 whereby in an action initiated by the Appellant the said High Court ordered and declared:- pp.52-223 pp.14-46

"(1) that the power to create disciplinary offences for which the Plaintiff was triable is vested solely in the Governor-General and is exercisable only by Regulations made by him under section 65(1)(j) of the Police Service Act,1965, or under the former Police Ordinance, Chapter II No. 1 and that the three disciplinary offences with which the Plaintiff was charged were not validly and properly created by the Police Service Commission Regulations,1966 made by the Police Service Commission with the consent of the Prime Minister under Section 102 of the Constitution of Trinidad and Tobago and did not exist in law at any material time. pp.47-48

(2) That the Plaintiff's action is maintainable notwithstanding Sections 99 and 102 of the Constitution of Trinidad and Tobago.

(3) That the Plaintiff, though a servant of the Crown was not dismissable at pleasure but was by statute dismissable or removable only in consequence of disciplinary proceedings for a disciplinary offence known to the law.

AND IT IS ORDERED that this determination and the proceedings be forwarded to the Registrar for any such further interlocutory process as may be applied for."

The said Court of Appeal ordered that the appeal of the Respondent herein be allowed and that the Judgment of the said High Court be wholly set aside and that the costs of the appeal be taxed and paid by the Appellant to the Respondent and that the cross appeal of the Appellant be dismissed with costs to be taxed and paid by the Appellant to the Respondent. pp.223-22

2. The principal questions which arise for determination in this appeal are :-

(1) Whether the regulations in the Police Service Commission Regulations 1966, creating the offences with which the Appellant was charged, are intra vires the Trinidad and Tobago Constitution Order in Council 1962 ("the Constitution"), and/or whether the Commission could remove or dismiss the Appellant from the Police Service for breaches of conduct of the kind set out in the Regulations.

(2) Whether the Appellant was a servant of the Crown dismissable at pleasure.

(3) Whether the Appellant's action is maintainable in law.

3. By Writ and Statement of Claim dated 18th October 1972 the Appellant brought an action against the Respondent claiming

"1. Declarations that pp.1-7

(a) the said regulations 74, 80, 81, 86, 99 and 101 are ultra vires the Trinidad and Tobago (Constitution) Order in Council 1962, null and void and of no effect;

(b) the purported interdiction and deprivation and laying of charges and inquiry and conviction and removal are and were ultra vires the Trinidad and Tobago (Constitution) Order in Council 1962, null and void and of no effect;

(c) the said purported laying of charges and inquiry and conviction and removal are and were ultra vires the Police Service Commission Regulations 1966, null and void and of no effect;

(d) he is and has at all material times been a public officer and a member of the Police Service holding the office of Assistant Superintendent;

(e) he is and has at all material times been entitled to the full salary, emoluments, rights, leave and other benefits of the said office and service;

(f) alternatively to (d) that he has been wrongfully dismissed from the said office and service.

2. Damages for wrongful dismissal.

3. Costs.

4. Such further or other relief as the case may require."

4. In the said Statement of Claim the Appellant pleaded that he was at all material times an Assistant Superintendent in the Trinidad and Tobago Police Service and that :-

(i) By letter dated 29th August 1970 the Director of Personnel Administration informed the Appellant that he should be interdicted from the performance of his duties pending the outcome of allegations of indiscipline against him.

(ii) By letter dated 10th September 1970 the said Director informed the Appellant that he was to be charged with three offences contrary to the said Regulations.

(iii) A Tribunal appointed under the said Regulations conducted an inquiry and found the Appellant guilty of all three charges and the Commission decided he should be dismissed from the Police Service.

(iv) The Appellant applied for a review of his conviction and the Review Board re-affirmed the findings of the said Tribunal but decided not to dismiss the Appellant but to remove him from the Police Service in the public interest.

