

IN THE PRIVY COUNCIL

No. 9 of 1974

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 O N A P P E A L

 FROM THE COURT OF APPEAL OF THE WEST INDIES  
 ASSOCIATED STATE SUPREME COURT (ANTIGUA)
 

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## B E T W E E N

 THE ATTORNEY GENERAL and  
 THE MINISTER OF HOME AFFAIRS  
 (Defendants)
Appellants

- and -

 10 ANTIGUA TIMES LIMITED  
 (Plaintiffs)
Respondents


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 CASE FOR THE APPELLANTS
RECORD

1. This is an appeal by leave of the Court of Appeal of the West Indies Associated State Supreme Court (Antigua) dated the 22nd April 1974, from a judgment of the said Court of Appeal dated 13th June 1973, (Lewis, C.J. (Ag), St. Bernard, J.A., and Peterkin, J.A. (Ag) (dissenting)) which dismissed the Appellants' appeal against the preliminary ruling and judgment of the High Court of Antigua (Louisy, J.) dated the 24th May 1972 and 15th June 1972 respectively, whereby the Respondents were granted declarations that the Newspapers Registration (Amendment) Act, 1971, No. 8 of 1971, and the Newspaper Surety Ordinance (Amendment) Act, 1971, No. 9 of 1971, were repugnant to s.10(1) of the Antigua Constitution Order, 1967, were ultra vires the powers of the Antiguan legislature and were consequently void, and the Respondents were awarded their costs.

 P.118  
 P.117

 P.5-8  
 P.12-53

2. The relevant statutory provisions are :-  
THE ANTIGUA CONSTITUTION ORDER, 1967, SCHEDULE 2:  
THE CONSTITUTION OF ANTIGUA, CHAPTER 1, PROTECTION  
OF FUNDAMENTAL RIGHTS AND FREEDOMS, (hereinafter  
referred to as "the Constitution")

Section 1. Whereas every person in Antigua is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely :-

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(a) life, liberty, security of the person, the enjoyment of property and the protection of the law;

(b) freedom of conscience, of expression and of peaceful assembly and association; and

(c) respect for his private and family life,

the subsequent provisions of this Chapter shall have effect for the purpose of affording protection to the aforesaid rights and freedoms, subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

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Section 10. - (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, and for the purposes of this section the said freedom includes the freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence and other means of communication.

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- (2) Nothing contained in or done under the authority of any law shall be held to

be inconsistent with or in contravention of this section to the extent that the law in question makes provision -

(a) that is reasonably required -

(i) in the interests of defence, public safety, public order, public morality or public health; or

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(ii) for the purpose of protecting the reputations, rights and freedoms of other persons, or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating telephony, telegraphy, posts, wireless broadcasting, television or other means of communication, public exhibitions or public entertainments; or

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(b) that imposes restrictions upon public officers.

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Section 15. - (1) If any person alleges that any of the provisions of sections 2 to 14 (inclusive) of this Constitution has been, or is being, contravened in relation to him, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress.

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THE NEWSPAPERS REGISTRATION (AMENDMENT) ACT, 1971, No. 8 of 1971, (hereinafter referred to as "the Act 8/1971").

Section 1A. In this Act the word "newspaper" shall have the same meaning as defined in Section 2 of the Newspaper Surety Ordinance.

RECORD

Section 1B. - (1) No person shall publish or cause to be published any newspaper unless he has obtained a licence from the Cabinet in respect of the newspaper published or caused to be published by him and has paid the annual licence fee prescribed by this Act.

Provided that every person who prints or publishes a newspaper registered under the provisions of the Principal Act fifteen days before the commencement hereof and has paid the annual licence fee prescribed by this Act shall be deemed to have been granted a licence. 10

(2) A licence issued under this section shall be signed by the Secretary to the Cabinet and the person named in the licence as the publisher of the newspaper specified therein shall on or before the 2nd day of January in every year pay into the Treasury the sum of six hundred dollars.

