Attorney-General of Antigua and Barbuda and Another v Lewis (Artland)

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COURT OF APPEAL OF THE EASTERN CARIBBEAN STATES
SIR VINCENT FLOISSAC CJ, BYRON and SATROHAN SINGH JJA
17th, 27th NOVEMBER 1995

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Criminal law – Appeal – Court of Appeal, to – Jurisdiction – No appeal in criminal cause or matter – Extradition proceedings – Order on application for habeas corpus – Eastern Caribbean Supreme Court Act 1969, section 31(2)(a)

d *Statute – Construction – Implied repeal – Inconsistency between earlier and later Acts – Possibility of construction of Acts involving no inconsistency – Eastern Caribbean Supreme Court Act 1969, section 31(2)(a) – Extradition Act 1993, No 12 [Antigua and Barbuda], section 13(5)*

e *Statute – Construction – Implied repeal – Intent of legislature – No sufficient indication of intent to effect repeal – Eastern Caribbean Supreme Court Act 1969, section 31(2)(a) – Extradition Act 1993, No 12 [Antigua and Barbuda], section 13(5)*

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Orders on applications for *habeas corpus* in extradition proceedings are orders in a criminal cause or matter and accordingly no appeal lies against such orders (Eastern Caribbean Supreme Court Act 1969, section 31(2)(*a*)). The reference in the Extradition Act 1993, section
g 13(5), to some "further possibility of an appeal" in proceedings on an application for *habeas corpus* might refer (by way of example) to an appeal against an order on a constitutional motion relating to fundamental rights and freedoms made in the context of an application for *habeas corpus* in extradition proceedings; accordingly, there is no irreconcilable
h conflict between section 31(2)(*a*) of the 1969 Act and section 13(5) of the 1993 Act and the latter does not (by implication) partially repeal the former; nor does the reference to a further possibility of an appeal in section 13(5) bear a sufficient indication of an intent by the legislature to repeal section 31(2)(*a*) in part.

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Armand v Home Secretary and Minister of Defence of Royal Netherlands Government [1943] AC 147 and *Glasford v Commissioner of Police* (1995) 48 WIR 117 applied.

Cases referred to in the judgments

Armand v Home Secretary and Minister of Defence of Royal Netherlands Government [1943] AC 147, [1942] 2 All ER 381, HL.

Glasford v Commissioner of Police (1995) 48 WIR 117, Eastern Caribbean States CA.

Summons

The Attorney-General of Antigua and Barbuda and the Superintendent of Prisons applied to the Court of Appeal of the Eastern Caribbean States (civil appeal 13 of 1995) for an extension of time in which to appeal against a decision of Redhead J in the High Court of Antigua and Barbuda dated 11th July 1995 granting an application on behalf of Artland Bradford Lewis (the respondent in these proceedings) for a writ of *habeas corpus*. The facts are set out in the judgment of Sir Vincent Floissac CJ.

M. Camacho for the appellants.

D. Hamilton for the respondent.

Sir Vincent Floissac CJ. A grand jury in the Eastern District of North Carolina indicted the respondent on two counts of conspiracy to commit offences in and contrary to the laws of the USA. The first count charged the respondent with conspiracy to import and export cocaine and the second count charged him with conspiracy to distribute cocaine.

In pursuance of a Ministerial order issued on an extradition request from the Government of the USA, extradition proceedings were instituted against the respondent under the Extradition Act 1993 of Antigua and Barbuda. These proceedings resulted in an order by the chief magistrate committing the respondent to custody with a view to his extradition to stand trial on the charges of conspiracy.

On 6th June 1995, the respondent applied to the High Court for a writ of *habeas corpus* for his release from custody. The application was heard by Redhead J. In a judgment delivered on 11th July 1995, the judge concluded as follows:

> "In this case, I have no option but to say that the warrant under which the [respondent] was held is bad, therefore his detention is illegal, that the magistrate erred in law in that there was not sufficient evidence before him to detain the [respondent] and finally I find that section 32 of the Extradition Act 1993 repealed the Extradition Acts of 1870-1989 . . . and therefore there was at the time of the [respondent's] detention no existing treaty between Antigua and

Barbuda and the USA. It is therefore ordered that the [respondent] be released from custody. Costs to the [respondent] to be taxed if not agreed."