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5. In the said Statement of Claim the Plaintiff alleged inter alia that the said offences were purportedly created by the Regulations which were expressly made by the Commission with the consent of the Prime Minister under the provisions of Section 102 of the Constitution of Trinidad and Tobago but that these said offences did not exist in law, their purported creation by the said regulations being ultra vires the Trinidad and Tobago (Constitution) Order 1962, as the power to create offences for which members of the Police Service are triable resides in the Governor-General only by virtue of section 13 of the said Order and must be exercised in the manner therein prescribed.

6. The Respondents by their Defence dated 13th December 1972 admitted (inter alia) that the said Regulations were expressly made by the Commission with the consent of the Prime Minister under Section 102 of the Constitution but alleged that the said three offences were validly and properly created by the said Regulations, and that they did exist in law and denied that their creation was ultre vires the Trinidad and Tobago (Constitution) Order in Council 1962 or that the power to create such offences resided solely in the Governor General. pp.8-11

7. By the said Defence the Respondents further pleaded inter alia that the Appellant's action was not maintainable in view of Sections 99 and 102 of the Constitution of Trinidad and Tobago and that the Appellant was a servant of the Crown dismissable at pleasure.

8. By his amended reply dated 4th October, 1973 the Appellant pleaded inter alia that Sections 99 and 102 of the Constitution were not bars to the Appellant's action and denied that he was dismissable at the pleasure of the Crown. pp.11-12

9. By an Order dated 18th June 1973 the High Court (Maharaj J.) ordered that the following preliminary points raised in paragraphs 5, 11 and 12 of the Defendant's Defence herein be heard and determined in open Court by a Judge of the High Court on or before the hearing of the Summons for Directions and/or the setting down of the action on the General List of cases to be tried :- pp.13-14

(1) Whether the power to create offences for which the Plaintiff was triable resides in the Governor-General only or whether the three offences with which the Plaintiff (Appellant herein) was charged were validly and properly created by the Police Service Commission Regulations 1966 made by the Police Service Commission with the consent of the

Prime Minister under Section 102 of the Constitution of Trinidad and Tobago and existed in law at any material time.

(2) Whether the Plaintiff's (Appellant's herein) action is maintainable in view of Sections 99 and 102 of the Consitution of Trinidad and Tobago.

(3) Whether the Plaintiff (Appellant herein) was a servant of the Crown dismissable at pleasure.

10. The case was heard on the 12th, 14th and 15th days of July 1976.

11. On the 17th December 1976 the High Court (Braithwaite J.) gave Judgment in which he made the declarations prayed for by the Appellant and ordered that the determination and the proceedings be forwarded to the Registrar for such further interlocutory process as might be applied for. The Learned Trial Judge held inter alia that the right of the Respondent to dismiss the Appellant at pleasure had been abrogated by Sections 9 and 61 of the Police Service Act 1965; that the said Act bound the Crown; that in purporting to create disciplinary offences the Commission had acted ultra vires the Constitution and the said Act; that the said Regulations were void and of no effect; and that as the proceedings against the Appellant were a nullity he was entitled to maintain his action.

12. By Notice of Appeal dated 22nd December 1976 the Respondent appealed to the Court of Appeal against the whole of the said Judgment. By Notice of Cross Appeal dated 29th December 1976 the Appellant appealed to the Court of Appeal contending the the decision of Braithwaite J. should be varied to include the following Orders and/or relief :- pp.48-50 pp.51-52

(a) Declarations in terms sought in paragraphs 1(a) to (e) inclusive of the Writ of Summons herein.

(b) An Order that the Defendant (Respondent herein) pay to the Plaintiff (Appellant herein) all sums due to the Plaintiff (Appellant herein) from the 14th August 1972 by way of salary emoluments and other benefits to be assessed by a Judge in Chambers in default of agreement.

(c) An Order that the Defendant (Respondent herein) pay to the Plaintiff (Appellant herein) the costs of the action.

The said appeal and the said cross appeal were heard by the Court of Appeal of Trinidad and Tobago.