(3) If the publisher of a newspaper to whom a licence has been granted fails to pay the said sum of six hundred dollars on or before the 2nd day of January in every year the licence shall be invalid until such payment has been made. 20

(4) If any person shall publish or cause to be published any newspaper without holding a valid licence under this section he shall be guilty of an offence and shall on summary conviction be liable to a fine of five hundred dollars for every day on which such newspaper is published. 30

.....  
THE NEWSPAPER SURETY ORDINANCE (AMENDMENT) ACT, 1971, No. 9 of 1971, (hereinafter referred to as "the Act 9/1971")

Section 2. Section 3 of the Principal Law is hereby amended as follows :-

- (a) by renumbering the section as section 3 (1); and

(b) by adding the following as sub-section (2) thereof -

RECORD

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No person shall print or publish or cause to be printed or published within the State any newspaper unless he shall have previously deposited with the Accountant General a sum of ten thousand dollars in cash to be drawn against in order to satisfy any judgment of the Supreme Court for libel given against the editor or printer or publisher or proprietor of the said newspaper or any writer therein and shall at all times maintain the said deposit at the sum of ten thousand dollars. The deposit aforesaid shall be paid into a deposit account in the name of the depositor and shall bear interest at the same rate payable at the Government Savings Bank;

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Provided however that the Minister responsible for newspapers on being satisfied with the sufficiency of the security in the form of a Policy of Insurance or on a guarantee of a Bank may waive the requirement of the said deposit:

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Provided further that no amount of the principal sum shall be paid from the deposit account aforesaid or against any policy of Insurance or recovered from the guarantee of the Bank save upon the Certificate of the Registrar of the High Court as to any award of the Court.

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3. By their writ of summons dated 5th January 1972 and by their Statement of Claim dated 12th January 1972, the Respondents applied to the High Court of Antigua claiming, inter alia, that section 1B of the Act 8/1971 and section 3(2) of the Act 9/1971 were ultra vires the powers of the Antiguan legislature; that the provisions of both statutes were contrary to natural justice and infringed the guarantees provided and declared in section 1 of Chapter 1 of the Constitution; and that the financial provisions of both statutes were penal in amount and unlawful in that they

P.1-4

RECORD

infringed the guarantees of freedom of expression generally provided by the Constitution.

P.4-5

4. By their Defence dated 16th February 1972, the Appellants denied that either of the aforesaid statutes were ultra vires the powers of the Antiguan legislature, or that the provisions thereof were contrary to natural justice, infringed constitutional guarantees, were penal, ultra vires or unlawful.

P.5-8

5. The Appellants raised the preliminary objection to the Respondents' claim that the Respondents as a limited company did not come within the definition of "any person" for the purposes of section 15(1) of the Constitution and consequently had no locus standi before the Court in this action and could not avail themselves of the provisions of the said section. The High Court of Antigua (Louisy, J.) overruled this preliminary objection on the 24th May 1972.

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6. For the purposes of the trial of the action the parties, by their respective counsel, agreed that the issues arising in the case should be considered in the light of and limited to the law as defined and agreed by them as being applicable thereto. The parties embodied the agreed definitions in the following three propositions, namely,

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P.18

(1) Any law the effect of which is that the Cabinet has the right to decide what person shall and what person shall not obtain a licence for a newspaper published or caused to be published by him or what person shall and what person shall not be allowed to register such newspaper by declaration is unconstitutional.

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(2) Any law is constitutional which provides for a fee for registration of a newspaper such fee being of a moderate figure in keeping with the established practice in the Caribbean.

(3) Any law is constitutional which provides that no person shall print or cause to be printed or published any newspaper unless he shall have previously deposited with the Accountant

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General a sum of \$10,000 in cash or a bond for the like amount from an established Bank or Insurance Company, to be drawn against in order to satisfy any judgment of the Court for libel against the editor or printer or publisher or proprietor of the newspaper and to be at all times maintained at the sum of \$10,000.

