In the Supreme Court

In Chambers

Suit No. C.L. 1976, R004

Between	Revere Jamaica Alumina, Ltd.	Plaintiff
And	Attorney General of Jamaica Honourable Horace Clarke Reginald A. Irvine	Defendants

Richard Mahfood, Q.C. and
Angela Hudson-Phillips for Plaintiff

Dr. Kenneth Rattray, Q.C. (Solicitor General),
A.B. Edwards and Lloyd Ellis for Defendants.

1976 - February 9, 10, 11, 12, 27

Smith, C.J.

On January 13, 1976 the plaintiff caused a writ to be issued against the Attorney General, representing the Crown, and against the Honourable Allan Isaacs, then Minister of Mining and Natural Resources, and Mr. Reginald A. Irvine, the Collector General. In the endorsement, the plaintiff claimed for a number of declarations, for damages and compensation and for injunctions against the second and third defendants. In a statement of claim, filed the same day, it was stated that the second and third defendants were sued in their personal capacities.

The statement of claim discloses that the plaintiff's claim arose out of an agreement which the plaintiff made with the Government of Jamaica on March 10, 1967 whereby the plaintiff agreed to engage in the mining of bauxite and the production of alumina and to construct an alumina plant. Pursuant to the agreement, the plaintiff was granted a special mining lease on April 10, 1967 giving it the right to mine bauxite in, under or upon the land therein specified. The statement of claim alleges several breaches of the agreement by the Government and contends

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that the Bauxite (Production Levy) Act, 1974, and the regulations made thereunder, are ultra vires and in breach of the Constitution. It is also contended that ss. 45C and 95 of the Mining Act (which were added by the Mining (Amendment) (No. 2) Act, 1974), and the powers granted to the Minister thereunder, are ultra vires and in breach of the Constitution. The Mining (Amendment) Regulations, 1974 are also said to be ultra vires and void and in breach of an obligation of the Government under the agreement.

S. 3(1) of the Bauxite (Production Levy) Act imposes a tax, known as a production levy, on all bauxite or laterite extracted or won in Jamaica on or after January 1, 1974. This tax was imposed "notwithstanding anything in any law, enactment or agreement" and the section provides that "nothing in any such law, enactment or agreement shall be construed as derogating from the provisions of this Act or any obligations arising thereunder, or give rise to any cause of action in respect of any act done in accordance with this Act or regulations made thereunder." S. 3(2) provides that the production levy payable by bauxite producers shall be paid to the Collector General or, at his direction, to the Bank of Jamaica. One of the main grounds upon which this Act, and, in particular, s. 3 thereof, is said to be ultra vires and unconstitutional is that it deprives the plaintiff of its contractual and proprietary rights under the agreement with the Government including its cause of action for breaches thereof. For a similar reason, among others, ss. 45C and 95 of the Mining Act are said to be ultra vires and unconstitutional.

The statement of claim states, further, that on August 19, 1975 the plaintiff temporarily ceased mining operations and, by letter dated October 10, 1975, informed the Minister of Mining

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and Natural Resources of this fact and sought his consent, pursuant to s. 42(1)(b) of the Mining Act, to a shut down to exceed six months. It is contended by the plaintiff that it is entitled to the Minister's consent, which has not been received, and that it is unreasonable for the consent to be withheld having regard to the circumstances causing the cessation of mining. The Minister is empowered by s. 42 to revoke a mining lease if the holder wholly ceases mining during a continuous period of six months without the written consent of the Minister, which consent must not unreasonably be withheld.

The plaintiff claims declarations: that the agreement of March 10, 1967 is valid, binding and enforceable; that the Government is in breach thereof; that the statutory provisions referred to above, and the powers they purport to give, are ultra vires, unconstitutional and invalid; that the plaintiff is entitled and empowered temporarily to cease mining operations in spite of s. 42 of the Mining Act, alternatively, is entitled to obtain the Minister's consent; and that the Minister is not entitled to revoke the plaintiff's mining lease. In addition to the claim for damages and compensation, the plaintiff claims a refund of the production levy already paid. The injunction claimed against the second defendant is to restrain him from revoking the mining lease. It is sought to restrain the third defendant from collecting, or taking any action or proceeding to collect or direct the collection of, the production levy or in any other way acting in derogation of or contrary to the plaintiff's rights.