13. The Court of Appeal (Hyatali C.J., Phillips J.A. and Kelsick J.A.) gave Judgment on the 19th day of January 1979 (Phillips J.A. dissenting) allowing the appeal and dismissing the cross appeal. pp.52-223

14. The majority of the Court of Appeal held inter alia that the Appellant was dismissable at the pleasure of the Crown; that the said Regulations were validly made; that the offences with which the Appellant was charged existed in law at the relevant time; and that the Appellant's action was not maintainable.

15. The minority of the Court of Appeal held inter alia that the Police Service Act 1965 bound the Crown; that the Appellant was not dismissible at pleasure; that the power to create the offences with which the Appellant was charged was vested solely in the Governor General and not in the Commission and that the Appellant's action was maintainable.

16. The Court of Appeal unanimously held that the Appellant's rights were not affected by Section 18 of the Constitution of the Republic of Trinidad and Tobago Act 1976.

17. By an Order dated the 14th February 1979 the Court of Appeal granted the Appellant conditional leave to appeal to the Judicial Committe of the Privy Council against its said Judgment of the 19th January 1979. pp.225-227

18. By an Order dated the 6th November 1979 the Court of Appeal granted the Appellant Final Leave to Appeal. pp.227-228

19. It is respectfully submitted that the majority of the Court of Appeal were right, and the minority of the Court of Appeal and Mr. Justice Braithwaite were wrong. It is further respectfully submitted that the Respondent need only succeed on one of the three points at issue for the Appeal to be dismissed. The Respondent submits that the Police Service Commission had power to dismiss the Appellant either for breach of conduct of the kind specified in the Regulations or at pleasure by reason of his status as a Crown Servant. The Respondent submits

that in any event the claim is not justifiable by reason of the provisions of Section 102 of the Constitution. The Respondent will deal with the three preliminary points hereafter seriatim.

20. THE FIRST QUESTION

"Whether the power to create offences for which the Plaintiff was triable resides in the Governor-General only or whether the three offences with which the Plaintiff (Appellant) was charged were validly and properly created by the Police Service Commission Regulations 1966 made by the Police Service Commission with the consent of the Prime Minister under Section 102 of the Constitution of Trinidad and Tobago and existed in law at any material time."

21. It is conceded that the Commission lacked power, under Section 102 of the Constitution, to define disciplinary offences in the Police Service Regulations made under that Section; but it is submitted that they had the power under Section 99 of the Constitution to formulate a disciplinary code of the kind to be found in the Regulations. It is respectfully submitted therefore that the answer to the first preliminary question must accordingly be -

(i) that the three offences with which the Appellant had been charged were not validly created by the Regulations in so far as they were made under Section 102;

(ii) that it was competent for the Commission to promulgate a disciplinary code under Section 99 of the Constitution of the kind contained in the Regulations;

(iii) that in any event the said offences existed in law at all material times; and that

(iv) the Governor General had no power to create disciplinary offences.

It is respectfully submitted that the Board should consider the real question relevant to the Appellant's complaint, and determine the lawfulness or otherwise of the Commission's removal of the Appellant in the exercise of its powers under Section 99 of the Constitution by reason of his breach of the provisions of that code.

22. Section 99 (I) of the Constitution provides that "Power...to remove and exercise disciplinary control over (police officers) shall vest in the Police Service Commission". It is respectfully noted that the power vested in the Police Service Commission is an unqualified one. It may be contrasted, in particular, with the analogous power to remove and exercise disciplinary control over certain other public officers which is vested in the Public Service Commission pursuant to Section 93 of the Constitution "subject to the provisions of this Constitution".

23. It is submitted that, prima facie the power to remove from office or to exercise disciplinary control involves the power to specify conduct which constitutes grounds for removal or a breach of discipline. While in the absence of an appropriate code such power could be exercised in respect of such breaches of contract as would, as a matter of common law or agreement entitle an employer to remove an employee, or would, as a matter of agreement, entitle an employer to discipline him, it is manifestly just and convenient that such a code be drawn up and promulgated. This is especially so in the case of so important a section of the public service as the police force. It is further submitted that the reference to the Regulations in the notification to the Appellant of breaches was immaterial and mere surplusage.