By summons issued on 21st August 1995, the appellants applied to this court for an order extending the time for appealing against the judge's judgment. Thereupon the respondent filed a notice of preliminary objection that the judgment is rendered unappealable by section 31(2)(*a*) of the Eastern Caribbean Supreme Court Act 1969 ("the Supreme Court Act") which provides that "No appeal shall lie under this section – (*a*) from any order made in any criminal cause or matter".

In reply to the respondent's preliminary objection, counsel for the appellants referred to section 13(5) of the Extradition Act which provides that:

"Proceedings on an application for *habeas corpus* shall be treated for the purposes of this section as pending (unless they are discontinued) until (disregarding any power of the court to grant leave to appeal out of time) there is no further possibility of an appeal."

Counsel for the appellants contended that section 31(2)(*a*) of the Supreme Court Act was impliedly repealed by section 13(5) of the Extradition Act, in so far as section 31(2)(*a*) relates to orders on applications for writs of *habeas corpus* in extradition proceedings. Accordingly, the issues in this prospective appeal are (1) whether the judge's judgment is an order made in a criminal cause or matter, and (2) whether section 31(2)(*a*) of the Supreme Court Act is impliedly and partially repealed by section 13(5) of the Extradition Act.

(1) Criminal cause or matter

In *Glasford v Commissioner of Police* (1995) 48 WIR 117, I said (at page 120):

"The principles which govern the question whether an order was made in a criminal cause or matter were authoritatively stated in the decisions of the House of Lords in *Re Clifford and O'Sullivan* [1921] 2 AC 570 and *Amand v Home Secretary and Minister of Defence of Royal Netherlands Government* [1943] AC 147. According to these decisions, there appear to be three pre-conditions to an order being in a criminal cause or matter. The first pre-condition is that, at the time of the filing or hearing of the application on which the order was made, a charge of crime punishable by a fine, imprisonment or otherwise had been or was about to be preferred against the applicant or some other person. The second pre-condition is that the application involved consideration of that charge of crime. The third pre-condition is that the direct outcome or result of the application was or might have been the applicant's or other person's trial and possible conviction and

punishment by a court or judicial tribunal having or claiming jurisdiction to try, convict and punish for that crime."

In *Amand v Home Secretary and Minister of Defence of Royal Netherlands Government* [1943] AC 147 at page 156, Viscount Simon LC said:

"As regards the right to appeal, it has been consistently held that there is no right of appeal from the refusal of the writ in extradition proceedings (*Ex parte Woodhall* or in proceedings under the Fugitive Offenders Act 1881 (*R v Brixton Prison (Governor of), ex parte Savarkar*). It will be observed that these decisions, which I accept as correct, involve the view that the matter in respect of which the accused is in custody may be 'criminal' although he is not charged with a breach of our own criminal law, and (in the case of the Fugitive Offenders Act), although the offence would not necessarily be a crime at all if committed here. It is the nature and character of the proceeding in which *habeas corpus* is sought which provide the test. If the matter is one the direct outcome of which may be trial of the applicant and his possible punishment for an alleged offence by a court claiming jurisdiction to do so, the matter is criminal. This is the true effect of the 'two conditions' formulated by Viscount Cave in *Re Clifford and O'Sullivan*."

In the present case, the judge's judgment was given in a cause or matter, namely an application for a writ of *habeas corpus*. At the time of the hearing of the application, charges of crimes of conspiracy punishable by fines, imprisonment or otherwise had been preferred against the respondent. The application involved consideration of those charges. The refusal of the application would have been equivalent to a confirmation of the chief magistrate's order committing the respondent to custody with a view to his extradition to stand trial on the charges of the crimes of conspiracy and could have resulted in the respondent's trial and possible conviction and punishment in the USA by a court having jurisdiction to try, convict and punish for those crimes. The application and the grant or refusal thereof were therefore integral parts of criminal proceedings. In those circumstances, the judge's judgment granting the application must be held to be an order made in a criminal cause or matter.

(2) Implied and partial repeal

I acknowledge the principle that in appropriate circumstances, a particular enactment (which prescribes a particular rule) should be deemed to have impliedly and partially repealed an earlier general enactment (which prescribes a general rule) to the extent of making the particular rule an exception to the general rule. The principle applies where the particular enactment is inconsistent and irreconcilable with the general enactment and where the language and other components of the

statutory context of the particular enactment clearly indicate a legislative intention to effect such partial repeal and to create such exception.