10 7. In the course of the proceedings evidence was given on behalf of the Respondents by one witness, Reuben Henry Harris. No evidence was given on behalf of the Appellants. The effect of Reuben Henry Harris' evidence was as follows :-

P.9-11

(i) that he was the second largest shareholder in the Respondent Company and a director and Deputy Chairman thereof;

(ii) that the Respondents published the 'Antigua Times' as a bi-weekly newspaper from December 1970 until the 31st December 1971;

20 (iii) that the 'Antigua Times' was registered as a newspaper under the Newspapers Registration Act, Cap. 318 of the Revised Laws of Antigua;

(iv) that at the time of cessation of publication the 'Antigua Times' had a circulation of 10,000, which was increasing;

(v) that since the coming into force of the Acts 8/1971 and 9/1971 the 'Antigua Times' had not been published;

30 (vi) that the 'Antigua Times' ceased publication because:

(a) the licence fee of \$600 and the cash bond of \$10,000 required by the new legislation were exorbitant; and

(b) the Respondents could not raise the licence fee without incurring an overdraft.

(vii) that the 'Antigua Times' had never been sued for libel;

RECORD

(viii) that the 'Antigua Times' had been in circulation for a period exceeding 15 days before the coming into force of the Acts 8/1971 and 9/1971 and that the Respondents would not have had to apply for a licence in order to publish if they had paid the requisite licence fee;

(ix) that the witness knew of only three libel actions against newspapers since 1962;

(x) that the witness agreed with the principle of insurance against libel; and 10

(xi) that the witness agreed with the principle of a licence fee.

P.12-53

8. The judgment of the High Court of Antigua (Louisy, J.) was delivered on the 15th June 1972. After reviewing the circumstances giving rise to the action and outlining the relevant statutory provisions and the arguments advanced by counsel on both sides, the learned judge considered whether the Acts 8/1971 and 9/1971 20

P.21

P.28.14-24

contravened s.10(1) of the Constitution in relation to the Respondents by hindering their enjoyment of the freedom of expression. He accepted the first proposition agreed by the parties as applying to the case. He held that provision in legislation for the obtaining of a licence from the Cabinet before a newspaper could be published amounted to a hindrance or previous restraint of the freedom of expression and constituted a form of pre-censorship which infringed s.10(1) of the Constitution. The 30

P.28.8-13

P.29.6-17

learned judge further held that such restraint was not reasonably required for any of the purposes set out in s.10(2) of the Constitution. He rejected the Appellants' argument that the Respondents were not entitled to the relief claimed because they were not obliged to apply for a licence from the Cabinet in order to publish, being deemed by s.1B(1) of the Act 8/1971 to have been granted a licence and he held that it was 40  
unconstitutional for the legislature to 'deem' that a licence had been granted and further, that if the Respondents wished to publish a newspaper

P.29.18-33

other than the 'Antigua Times' as the objects of the company permitted, they would have a right to relief.

RECORD

9. The learned judge next considered the second proposition agreed between the parties as being applicable to the case, and held that it was not a tenable general proposition of law. He held that the Court could not look at the amount of the fee, which he considered to be a matter strictly within the discretion of the law-making body. For this agreed proposition the learned judge substituted his own, viz.
- 10 P.29. 34  
P.34. 6  
P.32. 4
- "Any law which provides for a licence fee the nature of which falls within the taxing powers of the legislature is constitutional unless such law is so arbitrary as to compel the conclusion that it does not involve an exertion of the taxing power but constitutes in substance and effect, the direct execution of a different and forbidden power."
- 20 P.34. 10
- The learned judge then asked himself whether s.1B(2) of the Act 8/1971 fell within the taxing power of the legislature in view of s.10(1) of the Constitution, and came to the conclusion that it did not. He therefore held that the requirement of a licence fee as a condition for the publication of a newspaper was a hindrance to the enjoyment of the freedom of expression guaranteed by s.10(1) of the Constitution and was therefore unconstitutional. He held that s.1B(1) of the Act 8/1971 could not be justified for any of the purposes set out in s.10(2) of the Constitution.
- 30 P.34. 30  
P.45. 14  
P.45.22-27  
P.45. 28
10. The learned judge then considered the third proposition agreed between the parties and held that it was not a correct proposition of law. Although the learned judge said that both counsel in substance agreed with the provisions of s.3(2) of the Act 9/1971, he came to the conclusion that the requirement of a deposit of \$10,000 was a hindrance to the enjoyment of the freedom of expression and therefore unconstitutional. He found that s.3(2) of the Act 9/1971 could not be justified on any of the grounds set out in s.10(2)
- 40 P.45. 32  
P.46. 3  
P.52. 9  
P.52.22-26