24. The Appellant contended in paragraph 11 of his Statement of Claim that "the power to create offences for which...members of the Police Service are triable resides in the Governor-General only by virtue of Section 13 of the said Order and must be exercised in the manner therein prescribed". Section 13 of the Order provides that "The Governor-General may by Order at any time within twelve months after the commencement of this Order make provision for the definition and trial of offences connected with the functions of any Commission established by the Constitution and the imposition of penalties for such offences." The language of the Section does not support the contention in paragraph 11 of the Statement of Claim; it was held by Braithwaite J. that it enabled the Governor-General to create criminal offences that hindered the performance of the functions of the Commission and did not authorise him to create offences or charges of a disciplinary nature against persons subject to the jurisdiction of the Commission; the Appellant did not challenge that finding in the Court of Appeal, and it is respectfully submitted that the finding was in any event correct.

25. It is submitted further that no other provision of the Constitution or other valid law empowered the Governor-General after the Constitution had come into force to make disciplinary regulations or lay down an appropriate disciplinary code. "Section 65 (I) of the Police Service Act 1965 which purported to do so was ultra vires the Constitution." Alternatively, in so far as the Governor-General enjoyed such power, the power was not exclusive. It is submitted that this position was not affected by the enactment of the Police Service Act 1965. Section 65 (I) provided that "The Governor-General may make regulations for carrying out or giving effect to this Act, and in particular for the following matters, namely....(j) the...discipline of the Police Service." The Section enabled (if valid) the Governor-General to make such regulations; but it did not oblige him to do so. Further, it did not purport to endow him with any exclusive power to make such regulations. Accordingly, the Section could not of itself negate the power of the Police Service Commission to make regulations with the same or materially similar effect as those in respect of which the Appellant was disciplined and removed.

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26. The Respondent further respectfully relies upon and adopts the reasoning of Sir Isaac Hyatali CJ (The Record pp. 151 - 161) and of C. A. Kelsick JA (The Record pp. 58 - 82 and 105 - 119) in so far as the same is not inconsistent with the previous submissions and supports the Respondent's case.

27. THE SECOND QUESTION

Whether the Appellant's action is maintainable notwithstanding Sections 99 and 102 of the 1962 Constitution.

28. It is respectfully submitted that the Appellant's action is not maintainable by reason of the provisions of Sections 99 and 102 of the 1962 Constitution. Section 99(I) of the Constitution provides that "Power to .... remove and exercise disciplinary control over persons holding..... offices (in the Police Force) shall vest in the Police Service Commission". Section 102(4) of the Constitution provides that "The question whether (a) a Commission to which this section applies has validly performed any function vested in it by or under this Constitution .... shall not be enquired into in any Court."

29. It is submitted that (i) the function of removing the Appellant in his capacity as a police officerwas vested in the Police Service Commssion (The Constitution s.99(I)); (ii) the Appellant's claim raises the question whether the Commission has validly performed this function; and (iii) accordingly, on the clear words of s.102(4) of the Constitution the Appellant's claim is not justifiable.

30. It is submitted that the ouster clause contained in s.102(4) of the Constitution is effective even if, as the Appellant contends, his dismissal was null, void and of no effect. In Smith v. East Elloe District Council (1956) AC 736 the House of Lords held (3-2) that where a statute provided that after expiry of a six weeksperiod for making application to the High Court to challenge the validity of a compulsory purchase order, the order "shall not be questioned in any legal proceedings whatsoever", no proceedings could be brought even where bad faith was alleged. Viscount Simonds stated "I think that anyone bred in the tradition of the law is likely to regard with little sympathy legislative provisions for ousting the jurisdiction of the Court in order that the subject may be deprived altogether of remedy ... But it is our plain duty to give the words of an Act their proper meaning and, for my part, I find it impossible to qualify the words of the paragraph in the manner suggested. It may be that the legislature had not in mind the possibility of an order being made by a local

pp.750-1

authority in bad faith...This is a matter of speculation. What is abundantly clear is that words are used which are wide enough to cover any kind of challenge which any aggrieved person may think fit to make." (see also Lord Morton p. 756, Lord Radcliffe p. 769) The ratio was not, it is submitted, confined to cases in which there was a qualified power of recourse to the Courts for a limited period as opposed cases in which there is an absolute prohibition of recourse. (R. v. Secretary of State for the Environment ex parte Ostler 1977 QB 122 per Goff LJ at p.138).

