

Learie Alleyne-Forte

Appellant

v.

**(1) The Attorney General of Trinidad and Tobago and
(2) The Commissioner of Police of Trinidad and Tobago**

Respondents

FROM

**THE COURT OF APPEAL OF TRINIDAD
AND TOBAGO**

JUDGMENT OF THE LORDS OF THE JUDICIAL
COMMITTEE OF THE PRIVY COUNCIL,
Delivered the 20th October 1997

Present at the hearing:-

Lord Nicholls of Birkenhead
Lord Steyn
Lord Hope of Craighead
Lord Clyde
Lord Hutton

[Delivered by Lord Nicholls of Birkenhead]

The appellant is an attorney-at-law in San Fernando. On 6th January 1992 he parked his Nissan Sunny car in Lewis Street. In his absence the police arranged for it to be towed away by a wrecker vehicle to the compound at the local police station. The justification for the removal was that, according to the police, the car was parked one and half metres from the corner of Lewis Street and Court Street. This was in contravention of the Motor Vehicles and Road Traffic Regulations, made under the Motor Vehicles and Road Traffic Act. Regulation 38 requires every driver of a motor vehicle to comply with a number of rules. Rule 5(10) provides that a driver shall not park his motor vehicle within a distance of nine metres from any corner or road intersection.

Section 108 (1) of the Motor Vehicles and Road Traffic Act, under which the police acted, provides:-

"Where a vehicle is parked in contravention of any provisions of this Act or of any Regulations ... made thereunder, or is left on any road in such a manner that it is likely to cause any obstruction to persons lawfully using any such road, any member of the Police Service may -

...

- (b) if the driver or other person in control or in charge of such vehicle cannot be found or refuses to remove it when required to do so, remove such vehicle or arrange for it to be removed from the place in which it is parked to a place of safe custody either by towing or driving the vehicle or in such other manner as he may think necessary."

Section 109 spells out the consequences of removal:-

"(1) Where any motor vehicle is removed to a place of safe custody under section 108 such vehicle shall not be released to the owner thereof unless there is paid to the Commissioner of Police the sum of sixty-dollars by way of removal charges, and a further sum of twenty-five dollars for each day or part thereof during which the vehicle is kept in custody."

In the present case the appellant paid over his \$85, equivalent to about £6 sterling, and his car was released to him. He also received a parking ticket, with a fixed penalty of \$60, for parking in contravention of regulation 38, rule 5(10). He did not pay, and so he was summoned to attend at the magistrate's court. He pleaded not guilty. After several adjournments at the request of the prosecution, the summons was dismissed on 5th March 1993, the police complainant not being present.

Meanwhile, with the zeal of a latter day Hampden, the appellant launched two sets of proceedings in the High Court. On 24th January 1992 he commenced an action against the policeman responsible for the removal of his car and the Attorney-General. He claimed damages, including exemplary damages, for the unlawful removal of the car. Four days later, on 28th January 1992 he challenged the constitutionality of the law itself, in proceedings against the Attorney-General

and the Commissioner of Police under section 14 of the Constitution of Trinidad and Tobago. He claimed that section 108(1)(b) of the Motor Vehicles and Road Traffic Act is ultra vires the Constitution and of no legal effect, because it contravenes his right to the enjoyment of his property, and his right not to be deprived of his property except by due process of law.

Blackman J. dismissed the constitutional proceedings. The predecessor section to section 108(1)(b) became law in 1963: see section 78B(1)(b) of the Motor Vehicles and Road Traffic Ordinance, as amended. Blackman J. held that, assuming that section 78B(1)(b) was ultra vires the Constitution then in force (the 1962 Constitution), nonetheless the section was validated when the present Constitution (the 1976 Constitution) came into force. It was validated by section 18 of the Constitution of the Republic of Trinidad and Tobago Act, as an existing enactment which had not been declared void by a competent court before the appointed day.

The Court of Appeal, comprising Ibrahim, Hamel-Smith and Permanand JJ.A., dismissed the appellant's appeal. The court reached substantially the same conclusion as the Judge on the validating effect of section 18. The court also held that section 78B did not contravene the 1962 Constitution. The power to remove a vehicle was exercisable only in accordance with the provisions of the section. The law did not take away the right of the owner to challenge the exercise of the power by the police in a court of law if the owner was of the opinion that the power had been exercised unlawfully. The power to remove could never be exercised if, as the appellant contended, there must first be a judicial determination of the question whether the car had been parked in contravention of the regulations.

Before their Lordships' Board the appellant's case underwent a change of direction. Previously the challenge had been to the removal of the car under section 108. Before their Lordships' Board the appellant accepted that, in itself, the statutory power authorising the removal of a car parked in contravention of the regulations is not unconstitutional. Rather, the unconstitutionality lies in section 109: the exaction of the removal charge of \$60 and the daily custody fee of \$25 before the owner of the car can resume possession of his vehicle. The car will not be released until the money, a significant amount for many

people, is paid. This is so, irrespective of whether the removal was lawful or unlawful. The lawfulness of the towing away can be challenged, but only in court proceedings. This remedy is not, in this case, "due process" because it lacks practical utility. The owner of the car is put to the considerable expense of starting and pursuing court proceedings. Moreover, in the proceedings the car owner has the burden of proving that the removal was outside the circumstances authorised by the statute, and he has to discharge this burden when the best evidence may have gone. For instance, the best proof of where the car was parked was lost when the vehicle was towed away by the police.