RECORD

- P.52. 35 of the Constitution. He also considered that the provision for acceptance of security contained in the proviso to s.3(2) of the Act 9/1971 amounted to a previous restraint and was unconstitutional. The Court therefore declared both the Acts 8/1971 and 9/1971 to be repugnant to s.10(1) of the Constitution, ultra vires the powers of the Antiguan legislature and void. Costs were awarded to the Respondents.
- P.52.39- P.53
- P.54-56 11. The Appellants appealed against this judgment to the Court of Appeal of the West Indies Associated State Supreme Court (Antigua), (Lewis, C.J. (Ag), St.Bernard, J.A., and Peterkin, J.A.(Ag)), who on the 13th June 1973 delivered judgment dismissing the appeal with costs. 10
- P.56-117
- P.57. 10 12. The learned Acting Chief Justice (with whose judgment St.Bernard, J.A. in substance agreed) reviewed the course of the proceedings so far and then dealt with and rejected the Appellants' preliminary objection that the Respondents were not a "person" within the meaning of s.15 of the Constitution and therefore had no locus standi and could not invoke the provisions of that section. He held that the Respondents were a "person" within the meaning of Chapter 1 of the Constitution and were entitled to invoke the protective provisions of s.15 thereof. 20
- P.71. 37
- P.71.44- P.73 13. The learned Acting Chief Justice then dealt with the position arising as a result of the agreement of the parties to certain propositions of law as well as certain parts of the evidence of the witness Harris, who agreed in principle with a licence fee. The learned Acting Chief Justice held that agreement between the parties did not absolve the trial judge from coming to his own decision on the propositions; that any concession by the witness did not bind the trial judge; and that in cases where the constitutional validity of legislation arose, the parties could not by agreement or concession tie the hands of the Court, which had a special role as guardian of the Constitution and was required to determine for itself whether the Constitution had been infringed. 30 40

- 10 14. The learned Acting Chief Justice went on to consider the constitutional validity of the Act 8/1971. He found that in the sphere of fundamental rights a requirement for registration of a newspaper was not a hindrance or interference with the right of freedom of expression, but that the new requirements of the Act 8/1971 for licensing and payment of a licence fee of \$600 as conditions precedent to publication, were prima facie hindrances within the meaning of s.10(1) of the Constitution. Whilst allowing that there was a presumption in favour of the constitutional validity of impugned legislation, the learned Acting Chief Justice held that where there was a prima facie violation of s.10 of the Constitution, which in the present case he considered to be apparent on the face of the enactment, the burden of proof shifted onto the Appellants to show (a) that the enactment came within the permissible limits of s.10(2) of the Constitution, and (b) by placing before the Court all relevant facts and materials, that the enactment was reasonably required. He held that a newspaper did not fall within the ambit of the words "or other means of communication" in s.10(2)(a)(ii) of the Constitution; that the Act 8/1971 was not regulatory but inhibitory in scope; and that the Appellants had failed to discharge the burden lying on them to show that the Act was within the permissible limits and was reasonably required. He further rejected the Appellants' argument that the Respondents did not require a licence by virtue of the proviso to s.1B(1) of the Act, and he held such proviso to be ineffective.
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- 40 15. The learned Acting Chief Justice next considered the constitutional validity of the Act 9/1971. He referred to the fact that prior to its coming into force legislation, existing since 1909, required the printers and publishers of a newspaper to enter into a bond for \$960, and expressed the opinion that no weight should be added to the presumption of constitutionality by reason of this pre-existing legislation. He held that the requirement of a deposit of \$10,000 prima facie constituted a hindrance to the enjoyment of the right of freedom of expression
- P.74. 23
- P. 76
- P.76. 16
- P.77. 29-30
- P.78. 21-32
- P.79. 6-10
- P. 79. 27-80
- P.80.22-  
P.81
- P.81. 11
- P.83.26-36
- P.83. 42