31. It is also submitted that in that case the House of Lords had in mind and rejected the argument that a compulsory purchase order made in bad faith was a nullity and that, accordingly the ouster clause could not apply to it. Viscount Radcliffe said expressly at p.769 "This argument is really a play on the word nullity. An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity upon its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and get it quashed or otherwise upset it will remain as effective for its ostensible purpose as the most impeccable of orders. And that brings us back to the question that determines this case. Has Parliament allowed the necessary proceedings to be taken" (see also R. v. Secretary of State for the Environment ex parte Ostler (1977) QB 122 per Lord Denning MR at p. 136).

32. In Anisminic v. Foreign Compensation Commission (1969) 2 AC 148 it was held that a statutory provision that a determination by the Commission of an application made to them "shall not be called into question in any Court of law" did not preclude the Court from inquiring whether or not the order of the Commission was a nullity, and from granting a declaration to that effect. A majority of the House of Lords cast doubt on the authority of Smith v. East Elloe (1956) AC 736) (Lord Reid 171; Lord Pearson 200; Lord Wilberforce 210). It is respectfully submitted that insofar as the two decisions of the House of Lords are inconsistent, preference should be given to Smith v. East Elloe (1956 AC 736) for the purpose of the present appeal.

33. It is submitted in the alternative that the two decisions of the House of Lords can be reconciled on two grounds referred to by Members of the Court of Appeal in R. v. Secretary of State for the Environment ex parte Ostler (i) "In the Anisminic case the House was considering a determination by a truly judicial body, whereas in the East Elloe case the House was considering an order which was very much in the nature of an administrative decision"

(per Lord Denning MR at p.135; see also per Goff LJ at p.138) (ii) in the Anisminic case the House had to consider the actual determination of the tribunal, whereas in the Smith v. East Elloe District Council case the House had to consider the validity of the process by which the decision was reached" per Lord Denning MR at p. 135) It is submitted that the Appellant's claim falls in the present case on the Smith v. East Elloe District Council side of the boundary thus drawn in that (i) the Police Service Commission was an administrative, not a judicial body taking an administrative decision; and (ii) the Appellant's criticism is of the validity of the process by which it reached its decision.

34. In any event, it is submitted that the House of Lords in Anisminic v. Foreign Compensation Commission were considering an ouster clause contained in an Act of Parliament, and not one contained in a Constitution.* It is submitted that the arguments for giving full effect to an ouster clause apply a fortiori in this context. Such a Constitution embodies "what is in substance an agreement reached between representatives of the various shades of political opinion in the State as to the structure of the organs of government through which the plenitude of the sovereign power of the State is to be exercised in future". Hinds v. The Queen (1977) AC 195 at p. 212. The Constitution defines the respective functions of Legislature, Executive and Judicature; and Section 102(4) expressly states that the Judicature shall not enquire into the question whether a Commission to which Section 102 applies has validly performed any function vested in it by or under the Constitution.

*Reference: Kemrajh Harrikissoon v. Attorney General P.C.40 of 1977

35. In the further alternative it is submitted that even if, as the Appellant contends, the power to create offences for which he was triable resides in the Governor-General only and the three offences with which he was charged were based on regulations of no legal force, his removal from office by the Police Service Commission in such circumstances was an error within the Commission's jurisdiction, and not an excess of jurisdiction. By reason of Section 99 of the Constitution the Commission had the exclusive power to remove the Appellant from his office; inasmuch as the act complained of was an act of removal, it was intra vires. Thus even giving full force to the decision in Anisminic v. Foreign Compensation Commission, and treating as no longer authoritative the decision in Smith v. East Elloe District Council insofar as it related to acts or determinations which were nullities, it is submitted that the Plaintiff's claim cannot be maintained herein. (See S.E. Asia Fire Bricks v. Non-Metallic Union (PC) (1980) 3WLR 318 at p. 322 P.C. In Re A Company (1980) 3 WLR 181 per Lord

Edmund-Davies at p.194.)