This principle is lucidly expressed in paragraphs 966 and 969 of 44 *Halsbury's Laws of England* (4th Edn) as follows:

"966. Repeal by implication is not favoured by the courts, for it is to be presumed that Parliament would not intend to effect so important a matter as the repeal of a law without expressing its intention to do so. However, if provisions are enacted which cannot be reconciled with those of an existing statute, the only inference possible is that, unless it failed to address its mind to the question, Parliament intended that the provisions of the existing statute should cease to have effect, and an intention so evinced is as effective as one expressed in terms.

"The rule is, therefore, that one provision repeals another by implication if, but only if, it is so inconsistent with or repugnant to that other that the two are incapable of standing together. If it is reasonably possible so to construe the provisions as to give effect to both, that must be done, and their reconciliation must in particular be attempted if the later statute provides for its construction as one with the earlier, thereby indicating that Parliament regarded them as compatible, or if the repeals expressly effected by the later statute are so detailed that failure to include the earlier provision among them must be regarded as such an indication."

"969. To the extent that the continued application of a general enactment to a particular case is inconsistent with special provision subsequently made as respects that case, the general enactment is overridden by the particular, the effect of the special provision being to exempt the case in question from the operation of the general enactment or, in other words, to repeal the general enactment in relation to that case."

In the present case, we are concerned with section 31(2)(*a*) of the Supreme Court Act (which is a general enactment generally prohibiting appeals from orders made by the High Court in criminal causes or matters) and with section 13(5) of the Extradition Act (which is a particular enactment acknowledging the "further possibility of an appeal").

The evident object of section 13(5) of the Extradition Act is to amplify section 13(2)(*b*) which provides that:

"A person shall not be returned . . . (*b*) if an application for *habeas corpus* is made in his case, so long as proceedings on that application are pending."

According to section 13(5) of the Extradition Act, proceedings on an application for *habeas corpus* are treated as pending for the purposes of

section 13(2)(*b*) if there is "further possibility of an appeal". One such possibility arises where the applicant for a writ of *habeas corpus* in extradition proceedings alleges a contravention or threatened contravention of his constitutional or fundamental right or freedom either to personal liberty or to bail or otherwise and has applied to the High Court for one of the constitutionally prescribed forms of judicial enforcement or protection of that fundamental right or freedom. In that case, there is a constitutional right of appeal and a possibility of an appeal to this court.

In my judgment, there is no inconsistency between section 31(2)(*a*) of the Supreme Court Act and section 13(5) of the Extradition Act. Section 31(2)(*a*) of the Supreme Court Act relates to orders made by the High Court in criminal causes or matters. By judicial interpretation, such orders have been held to include orders on applications for *habeas corpus* in extradition proceedings. Section 31(2)(*a*) of the Supreme Court Act prohibits appeals against such orders. The Extradition Act does not expressly confer any right of appeal against such orders and accordingly does not contradict section 31(2)(*a*) of the Supreme Court Act or the prohibition therein.

The acknowledgement in section 13(5) of the Extradition Act of the "further possibility of an appeal" does not create an irreconcilable inconsistency between section 13(5) of the Extradition Act and section 31(2)(*a*) of the Supreme Court Act. One such possibility is an appeal against an order or decision on a constitutional motion in or incidental to an application for *habeas corpus* in extradition proceedings. Such an appeal is a constitutional appeal from an order made in a constitutional cause or matter and not a criminal appeal from an order made in a criminal cause or matter. Accordingly, section 13(5) of the Extradition Act and section 31(2)(*a*) of the Supreme Court Act are reconcilable and can harmoniously co-exist. In any case, I am not inclined to regard the words "further possibility of an appeal" as constituting statutory language which is sufficiently indicative of a legislative intention partially to repeal section 31(2) of the Supreme Court Act.

In my judgment this is not an appropriate case for the application of the principle of implied and partial repeal. Accordingly, section 31(2)(*a*) of the Supreme Court Act survives the Extradition Act. This means that orders of the High Court in criminal causes or matters (including orders on applications for *habeas corpus* in extradition proceedings) remain unappealable by virtue of section 31(2)(*a*) of the Supreme Court Act.

For these reasons, I would sustain the respondent's preliminary objection and would dismiss the appellants' application with costs to the respondent.

Byron JA. I concur.

Satrohan Singh JA. I concur.

Application dismissed.