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IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE FULL COURT

SUIT NO. M-71 OF 1987

COR: The Honourable Mr. Justice Zacca, C.J.
The Honourable Mr. Justice Bingham, J.
The Honourable Mr. Justice Ellis, J.

BETWEEN JUNIOUS C. MORGAN APPLICANT

A N D THE ATTORNEY GENERAL OF JAMAICA RESPONDENT

Ian Ramsay, Q.C. and Enos Grant for Applicant

Patrick Robinson, Deputy Solicitor General and
Miss D. Little for Respondent

January 19, 20, 21, 22, 1988,
May 6, 1988

Zacca, C.J.

On January 22, 1988 the Court upheld a preliminary objection taken on behalf of the Respondent. The originating summons was dismissed with costs to the Respondent to be agreed or taxed. We promised to put our reasons into writing. This I now do.

The applicant filed an originating motion seeking a declaration pursuant to Section 25 of the Constitution of Jamaica. He sought the following declarations :

1. A Declaration :

   (a) that sections 15 and/or 16 of the Constitution and in particular Sections 15(1)(b), 15(1)(j), 16(1) and 16(3)(e) have been and/or are being contravened in relation to him in that he is being deprived of his personal liberty and/or his freedom of movement and/or his right to reside in Jamaica; and/or his immunity from expulsion from Jamaica; and/or

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(b) that the order made by His Honour Mr. Karl Harrison on 4th June, 1987 that the Applicant is proven to be a person convicted of an extraditable crime and that he be committed to the General Penitentiary to await his surrender to the Government of the United States of America contravenes the Applicant's rights under sections 15 and/or 16 of the Constitution as aforesaid; and/or

(c) that the order made by the Full Court on the 9th October, 1987, dismissing the Applicant's application for an Order of Habeas Corpus ad Subjiciendum contravenes the Applicant's rights under section 15 and/or 16 of the Constitution; and/or

(d) that the Applicant is not a convicted person within the meaning and intendment of section 10 of the Extradition Act 1870 and/or section 15 and/or 16 of the Constitution; and/or

(e) that the Applicant's detention is not in execution of the sentence of a court in respect of a criminal offence of which he has been convicted by any court in Jamaica or elsewhere; and/or

(f) that there was no evidence before His Honour, Mr. Karl Harrison, that the purpose of the removal of the Applicant from Jamaica is so that he should undergo imprisonment in execution of the sentence of a court in respect of a criminal offence of which he has been convicted within the intendment of section 10 of the Extradition Act and/or section 15 and/or 16 of the Constitution; and/or

(g) that the said orders of His Honour, Mr. Karl Harrison, and the Full Court or either of them are unconstitutional, null, void and of no effect ;

2. An Order :

(a) that the Applicant be forthwith released from custody; and/or

(b) that the Respondent pays the cost of these proceedings ;

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3. Such further and other reliefs as to the Honourable Court may seem just.

AND TAKE FURTHER NOTICE that the Grounds of this Application are inter alia :-

(a) That His Honour, Mr. Karl Harrison, and/or the Full Court misdirected itself on the true and proper construction of the word "conviction" and/or "convicted" as used in the Extradition Act 1870 as part of Jamaican Law; and/or

(b) That section 15 and/or 16 of the Constitution contains clear directions that the word "conviction" and/or "convicted" as used in the Extradition Act 1870 should be interpreted in the legal sense, that is, to include sentence, and/or

(c) That the Extradition Act 1870 should be interpreted in a manner to make it consistent rather than conflicting with the express words of the Constitution; and/or

(d) That the Extradition Act 1870 as a PENAL STATUTE, OUGHT TO BE construed in favour of the citizen, in particular where his liberty is at stake.

On June 4, 1987 the applicant was ordered to be extradited to the United States of America by the Resident Magistrate for Kingston.

He subsequently applied to the Full Court of the Supreme Court for the issue of a Writ of Habeas Corpus. On October 19, 1987 the application was dismissed, the Court having heard the application on its merits. The applicant now seeks redress under the Constitution of Jamaica. He alleges that his constitutional rights under sections 15 and 16 and particularly sections 15(1)(b), 15(1)(j), 16(1) and 16(3)(e) have been contravened.

The application is brought under s. 25 of the Constitution. It will be necessary to look at the provisions of the Constitution as it relates to the sections mentioned above.