36. The Respondent further relies respectfully upon the reasoning of Sir Isaac Hyatali CJ (The Record pp. 160-1) and C.A. Kelsick JA (The Record pp. 119-132) in so far as it is not inconsistent with the above submissions, and supports the Respondent's case.

37. THE THIRD QUESTION

Whether the Plaintiff was a servant of the Crown dismissable at pleasure.

10 38. It is respectfully submitted that the Appellant was a servant of the Crown dismissible at pleasure. It would not appear to be in issue that the Appellant, as a member of the Trinidad and Tobago Police Service holding the office of Assistant Superintendent was a servant of the Crown. It was expressly pleaded in the Statement of Claim that "the Plaintiff was at all material times a public officer" (paragraph 1). "Public Officer" is defined in the Constitution to mean "the holder of any public office"; "public office" is there defined to mean
20 "an office of emolument in the public service"; public service is there defined to mean (subject to an immaterial proviso) "the service of the Crown in a civil capacity" (The Constitution s. 105(1))

39. It is respectfully submitted that the law relating to the tenure of servants of the Crown is well established. "Except where otherwise provided by statute, all public officers and servants of the Crown hold appointments at the pleasure of the Crown". (Halsbury's Laws of England, 4th Ed. Vol. 8 para 1106). Recent authority for such a principle
30 is to be found in the statement of Lord Diplock in Kodeeswaran v. Attorney General of Ceylon (1970) AC 1111 at p. 1118; "It is now well established in British Constitutional theory, at any rate as it has developed since the eighteenth century, that any appointment as a Crown servant, however subordinate, is terminable at will unless it is expressly otherwise provided by legislation."

40. The fundamental question to be resolved in relation to this issue is, accordingly, whether any legislation provided that the Appellant or any justice officer in his
40 position was not to be dismissible at pleasure pursuant to the principles of common law. The legislation relied upon by the Appellant in this context is the Police Service Act 1965. Whether this statute provided the Appellant with security of tenure of any kinds depends upon (i) whether it binds the Crown; and (ii) (if so) whether upon its true constructions it fettered the Crown's power to terminate his employment at pleasure.

41. It is respectfully submitted that the Police

Service Act 1965 does not bind the Crown. Section 7 of the Interpretation Act 1962, which came into force on 19th July 1962, provides : "No enactment passed or made after the commencement of this Act binds or affects in any manner Her Majesty or Her Majesty's rights or prerogatives unless it is expressly stated therein that Her Majesty is bound thereby." By contrast a different test obtains for enactments passed before the commencement of the Interpretation Act. Such an enactment does not bind the Crown "unless it is therein expressly provided or unless it appears by necessary implication that the Crown is bound thereby" (Interpretation Act 1962 s.60 Schedule 1, para. 1(4). See also the Interpretation Ordinance Ch. 1, No. 2, s.37 repealed by the Interpretation Act 1962 s.60). This different test reflected the common law position as described in Province of Bombay v. Municipal Corporation of Bombay(1947) AC 58 at p.61 per Lord du Parcq as follows :"The maxim of law in early times was that no statute bound the Crown unless the Crown was expressly named therein. But the rule so laid down is subject to at least one exception. The Crown may be bound ..... by necessary implication. If, that is to say, it is manifest from the very terms of the statute, that it was the intention of the legislature that the Crown should be bound, then the result is the same as if the Crown had been expressly named. It must be inferred that the Crown, by assenting to the law, agreed to be bound by its provisions".