RECORD

P.83. 45	guaranteed by s.10 of the Constitution. He considered that the evidence of the witness Harris confirmed that it was a hindrance and that the burden therefore shifted to the Appellants to show that it was within the permissible limits of s.10(2) of the Constitution and was reasonably required and that the Appellants had failed to do so. He also held that the proviso giving power to the Minister to waive the requirement of a deposit gave an unregulated and unfettered discretion to that Minister and in the absence of any guidelines as to how such discretion was to be exercised, the proviso was unconstitutional. He therefore held that the Act 9/1971 was unconstitutional and dismissed the appeal with costs.	10
P.84. 33 P.87.43- P.88		
P.87.42		
P.90. 30		
P.103. 33	16. Although in substance agreeing with the judgment of Lewis, C.J. (Ag), St.Bernard, J.A. thought that the requirement of a deposit of \$10,000 was not unreasonable, but as it was nevertheless a restraint on the enjoyment of the right of freedom of expression and as the Appellants had failed to prove that it came within the permissible limits of s.10(2) of the Constitution and was reasonably required, it was repugnant to s.10(1), was <u>ultra vires</u> the powers of the legislature and was void. He agreed that the appeal should be dismissed.	20
P.104		
P.104-117	17. Peterkin, J.A. (Ag) delivered a dissenting judgment in which he came to the conclusion that the fundamental rights guaranteed in the Constitution were intended only to protect natural and not artificial persons and that the Respondents, being a limited company, could not take advantage of the provisions of s.15. He would therefore have allowed the appeal. He went further, however, and held that even if the Respondents were entitled to invoke the provisions of s.15 of the Constitution, they had to show that there was a contravention of a right in relation to them. He took the view that this being a civil action, the parties were at liberty to agree the propositions which they in fact agreed. He referred to the fact that at the trial the	30
P.109.10		
P.110. 04		
P.112. 03 P.113. 30		40

RECORD

Respondents case as well as the evidence had been that if a licence fee had been paid, the Respondents did not have to apply for a licence and that they had therefore failed to show that there had been or was any contravention of any provision of the Constitution in relation to them. The learned Acting Justice of Appeal then referred to the evidence of the witness Harris and to the second agreed proposition and found that the Respondents' case at trial had challenged only the excessive nature of the licence fee. He considered that the Respondents had failed to show that this fee was manifestly excessive so as to show that it was a hindrance to publication. Although he agreed with the reasoning of the learned Acting Chief Justice regarding the conferring of an unfettered discretion on the Minister as being unconstitutional, for the reasons already given, he would have allowed the appeal.

P.114. 11  
P.114. 21  
P.115. 33  
P. 117

18. The Appellants respectfully submit that the judgments of the High Court of Antigua and of the majority of the Court of Appeal of the West Indies Associated State Supreme Court ( Antigua) are wrong and should be reversed. It is respectfully submitted that the Respondents had no locus standi in the action and could not invoke the provisions of s.15 of the Constitution. They were a limited company and as such were not a "person" within the meaning of that section. Whilst section 19 of the Interpretation Act, 1889, (which provides that the expression "person" shall, unless the contrary intention appears, include any body of persons corporate) applies to the interpretation of the Constitution, it is submitted that on a proper construction such contrary intention does appear and that the word "person" when used in Chapter 1 was not intended to include artificial persons. The fundamental rights and freedoms guaranteed by Chapter 1 of the Constitution must be construed within their historical context, and thus viewed, can apply only to individual human beings and not to artificial persons. Section 1 of the Constitution supports this contention by employing the word "individual" twice, as well as repeating it in the marginal note