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Section 15(1) states :

> "No person shall be deprived of his personal liberty save as may in any of the following cases be authorised by law -
>
> (b) in execution of the sentence or order of a Court, whether in Jamaica or elsewhere, in respect of a criminal offence of which he has been convicted; or
>
> (j) for the purpose of preventing the unlawful entry of that person into Jamaica, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Jamaica or the taking of proceedings relating thereto. "

Section 16(1) states :

> "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. "

and Section 16(3) states :

> "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 -
>
> (e) for the removal of a person from Jamaica to be tried outside Jamaica for a criminal offence or to undergo imprisonment outside Jamaica in execution of the sentence of a Court in respect of a criminal offence of which he has been convicted. "

It is conceded that the applicant was found guilty of a criminal offence in the United States of America but that no sentence has yet been passed on him. It is argued on behalf of the applicant that he was therefore not a convicted person.

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Section 25 of the Constitution states :

> (1) Subject to the provisions of subsection (4) of this section, if any person alleges that any of the provisions of sections 14 to 24 (inclusive) of this Constitution has been, is being or is likely to be 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 Supreme Court for redress.
>
> (2) The Supreme Court shall have original jurisdiction to hear and determine any application made by any person in pursuance of subsection (1) of this section and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of the said sections 14 to 24 (inclusive) to the protection of which the person is entitled. Provided that the Supreme Court shall not exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.
>
> (3) Any person aggrieved by any determination of the Supreme Court order this Section may appeal therefrom to the Court of Appeal.

In his preliminary objection, Mr. Patrick Robinson for the Respondent submitted that the Supreme Court was barred from exercising its powers under Section 25(2) to grant the redress sought by the applicant as a result of the proviso to the Section. He further submitted that adequate means of redress have been available to the applicant for the alleged contraventions of the Constitution under the Extradition Act 1870. The right to apply for Habeas Corpus afforded by the Extradition Act and which was in fact utilized by the applicant, albeit, unsuccessfully, was an adequate means of redress for the contravention alleged by the applicant.

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Mr. Ramsay for the applicant submitted that the writ of Habeas Corpus did not provide adequate means of redress for the contraventions alleged. He argued that there was no right of appeal from an application for Habeas Corpus and this made the redress inadequate. There was a right of appeal to the Court of Appeal from an application under Section 25 of the Constitution, with a further appeal to Her Majesty in Privy Council.

He also submitted that the redress under the Constitution was wider and also provided for compensation to be awarded...

A further submission by Mr. Ramsay was to the effect that the words "Provided that the Supreme Court shall not exercise its powers" relate not to the hearing and determining of the application but relates only to "the making of such Orders, issue such Writs and give such directions...." as stated in Section 25(2).

The last submission may be easily disposed of. In my view it is clear that the words "exercise its powers" relate to "hear and determine" and "the making of such Orders....." as provided for in Section 25(2).

For his proposition that the Supreme Court should not hear the Motion because there was another remedy available to the applicant, Mr. Robinson relied on certain dicta of Lord Diplock in Maharaj 1978, 2 ALL ER 670. Harrikissoon v. Attorney General of Trinidad and Tobago, 1979, 3 Weekly L.R. 62, and Chokolingo v. Attorney General of Trinidad and Tobago 1981 1 ALL ER 244.

It is to be observed that the Trinidad Constitution does not contain the proviso which the Jamaican Constitution has in Section 25(2). Section 6(1) and (2) of the Trinidad Constitution is similar to that of Section 25(1) and (2) of the Jamaican Constitution.

In Maharaj case, the applicant applied by Motion under Section 6 for redress for alleged contravention of his right under s. 1(a) of the Trinidad Constitution not to be deprived of liberty except by due process of law. Maharaj, a Barrister, had been committed to prison for seven days for contempt of Court.

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At page 680, Lord Diplock stated :

> " It is true that instead of or even as well as, pursuing the ordinary course of appealing directly to an Appellate Court, a party to legal proceedings who alleges that a fundamental rule of natural justice has been infringed in the course of the determination of his case, could in theory seek collateral relief in an application to the High Court under Section 6(1) with a further right of appeal to the Court of Appeal under s. 6(4). The High Court, however, has ample powers, both inherent and under s. 6(2), to prevent its process being misused in this way. For example, it could stay proceedings under s. 6(1) until an appeal against the judgment or order complained of had been disposed of. "

Here Lord Diplock was saying that a right of appeal existed from the Order made against Maharaj and this right should be exercised before applying for Constitutional redress.