42. It is thus clear from

(i) the language of s.7 of the Interpretation Act 1962; And s.60 para 1(4) of the Schedule to the Interpretation Act;

(ii) the legislative background in Trinidad and Tobago; and

(iii) the common law background

that unless the Police/Service Act 1965 expressly binds the Crown it cannot affect the Appellant's liability to dismissal at pleasure. It would be insufficient for the Appellant's purposes to establish that it binds the Crown by necessary implication.

43. The Police Act 1965 does not contain any express provision that it is binding on the Crown. If (contrary to the Respondent's primary submission) the Appellant is entitled to rely upon the doctrine of "necessary implication", it is submitted that there is no such necessary implication that the Police Act 1965 is binding on the Crown. The appropriate test is to be found in Province of Bombay v. Municipal Corporation of Bombay

(1947) AC 58 at p.63 per Lord du Parcq: "If it can be affirmed that, at the time when the statute was passed and received the royal sanction, it was apparent from its terms that its beneficial purpose must be wholly frustrated unless the Crown were bound, then it may be inferred that the Crown has agreed to be bound. Their Lordships will add that when the Court is asked to draw this inference, it must always be remembered that, if it be the intention of the legislature that the Crown shall be bound, nothing is easier than to say so in plain words." It is submitted that, in the words of Latham CJ in Fletcher v. Nott (1938) 60 CLR 55 at p. 69, "there is no necessary inconsistency between an officer of the Crown holding his appointment at pleasure and the existence of rules, either contained in a statute or made under a statutory power, which purport to regulate the manner in which an officer is to be dismissed. Such rules do not legally limit the power or manner of dismissal." Such rules could serve a useful purpose either as indicating the only circumstances in which in practice the Crown would seek to exercise its rights or in a different perspective, as warning members of the force that the power of dismissal might be exercised in such circumstances (ibid. of Venkata Rao v. Secretary of State for India (1937) AC 248 at p. 257).

44. It is submitted that if, contrary to the previous submissions, the Police Service Act 1965 does bind the Crown it does not itself purport to abrogate the Crown's power to dismiss police officers at pleasure. Section 61 of the Act provides (Mode of Leaving Service) "The modes by which a police officer may leave the Police Service are as follows :-

(a) on dismissal or removal in consequence of disciplinary proceedings". Both the use of the the word "may" and the absence of qualification of the word "modes" by use of a word such as "only" show, it is respectfully submitted, that the Section does not on its ordinary and natural meaning set out a comprehensive code of the circumstances in which a police officer can leave the service, and thereby prima facie excludes the right to dismiss at pleasure.Section 9 of the Act (Tenure of Office) provides "A Police Officer shall hold office subject to the provisions of this Act and any other enactment

and any regulations made thereunder and unless some other period of employment is specified, for an indeterminate period". It is submitted that this provision neither expressly nor by implication negates the power to dismiss the officer at pleasure.

45. Reliance is also respectfully placed, further or in the alternative on the reasoning of Sir Isaac Hyatali CJ (The Record pp. 136-150) and C.A. Kelsick JA (The Record pp. 82-105) in so far as the same is not inconsistent with the previous submissions and is in support of the Respondent's case.

46. The Respondent humbly submits that the Appeal should be dismissed for the following among other

R E A S O N S

(1) BECAUSE the Police Service Commission had the power to create the offences with which the Appellant was charged and the proceedings against him were valid and effective.

(2) BECAUSE the Appellant's action is not maintainable in view of Sections 99 and 102 of the Constitution.

(3) BECAUSE the offences with which the Appellant was charged existed at law.

(4) BECAUSE the Appellant as a servant of the Crown was dismissible at pleasure.

(5) BECAUSE the right to dismiss at pleasure had not been abrogated by the Police Service Act 1965 or otherwise.

(6) BECAUSE the said Act did not bind the Crown.

(7) BECAUSE in any event the Judgment of the Court of Appeal was right and ought to be affirmed.

ANTHONY LESTER Q.C.

MICHAEL BELOFF Q.C.

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London W.C.2