Their Lordships are unable to accept this submission. Sections 4 and 5 of the 1976 Constitution provide:-

"4. It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist ... the following fundamental human rights and freedoms, namely:-

- (a) the right of the individual to ... enjoyment of property and the right not to be deprived thereof except by due process of law;
- (b) the right of the individual to equality before the law and the protection of the law; ...

5.(1) ... no law may abrogate ... or infringe ... any of the rights and freedoms hereinbefore recognised and declared.

(2) ... Parliament may not - ...

- (e) deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations; ..."

The 1962 Constitution contained corresponding provisions.

The right of property recognised in section 4(a) calls for a balancing exercise. A court investigating an alleged infringement of this right is concerned to see whether in the particular case a fair balance was struck between the requirements of the general interest of the community and the requirements of the protection of the fundamental rights of the individual.

Parking regulations are an unexceptional feature of modern life. They are necessary for the safety and convenience of all road users, pedestrians and motorists alike. The Motor Vehicles and Road Traffic Regulations were made in exercise of statutory powers and they are publicly accessible. Without a power to remove vehicles at once, the object of the regulations would be stultified. In agreement with the Court of Appeal and with the concession made before their Lordships' Board, their Lordships consider that the removal of a car which is parked illegally, and the consequential temporary loss of use of the car, cannot be regarded as an infringement of section 4(a). Nor can the attendant obligation to pay a reasonable, statutorily-prescribed sum by way of removal and custody charges.

Their Lordships take the same view of the lack of opportunity to challenge the lawfulness of the removal, and hence the exaction of the charges, before the car will be released. To permit a car owner to reclaim his car without payment, and leave the police to pursue him for the charges, would undermine one aspect of the tow away system. A person whose car is removed may, if he wishes, challenge the lawfulness of the police action in court proceedings, and recover the charges paid and obtain damages for unauthorised interference with his car. Having regard to the comparatively modest amounts involved, and the fact that the payments are not fines for criminal offences, the balance which has been struck in dealing with the intractable problem of car parking in public places cannot be regarded as unfair, despite the absence of a simpler, cheaper alternative remedy whereunder the police must prove the lawfulness of their actions.

Nor, for the same reasons, is there any question of an infringement of sections 4(b) or 5(1) or 5(2)(e) of the Constitution. The car owner may have recourse to the courts to challenge the lawfulness of the removal of his car.

For these reasons this appeal fails and must be dismissed with costs. It is unnecessary for their Lordships to consider the respondents' alternative submission based on the validating effect of section 18 of the Constitution Act.

Their Lordships mention one further point. Under section 109(1)(c) of the Constitution an appeal lies as of

right to the Judicial Committee from final decisions of the Court of Appeal "in any civil, criminal or other proceedings which involve a question as to the interpretation of this Constitution". In their written case the respondents submitted that there was here no genuinely disputable question of interpretation of the Constitution, as distinct from its application to a particular set of facts, and that the appellant was not entitled to appeal as of right. They relied on the observations of Lord Diplock in *Frater v. The Queen* (Note) [1981] 1 W.L.R. 1468, 1470:-

"In *Harrikissoon v. Attorney-General of Trinidad and Tobago* [1980] A.C. 265 this Board had occasion to point out the danger of allowing the value of the right to apply to the High Court for redress for contravention of his fundamental rights and freedoms which is conferred upon the individual by section [14] of the Constitution of Trinidad and Tobago ... to become debased by lack of vigilance on the part of the courts to dispose summarily of applications that are plainly frivolous or vexatious or are otherwise an abuse of process of the court. In their Lordships' view similar vigilance should be observed to see that claims made by appellants to be entitled to appeal as of right under section 110(1)(c) are not granted unless they do involve a genuinely disputable question of *interpretation* of the Constitution and not one which has merely been contrived for the purpose of obtaining leave to appeal to Her Majesty in Council as of right."

Had this been an appeal under section 109(1)(c) (the equivalent of section 110(1)(c) in the Jamaica Constitution) there might have been force in this submission. This appeal, however, was brought under section 109(1)(d) which, by reference to section 108(b), provides for appeals as of right from "any order or decision given in exercise of the jurisdiction conferred on the High Court by section 14 (which relates to redress for contravention of the provisions for the protection of fundamental rights)".

An appeal as of right, by definition, means that the Court of Appeal has no discretion to exercise. All that is required, but this *is* required, is that the proposed appeal raises a genuinely disputable issue in the prescribed category of case; here, a claim under section 14 to redress a contravention of a provision for the protection of a fundamental right. Contrary to the submission of Mr. Mendes, that principle is

as much applicable to an appeal under section 109(1)(d) as it is to an appeal under section 109(1)(c). It is unnecessary, however, for their Lordships to express any opinion on the application of that principle in this case: that is not an issue which is before them.