In Harrikissoon's case, a teacher was transferred under regulation 135(1) of the Public Service Commission Regulations 1966. Instead of availing himself of the review procedure provided by Regulation 135, he applied to the High Court under s. 6 of the Trinidad Constitution for a declaration that the human rights and fundamental freedoms guaranteed to him by section 1 of the Constitution had been violated.

At Page 64, Lord Diplock said :

> " The notion that whenever there is a failure by an organ of government or a public authority or public officer to comply with the law, this necessarily entails the contravention of some human right or fundamental freedom guaranteed to individuals by Chapter 1 of the Constitution is fallacious. The right to apply to the High Court under section 6 of the Constitution for redress when any human right or fundamental freedom is or is likely to be contravened, is an important safeguard of those rights and freedoms; but its value will be diminished, if it is allowed to be misused as a general substitute for the normal procedures for invoking Judicial control of administrative action. "

In Chokolingo v. Attorney General of Trinidad and Tobago (supra) the Editor of a Newspaper was sentenced to 21 days imprisonment for a criminal contempt. The appellant did not appeal and served his sentence. Subsequently, he applied for a declaration under

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s. 6(1) of the Constitution of Trinidad and Tobago that his committal was unconstitutional and void because it contravened his right under s. 1(a) of the Constitution not to be deprived of his liberty 'except by due process of law.'

At page 248, Lord Diplock said :

> "Acceptance of the appellant's argument would have the consequence that in every criminal case in which a person who had been convicted, alleged that the judge had made any error of substantive law as to the necessary characteristics of the offence, there would be parallel remedies available to him one by appeal to the Court of Appeal, the other by originating application under s. 6(1) of the Constitution to the High Court with further rights of appeal to the Court of Appeal and to the Judicial Committee. These parallel remedies would be also cumulative since the right to apply for redress under s. 6(1) is stated to be 'without prejudice to any other action with respect to the same matter which is lawfully available.' The convicted person having exercised unsuccessfully his right of appeal to a higher Court, the Court of Appeal, he could nevertheless launch a collateral attack (it may be years later) on a judgment that the Court of Appeal had upheld by making an application for redress under s. 6(1) to a Court of co-ordinate jurisdiction, the High Court. To give to Chapter 1 of the Constitution an interpretation which would lead to this result would, in their Lordships' view, be quite irrational and subversive of the rule of law which it is a declared purpose of the Constitution to enshrine. "

Lord Diplock's conclusions of the Trinidad Constitution which lacks the proviso would seem to support the view that an application under s. 25(1) would be barred where there is an adequate remedy under some other law. The remedy being an application for a Writ of Habeas Corpus under s. 11 of the Extradition Act, 1870.

In the Director of Public Prosecutions for Jamaica v. Feurtado, the Respondent Feurtado, obtained from the Full Court a declaration under s. 25 of the Constitution that he should not be tried and should be unconditionally discharged by reason of gross, unconscionable and unreasonable delay.

On Appeal, it was held that where a Resident Magistrate refused or neglected to carry out his statutory duty, the proper remedy did not lie in a motion under the Constitution, section 25,

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but in the invocation of the supervisory jurisdiction of the Supreme Court by the seeking of the appropriate prerogative Order.

In his judgment, Kerr, J.A. at page 217, said :

> "A fortiori this is even more pertinent when the Constitution contains purposeful proviso such as that in the Jamaican Constitution, s. 25(2). We are of the view that even if there were a contravention of the Constitution, s. 20, adequate means of redress were available to the respondent under other laws and consequently the Court should not exercise its power under the Constitution, s. 25. "

The case of Dennis McMorris v. Calvin Benjamin and Attorney General, M53/1978, November 16, 1978, was a case in which the Court applied the proviso and refused to hear an application for a declaration that s. 15 of the Jamaican Constitution had been breached.

Mr. Ramsay relied on the cases of Grant v. D.P.P., 1979 29 W.I.R. 235 and Herbert Bell v. D.P.P. 1985 2 ALL E.R. 585 in support of his submission that the application ought to be heard by the Court.

These cases can be distinguished with the instant case in that the applications sought in these two cases were that there should be no trial at all. (There was no other adequate means of redress available under any other law).