RECORD

thereto. The expression "individual" is here used in the same sense as in Income Tax legislation where it distinguishes between the individual and corporate tax payers. Section 16 of the Constitution, (which deals with interpretation and savings in respect of Chapter 1) uses, in sub-section (8), the word "person" when defining the circumstances in which a person shall for the purposes of Chapter 1 be regarded as belonging to Antigua. It is made clear in the context that the word "person" does not include corporations. This section therefore supports the contention that when the word "person" is used in Chapter 1, it is not intended to include corporate bodies. It is respectfully submitted that Peterkin, J.A. (Ag) was therefore correct in holding that the provisions of s.15 of the Constitution did not apply to the Respondents. 10

19. Moreover, it is respectfully submitted that the learned trial judge and the majority of the Court of Appeal failed to give sufficient weight to the presumption of constitutional validity in favour of impugned legislation. It is submitted that they were wrong in holding that there was any contravention of the Constitution on the face of the enactment. The provisions for a licence and a licence fee were solely regulatory and did not constitute any form of pre-censorship or previous restraint. The pre-existing requirements for registration were not in substance different from the requirement for licencing. There is nothing unconstitutional in charging a licence fee and the Respondents so agreed. In no sense was either requirement a 'hindrance' to the enjoyment by the Respondents of the right of freedom of expression. 20 30

20. The Appellants further respectfully submit that the learned trial judge and the majority of the Court of Appeal failed properly to direct themselves as to the burden of proof lying upon the Respondents. It was for the Respondents to show beyond reasonable doubt that a right had been contravened in relation 40

to them. This, it is submitted, they wholly failed to do and the evidence in fact adduced by them and their agreement to the propositions adopted by the parties in fact supported the Appellants' contention that a licence fee and the requirement of a deposit were constitutional. Even if the Respondents had discharged the burden of proof lying on them, it is respectfully submitted that the learned trial judge and the majority of the Court of Appeal erred in holding that the Appellants had to lay before the Court all relevant facts and materials by means of evidence. In order to sustain the presumption of constitutionality the Court was able to take into consideration without hearing specific evidence all matters of common knowledge and common report as well as the history of the times, and to assume all necessary facts which could be conceived as existing at the time of the impugned legislation.

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21. It is further respectfully submitted on behalf of the Appellants that the parties were entitled to limit the issues to be decided by the Court by agreeing to the propositions which they in fact agreed. In the light of such agreement it was not open to the Court to arrive at findings which were not consistent with the agreed propositions. It is submitted that in the light of the first of these propositions the Respondents were not affected by any infringement of rights as they did not have to apply for a licence, being deemed to have obtained one by reason of their prior publication of the 'Antigua Times' fifteen days before the coming into force of the Acts 8/1971 and 9/1971. In the circumstances, even if the requirement of a licence amounted to a contravention of s.10(1) of the Constitution, it was not such a contravention in relation to the Respondents as would entitle them to invoke the provisions of s.15. Further, by their evidence and by agreement to the second proposition, the Respondents did not challenge the constitutional validity of the requirement for a licence fee. Their objection to this fee was limited solely to the amount thereof. They failed to prove that the amount of the fee was so excessive as to render it an infringement of s.10(1) of the

