

Trevor Forbes

Appellant

v.

**(1) The Director of Public Prosecutions
(2) The Commissioner of Correctional Services**

Respondents

FROM
**THE COURT OF APPEAL OF
JAMAICA**

REASONS FOR DECISION OF THE LORDS OF THE
JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, OF THE
8TH October 2007, Delivered the 8th November 2007

Present at the hearing:-

Lord Hoffmann
Lord Scott of Foscote
Lord Rodger of Earlsferry
Lord Walker of Gestingthorpe
Lord Mance

[Delivered by Lord Hoffmann]

On the 5th of June 2001, Mr Trevor Forbes was arrested in Jamaica on an extradition warrant pursuant to a request from the Government of the United States which alleged that he was wanted on charges of large scale smuggling of marijuana.

On the 23rd of August 2001 the Minister gave authority to proceed and there were proceedings before the Magistrate.

On the 23rd of July 2002 the Magistrate ordered his committal pending extradition. Mr Forbes applied for a writ of habeas corpus to the Supreme Court. His application was dismissed on the 19th of December 2003.

He appealed on various grounds to the Court of Appeal but his appeal was dismissed on the 23rd of November 2005.

He now appeals to the Privy Council on one of the grounds which was argued before the Court of Appeal, namely that the Extradition Act 1991 under which he was ordered to be extradited is inconsistent with the Constitution of Jamaica.

Section 2 of the Constitution says that, subject to sections 49 and 50 which provide a special procedure for amendment, “if any other law is inconsistent with this Constitution, this Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void.”

Section 13 of the Constitution introduces the provisions concerning human rights. It provides that every person in Jamaica is to be entitled to various rights set out in general terms, such as life, liberty, security of the person, the enjoyment of property and the protection of the law. But it goes on to say: “subject to such limitations of that protection as are contained in these provisions.”

The section which is relied upon as creating the inconsistency with the Extradition Act is section 16(1). It says that no person shall be deprived of his freedom of movement, and “for the purposes of this section the said freedom means the right to move freely throughout Jamaica, the right to reside in any part of Jamaica, the right to enter Jamaica and immunity from expulsion from Jamaica.”

I think there is no doubt that if that provision had stood alone, Mr Forbes’ extradition to the United States would be an infringement of his immunity from expulsion from Jamaica.

However, section 16(3) says:

“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”

And then there are a number of paragraphs of which the relevant one is para 16(3)(e):

- e. “for the removal of a person from Jamaica to be tried outside Jamaica for a criminal offence”

It appears to the Board that the Extradition Act 1991 is a law which makes provision for the removal of a person from Jamaica to be tried outside Jamaica for a criminal offence and therefore falls within the terms of section 16(3)(e).

Consequently, it is not inconsistent with section 16 and that appears to the Board to be the end of the matter.

Mr Phipps QC for the appellant said that the Extradition Act was nevertheless inconsistent with section 16 because it was not actually contained in the Constitution. It was a law extrinsic to the Constitution and therefore in his submission added to the Constitution and thereby amended it within the wide definition of a alteration to the Constitution which is contained in section 49(9)(b).

It followed in his submission that it could only be validly enacted by the special procedure contained in section 50.

In the opinion of the Board that submission is mistaken. There is no reason why the provisions for extradition need to spelled out in terms in the Constitution. The reference in section 16(3) to matters which are contained in or bound under the authority of “any law”, means exactly what it says, namely, any law which is passed by parliament and which contains provisions of the kind specified in those subsections.

If the Extradition Act did not constitute a law for the purposes of section 16(3), it is very difficult to see how it could constitute a law for the purposes of section 2 and thereby be invalid on the grounds of its inconsistency with the Constitution.

In either event, the Board considers this appeal to be entirely misguided. It must therefore be dismissed.

Their Lordships will accordingly humbly advise Her Majesty that the appeal should be dismissed.