In his submission, Mr. Ramsay argued that the Writ of Habeas Corpus was not an adequate means of redress because there was no appeal from the Order of the Court. It was conceded that there was no appeal to the Court of Appeal and Mr. Ramsay submitted that there was no right of appeal to the Judicial Committee by special leave. Mr. Robinson expressed doubts as to whether there was a right of appeal to the Judicial Committee by special leave.

The proviso is concerned with whether there was an adequate means of redress available under any other law. The means of redress is the Writ of Habeas Corpus. The concern of the applicant is his immediate release. This remedy provides for the release of the applicant. There was also adequate means of redress with

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respect to compensation by the bringing of an action claiming damages for false imprisonment and illegal detention. The remedy is not in the appeal.

Whether or not there is an appeal from the Order under a Writ of Habeas Corpus does not affect the adequacy of the remedy.

In Maharaj v. Attorney General of Trinidad and Tobago (No. 2) (supra) at page 679, Lord Diplock said :

> "In the first place, no human right or fundamental freedom recognized by Chapter 1 of the Constitution is contravened by a judgement or Order that is wrong and liable to be set aside on appeal for an error of fact or substantive law, even where the error has resulted in a person serving a sentence of imprisonment. The remedy for errors of these kinds was to appeal to a higher Court. When there is no higher Court to appeal to then none can say that there was error. The fundamental human right is not to 'a legal system that is infallible but to one that is fair'".

Whilst I do not share the doubt expressed by Mr. Robinson that there is no appeal to the Judicial Committee by special leave for an Order under a Writ of Habeas Corpus, I find it unnecessary to resolve the matter in view of my opinion that the question of an appeal does not affect the adequacy of the remedy of Habeas Corpus.

I find that the Writ of Habeas Corpus which was available to the applicant and which remedy he availed himself of, albeit unsuccessfully, is an adequate means of redress under other law.

Such a remedy being available, this would be a bar to hearing of the application by reason of the proviso to s. 25(2) of the Jamaican Constitution.

It is for these reasons that I concurred in upholding the preliminary objection of the Respondent that the application should be dismissed.

Bingham J:

The declarations sought by the applicant, the relevant sections of the Constitution and the arguments advanced in support of and against the Preliminary objection taken by the Respondent in this matter have been fully set out in the opinion of the Learned Chief Justice. I do not intend, therefore, to resort to an unnecessary repetition of these matters in my opinion.

Although we were unanimous in upholding the Preliminary objection, the important question raised as to what amounts to "adequate means of redress", calls for some comment and in that regard I wish to make a few observations of my own in-so-far as these touch on the questions raised before us in this matter.

The gravamen of the Applicant's complaint which formed the basis for the reliefs sought in the Notice of Motion were set out in 1(a) of the said Motion and the main area of his complaint was that "he is being deprived of his personal liberty and/or his freedom of movement and/or his right to reside in Jamaica and/or his immunity of expulsion from Jamaica."

On the arguments which have been advanced before us the matters upon which a determination was sought were:-

The proper construction to be placed upon Section 25 of the Constitution in-so-far as:-

(a) That section seeks to create a bundle of new rights not hitherto recognised by Statute and which when examined appears to be in conflict with the proviso to that section.

(b) What amounts to "adequate means of redress"?

(c) What is embraced by the words "any other law"?

Section 25(2) states:-

> "The Supreme Court shall have original jurisdiction to hear and determine any application made by any person in pursuance of Subsection (1) of this section and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing any of the provisions of sections 14 to 24 (inclusive) to the protection of which the person concerned is entitled.

> "Provided that the Supreme Court shall not exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available under any other law."

The central issue before us and the matter around which most of the arguments were directed was as to the meaning and effect of this proviso in-so-far as the interpretation to be placed upon the words "adequate means of redress."

It is clear that in so far as the written Constitutions of the Caribbean Countries are framed and are based upon a Westminister Model, that only such authorities as have emerged since these countries including Jamaica became independent, can be of any useful guide in construing the relevant sections of the Chapter dealing with the fundamental rights and freedoms which are provided for therein.

Moreover it may also be said in this regard that in-so-far as Section 25 in Chapter 3 of our own Constitution has sought to prescribe a bundle of new rights, it has been authoritatively decided that such rights do not in any way detract from or seek to be an enlargement of or an abridgment of such other rights which were already in existence at the time that these Constitutions were brought into force by order of the Imperial Parliament at Westminister in England.