On the same date that the writ and statement of claim were filed, the plaintiff took out a summons against the second and third defendants seeking orders for interim injunctions against

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them in the terms set out above. On the first day of the hearing of the summons, the writ and other documents were amended by leave substituting the Honourable Horace Clarke, the present Minister, as second defendant for the Honourable Allan Isaacs.

Objection was taken in limine to the grant of the application for interim injunctions on the ground that the court had no jurisdiction to make the orders sought. The main contention, in respect of both defendants, was that the effect of such a grant would be to grant injunctions against the Crown in contravention of the Crown Proceedings Act. This contention raises the question of the proper interpretation of s. 16(2) of the Act. Additionally, in respect of the second defendant, it was contended that no allegations of impropriety can be attributed to him as, at all material times, he had no jurisdiction to revoke the lease and the allegations made in the statement of claim relate to a point of time before he was appointed Minister. In respect of the third defendant, it was contended that no allegations have been made against him of any improper or wrongful acts committed by him and there is, therefore, no basis on which an injunction can issue against him in his personal capacity.

Before the Crown Proceedings Acts (of the United Kingdom in 1947 and Jamaica in 1958), in spite of the immunity of the Crown, a servant of the Crown was liable at common law in his personal, though not in his official, capacity for torts committed by him (Raleigh v Goschen (1898) 1 Ch. 73). He was also liable to be sued personally in respect of illegal or otherwise unauthorised and wrongful acts done by him which infringed the rights of, or were in breach of a duty owed to, any person, though the acts were done in purported exercise of his lawful authority as an official (Musgrave v Pulido (1879) 5 App. Cas. 102, Nireaha Tamaki v Baker (1901) A.C. 561, Hochoy v N.U.G.E. & ors. (1964) 7 W.I.R.

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174, Le Conseil Des Ports Nationaux v Langelier et al (1969) S.C.R. 60). This personal liability of servants of the Crown was not affected by the Crown Proceedings Acts, "the main objects of which were, as far as practicable, to make the Crown liabile in tort in the same way as a private person, and to reform the rules of procedure governing civil litigation by an against the Crown" (Hood Phillips' Constitutional and Administrative Law (3rd edn.) 650).

Consistent with their personal liability for wrongful acts, at common law relief by way of injunction could be obtained in respect of such acts against servants of the Crown in their personal capacity (Nireaha Tamaki v Baker (supra), the Le Conseil case (supra)). Whether or not this form of relief is available in this Country since the passing of the Crown Proceedings Act is a question which depends for its answer on the construction of s. 16(2) of the Act (s. 21(2) of the U.K. Act). It is clear on the authorities that without this statutory provision the relief would still be available.

S. 16 provides as follows :

> "16.-(1) In any civil proceedings by or against the Crown the Court shall, subject to the provisions of this Act, have power to make all such orders as it has power to make in proceedings between subjects, and otherwise to give such appropriate relief as the case may require :
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> Provided that -
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> (a) where in any proceedings against the Crown any such relief is sought as might in proceedings between subjects be granted by way of injunction or specific performance, the Court shall not grant an injunction or make an order for specific performance, but may in lieu thereof make an order declaratory of the rights of the parties; and
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> (b) in any proceedings against the Crown for the recovery of land or other property the Court shall not make an order for the recovery of land or the delivery of the property, but may in lieu thereof make an order declaring that the plaintiff is entitled as against the Crown to the land or property or to the possession thereof.

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> (2) The Court shall not in any civil proceedings grant any injunction or make any order against an officer of the Crown if the effect of granting the injunction or making the order would be to give any relief against the Crown which could not have been obtained in proceedings against the Crown. "

As far as is known, sub-s. (2), or a corresponding provision elsewhere, has not been judicially interpreted. The opportunity arose in Saskatchewan in 1960 in Duplain v Cameron et al 26 D.L.R 340, but the provision was held not to apply as the defendant Cameron was held to be acting as the agent of the Legislature and not as agent or servant of the Crown.