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RECORD

Constitution. With regard to the requirement for a deposit of \$10,000. it is submitted that there was again no issue between the parties requiring a decision of the Court. It had been agreed between them in the third proposition that such requirement was constitutional and, indeed, similar legislation had previously required a bond in the sum of \$960, since 1909, many years before the date of the Constitution. Had such a requirement been unconstitutional, this pre-existing legislation would have been specifically repealed. It is submitted that the only issue which arose under the Act 9/1971 was with regard to the constitutional validity of the proviso to s.3(2) which empowered the Minister responsible for newspapers to waive the requirements of a deposit on being satisfied with the sufficiency of the security in the form of a Policy of Insurance or Bank guarantee. The Appellants respectfully submit that this proviso did not give the Minister an unfettered or unregulated discretion. The exercise of all discretions by Ministers must be bona fide for the achievement of the object of the legislation conferring them, must be made within the confines of legality and in accordance with the dictates of natural justice. The proviso in question required the Minister to be satisfied as to the sufficiency of the security. The object of the statutory provision was clearly to provide a reliable fund to satisfy judgments which might otherwise not be met. Beyond the prescribed requirement that he must be satisfied as to the sufficiency of the security, it is submitted that no further guidelines for the Minister were necessary as it was clearly his duty to achieve the object of the statute by a bona fide exercise of his discretion. It is submitted that the proviso to s.3(2) of the Act 9/1971 is not unconstitutional.

22. It is further respectfully submitted on behalf of the Appellants that even if the requirements for a licence, licence fee or deposit were prima facie in contravention of s.10(1) of the Constitution, they were matters reasonably required for the purposes of

protecting the reputations, rights and freedoms of other persons and for regulating a means of communication within the provisions of s.10(2) of the Constitution.

RECORD

10 23. The Appellants accordingly respectfully submit that the judgment of the majority of the Court of Appeal of the West Indies Associated State Supreme Court (Antigua) was wrong and should be reversed and that this appeal should be allowed, with costs, for the following, amongst other

R E A S O N S

1. BECAUSE the Respondents were not a "person" within the meaning of section 15 of the Constitution and could not therefore invoke its provisions;
2. BECAUSE the presumption of constitutional validity in favour of the Acts 8/1971 and 9/1971 was not displaced by the Respondents;
- 20 3. BECAUSE the Respondents failed to prove beyond reasonable doubt that the Acts 8/1971 and 9/1971 contravened section 10 of the Constitution;
4. BECAUSE the requirement of a licence was not an infringement of section 10 of the Constitution;
5. BECAUSE even if the requirement of a licence infringed section 10 of the Constitution, there was no such contravention in relation to the Respondents as could enable them to invoke the provisions of section 15 of the Constitution;
- 30 6. BECAUSE the requirement of a licence fee was not impugned by the Respondents as being unconstitutional and was not a contravention of section 10 of the Constitution;
7. BECAUSE the requirement of a licence fee of \$600 was not proved by the Respondents to have been so excessive as to constitute a contravention of section 10 of the Constitution;
8. BECAUSE the requirement of a deposit was not impugned by the Respondents as being unconstitutional

RECORD

and was not a contravention of section 10 of the Constitution;

9. BECAUSE the amount of the deposit was not impugned by the Respondents as being unconstitutional and was not a contravention of section 10 of the Constitution;

10. BECAUSE the proviso to section 3(2) of the Act 9/1971 did not confer an unfettered or unregulated discretion on the Minister;

11. BECAUSE even if the discretion conferred was unfettered or unregulated, it was not a contravention of section 10 of the Constitution; 10

12. BECAUSE even if the Acts 8/1971 and 9/1971, prima facie contravened section 10(1) of the Constitution, the provisions of the Acts were reasonably required for the purposes of section 10(2) of the Constitution;

13. BECAUSE it was not open to the Court to arrive at findings which were not consistent with accepted propositions agreed upon by all parties. 20

LIONEL A. LUCKHOO

HARVEY DA COSTA

JULIAN PRIEST

No. 9 of 1974

IN THE PRIVY COUNCIL

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O N A P P E A L

FROM THE COURT OF APPEAL OF THE  
WEST INDIES ASSOCIATED STATE  
SUPREME COURT (ANTIGUA)

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B E T W E E N :

THE ATTORNEY GENERAL  
and  
THE MINISTER OF HOME  
AFFAIRS (Defendants) Appellants

- and -

ANTIGUA TIMES  
LIMITED (Plaintiffs) Respondents

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CASE FOR THE APPELLANTS

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DRUCES & ATTLEE,  
115 Moorgate,  
London, EC2M 6YA

Solicitors for the Appellants