Lord Devlin in delivering the opinion of the Board in Director of Public Prosecutions and Nasralla (1967) 10 JLR 1; (1967) A.C. 238; (1967) 2 AER 161; (1967) 3 WLR 13; in what is an oft-cited quotation said in reference to Chapter 3 of our Constitution:-

> "This chapter ..... proceeds upon the presumption that the fundamental rights which it covers are already secured to the people of Jamaica by existing law. The laws in force are not to be subjected to scrutiny to see whether or not they conform to the precise terms of the protective provisions. The object of these provisions is to ensure that no future enactment shall in any matter which the chapter covers derogate from the rights which at the coming into force of the Constitution the individual enjoyed."
> (Emphasis mine).

In support of the Preliminary objection, Mr. Robinson for the Respondent submitted that the words "adequate means of redress" has yet to be authoritatively decided. He contended that these words when examined in the proviso meant no more or less than such means of redress

as is sufficient to deal with the particular contravention complained of. The test here being not one that calls for a comparison between the remedies available under the existing law and the bundle of rights provided for in Section 25(2). He cited in support of his submission three Trinidadian cases, all based upon Section 6(1) and 6(2) of the Trinidad and Tobago Constitution which when examined are in pari materia with Subsection 25(1) and (2) of its Jamaican counterpart and moreover do not contain "the purposeful proviso" in our Constitution. These cases were:-

1. Harrikisson vs. Attorney General of Trinidad and Tobago (1979) 3 AER 62 at 64 (C-E).

2. Maharaj vs. Attorney General of Trinidad and Tobago (No. 2) (1978) 2 AER 670; (1978) 30 WIR 310.

3. Chokolingo vs. Attorney General of Trinidad and Tobago (1981) 1 AER 244.

In Harrikisson the Appellant, a teacher had been summarily transferred from one school to another without notice as was required under the relevant Regulations. He sought a declaration under Section 6 of the Constitution of 1962 that the human rights and fundamental freedoms guaranteed to him by Section 1 of the Trinidad and Tobago Constitution had been violated. His appeal was rejected by the High Court. On appeal to the Court of Appeal his appeal was dismissed on a clear misconception by that Court; which wrongly assumed that they had no power to enquire into the matter having regard to Section 104(4) of the Constitution, whereby the question whether the Commission had validly performed its functions "shall not be enquired into by any Court."

On appeal to the Privy Council it was held:-

"1. That although the right to apply to the High Court under Section 6(1) of the Constitution for redress when a human right or fundamental freedom had been or was likely to be contravened was an important safeguard of those rights and freedoms, it was abuse of the process of the Court to make such an application as a means of avoiding the necessity of applying for the appropriate remedy for an unlawful administrative action which involved no contravention of a human right or fundamental freedom."

Lord Diplock in delivering the opinion of the Board said (page 67):

"The notion that whenever there is a failure of any organ of government or a public authority or public officer to comply with the law this necessarily entails the contravention of some human right or fundamental freedom

guaranteed to individuals by Chapter 1 of the Constitution is fallacious. The right to apply to the High Court under Section 6 of the Constitution for redress when any human right or fundamental freedom is likely to be contravened is an important safeguard of those rights and freedoms, but its value will be diminished if it is allowed to be misused as a general substitute for the normal procedures for invoking judicial control of administrative action." (Underlines mine for emphasis).

In Maharaj, the Appellant, an Attorney-at-Law was wrongly imprisoned for Contempt of Court, the order for committal having been improperly made as the judge had not specified the nature of the contempt with which he charged the Appellant.

The Appellant subsequently applied to the High Court for damages on the basis that his fundamental right not to be deprived of his liberty except by due process of Law (guaranteed by Section 1(a) of the Constitution) had been violated.

The Judge at first instance dismissed the action on the ground that under Section 6 of the Constitution the High Court had no jurisdiction to entertain what was in effect an appeal from one judge to the other. The Court of Appeal dismissed the appeal from the judge's decision.

On appeal to the Privy Council it was held, allowing the appeal -

1. The claim for redress of an alleged contravention of Section 1 (a) of the Constitution fell within the original jurisdiction of the High Court under Section 6(2) (a) of the Constitution and, in accordance with Section 19(2) of the State Liability and Proceedings Act 1966, the Attorney General was the proper respondent to the motion.
2. The failure of Maharaj J. to inform the Appellant of the specific nature of the contempt of court with which he was charged contravened a constitutional right in respect of which he was entitled to protection under Section 1(a) of the Constitution.

In Chokolingo vs. Attorney General of Trinidad and Tobago, the Appellant, the Editor of a newspaper called the Bomb, published an article which was clearly defamatory of the Judiciary. The Law Society applied to have the Appellant committed to prison for Contempt of Court

When the matter came before the Court, the appellant acting on the advice of his Attorneys pleaded guilty to a charge of criminal contempt and was sentenced to a term of imprisonment. Some two and a half years later the appellant applied for a declaration under Section 6 (1) of the Constitution on the grounds that his committal was unconstitutional and void because it contravened his right under Section 1 (a) of the Constitution not to be deprived of his liberty except by due process of law. The appellant contended that the offence of scandalising the Court was obsolete and not known to the common law of Trinidad and Tobago when the Constitution of that Country came into force; hence he was not imprisoned by due process of law. His appeal to the Court of First Instance and to the Court of Appeal was dismissed.

On his appeal to the Privy Council it was held dismissing the Appeal - inter alia that:-

> "2. It would be irrational and would subvert the rule of law, which the Constitution was declare to enshrine. If the appellant were to be allowed to apply under Section 6(1) for a declaration that he has been denied due process of law because the judge has wrongly interpreted and declared what the law was and since that would amount to the Appellant having parallel and collateral remedies with respect to the same matter, namely a direct appeal and an application under Section 6(1) which could lead to conflicting decisions."

Lord Diplock in delivering the opinion of the Board said:-

> "Acceptance of the Appellant's arguments would have the consequence that in every criminal case, in which a person who had been convicted alleged that the Judge had made any error of substantive law as to the necessary characteristics of the offence there would be parallel remedies available to him; one by appeal to the Court of Appeal, the other by originating summons under Section 6(1) is stated to be 'without prejudice to any other action with respect to the same matter which is lawfully available'. The convicted person having exercised unsuccessfully his right of appeal to a higher court, the Court of Appeal, he could nevertheless launch a collateral attack (it may be years later) on a judgment that the Court of Appeal had upheld by making an application for redress under Section 6(1) to a Court of co-ordinate jurisdiction, the High Court. To give to Chapter 1 of the Constitution an interpretation which would lead to this result would in their Lordship's view be quite irrational and subversive of the rule of law which it is a declared purpose of the Constitution to enshrine."

Mr. Ramsay has submitted that a citizen who is faced with an alleged contravention under Chapter 3 has two courses open to him, as to

whether if there is already a remedy in existance at law to seek to exercise his right to take recourse under the existing law or to proceed to seek constitutional redress under Section 25. He further submitted that the citizen has the right to choose which of the two forums he will avail himself of. He relied in support upon a statement of Rowe J. (as he then was) made obiter in The Director of Public Prosecutions and Others vs. Desmond Grant and Others, in the Manchester Circuit Court on 29th January, 1979. We were referred to a transcript of the Learned Judge's ruling in this matter.

The Court was also referred to the following dicta in support of a hearing on the merits.

1. Grant and Others vs. The Director of Public Prosecution and Others (1981) 29 WIR 235 per Smith C.J. at 239 (H-J).

2. Herbert Bell vs. The Director of Public Prosecution of Jamaica (1985) 2 AER 585.

In Grant's case at first instance before Rowe J. the matter for determination was for a stay of proceedings to allow the accused persons the opportunity to seek constitutional redress under Section 25 in circumstances whereby they were alleging that the massive pretrial publicity and its manner gravely prejudiced their receiving a fair trial in Jamaica. Given the circumstances of the case the only course open to them was that available under the relevant section of the Constitution.

In so far as the statement of Rowe J. was his opinion based upon the circumstances of that case then it was correct and ought not to be faulted. In both cases to which we were referred the Applicants sought a determination which would have effectively brought the proceedings against them to an end.

If, however, as in the instant case, the substantive relief being sought under Section 25 was available under the existing law, then in my opinion the proper course is for the citizen to avail himself of such remedies as were available at law in the light of the clear and express words as set out in the proviso to Section 25.

This statement gains even greater support from the added fact that the Applicant in this matter did avail himself of his rights under the existing law, by applying for a Writ of Habeas Corpus under Section

of the Extradition Act 1870 and there was a full hearing of that matter before the Full Court.

In this regard paragraph 3 of the Applicant's Affidavit in support of the Motion states:

> "3. That I applied for a Writ of Habeas Corpus Ad Subjiciendum, to the Supreme Court within fifteen (15) days of the aforesaid Order of the hearing by the Resident Magistrate; that the matter was heard on the 28th, 29th, and 30th of September and the 1st, 2nd, and 9th of October; and that on the aforesaid 9th of October the Full Court of the Supreme Court dismissed my application to be released from custody."

The question which naturally follows therefore is this, that given the factual basis that the reliefs sought in the Habeas Corpus proceedings, if successful would have effectively determined the matter in that it would have resulted in the Applicant being set at liberty can the Applicant now properly contend that he was thereby prejudiced in any way in taking the course that he did?

Mr. Ramsay, however, has also submitted that the redress available under Section 11 of the Extradition Act 1870, that is "the other law" is not "adequate means of redress", giving that word "adequate" its ordinary dictionary meaning. On the basis of that meaning, the applicant should be able to have resort to the plentitude of powers contained in those bundle of rights which are now available under Section 25 of the Constitution. He further contends that as there is no right of appeal from a refusal to grant a Writ of Habeas Corpus, that remedy leads to a dead end hence the necessity for the Applicant to be able to now seek Constitutional redress.

It may be convenient at this stage to emphasise that in so far as Section 26 (8) of the Constitution, seeks to state the effect that the Constitution has on existing laws which were in force at the date of the coming into effect of that instrument gives express validity to such laws, subject to such adaptations or modifications.

The Subsection enacts that:-

> "26(8) Nothing contained in any law in force immediately before the appointed day shall be held to be inconsistent with any of the provisions of this Chapter, and nothing done under the authority of any such law shall be held to be done in contravention of any of these provisions."

The question as to whether under the existing law the Applicant is deprived of a right of appeal from a refusal by the Full Court following an application for a Writ of Habeas Corpus and may therefore appear to be somewhat prejudiced in that regard is not a matter for a judicial determination by this Court, but more in the nature of a political question for a policy decision to be considered by the Legislature in seeking to correct such deficiencies or mischief as may be apparent in the existing law. For as Lord Diplock said in delivering the judgment of the Board in Maharaj and the Attorney General of Trinidad and Tobago (No.2) (referred to supra) at page 321 (a - b).

> "In the first place, no human right or fundamental freedom recognised by Chapter 1 of the Constitution is contravened by a Judgment or order that is wrong and liable to be set aside on appeal for an error of fact or substantive law, even where the error has resulted in a person serving a term of imprisonment. The remedy for errors of these kind is to appeal to a higher court. Where there is no higher court to appeal to then none can say that there was error. The fundamental human right is not to a Legal System that is infallible but to one that is fair."
> (Underlining mine for emphasis).

I would adopt this statement as being most apposite to the instant case, as not only does it deal effectively with Mr. Ramsay's main contention touching on the meaning of "adequacy" but it supports the argument being advanced by Mr. Robinson. To put any other interpretation on the clear words of the instrument would lead to absurdity and inconsistency which would not be in keeping with the cardinal rules applicable to the interpretation of statutes.

The proviso when further examined equally does not support also the argument being advanced on behalf of the Applicant that the two classes of rights can co-exist or are cumulative, as the meaning and intendment of the Section clearly does not admit of any such interpretation. Had there been any such intention on the part of the framers of the Constitution one would expect to see this being expressed in clear and unambiguous terms.

In conclusion, what the Applicant has sought to attempt to do by way of the present Motion, based upon the declarations now being sought is to attempt to re-argue the same grounds before us as before the Full Court in the proceedings for Habeas Corpus under the guise of

seeking Constitutional relief and is in effect tantamount to an abuse of the Court's process.

It is for these reasons why I too concurred in upholding the preliminary objection and ordered that the Motion be dismissed with the Order for costs as proposed by the Learned Chief Justice.

ELLIS, J:

I have read the Judgments of the Learned Chief Justice and Bingham J, and there is nothing that I can add.

I too concur with the decision to uphold the respondent's preliminary objection and that the application should be dismissed.