It was submitted on behalf of the plaintiff that s. 16(2) was not designed to relieve officers of the Crown of their personal liability to be enjoined in their personal capacity and has not deprived the court of its inherent and common law jurisdiction to issue an injunction against an officer of the Crown in his personal capacity. Alternatively, it was submitted that the plaintiff's very important common law rights to obtain an injunction against an officer of the Crown in his personal capacity can only be taken away by clear, precise statutory language and s. 16(2) is inappropriate for that purpose. Similarly, it was said, it required clear and precise statutory language to deprive the court of its inherent jurisdiction to grant injunctions. It was contended that the language in s. 16(2) is not clear and precise and, at the highest, can be regarded as ambiguous.

The opinion of the learned author of Hogg's Liability of the Crown was relied on by the plaintiff in support of the submission that s. 16(2) does not deal with the acts of an officer of the Crown in his personal capacity. After referring to the corresponding provisions in the statutes of the United Kingdom and New Zealand, the learned author says, at pp. 25, 26:

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> " It is submitted that none of these provisions affects the power of the courts to grant an injunction against a Crown servant restraining him from committing an unauthorized act; such an injunction is directed against the servant in his personal capacity, not in his capacity as a Crown servant; and its effect is to give relief against the individual and not the Crown. "

With great respect, the final statement in this passage seems to beg the question. S. 16(2) does not deal with the giving of relief against the Crown to the exclusion of relief against the officer of the Crown. What it says,plainly, is that the grant of injunctive relief against the officer must not be made if the effect will be to give that relief against the Crown as well. Professor S.A. deSmith was not as sure of the meaning of the provisions as was the author just cited. In the 3rd edn. of his book Judicial Review of Administrative Action he referred to the provisions of s. 21(2) of the United Kingdom Act and said, at p. 398 :

> " What is the effect of this last provision ? It is not self-explanatory. In mandamus cases it is recognised that when a statutory duty is cast upon a Crown servant in his official capacity and this duty is one owed not to the Crown but to the public, any person having a sufficient legal interest in the performance of the duty may apply to the courts for an order of mandamus to enforce it. If, however, the remedy sought is an injunction, it is doubtful whether any such duality can be imputed to a Crown servant; .....
> Yet there is no obvious reason why the statutory restriction should not be so interpreted as to bring it into line with the rule on mandamus; this would limit the unavailability of injunctions against Crown servants to a narrow range of situations .....
> A rule embodying a tenuous formal distinction would be better than one flatly denying injunctive relief against Crown servants who act ultra vires.
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> It is arguable that if an officer of the Crown were to commit a tort in the purported discharge of his official functions an injunction could issue to him because the tort would be his individual wrong-doing for which he would be personally liable. But although he would, of course, be personally liable in damages as a tortfeasor, it is doubtful whether, under the present law, an injunction would issue against him unless his act was so far removed from the proper sphere of his official duties that the award of an injunction could not be regarded as an indirect form of relief against the Crown. "

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Though Professor deSmith starts by saying that the effect of the provisions of the sub-section is not self-explanatory, it seems that at the end his conclusion is that the effect is to bar injunctive relief against an officer in his personal capacity where it could be regarded as an indirect form of relief against the Crown. In criticism of the learned professor's opinion, learned counsel for the plaintiff said that he failed to consider the essential question, namely, whether the language of the sub-section is compelling enough to deprive the court of its important inherent jurisdiction.

Learned counsel for the plaintiff submitted that the prima facie meaning of s. 16(2) is that it is referable to officers of the Crown in their official and representative capacity and that the sub-section is also dealing with legal relief against the Crown. A statement by Evershed, M.R. in the Court of Appeal in Harper v Secretary of State for the Home Dept. (1955) Ch. 238 lends support, by implication, to the plaintiff's contention that s. 16(2) does not refer to officers in their personal capacity. In that case it was sought to restrain the Home Secretary by injunction from submitting draft statutory orders, approved by both Houses of Parliament, to Her Majesty in Council on the ground that the orders were ultra vires. The orders were held, on appeal, to be intra vires but at the end of his judgment (at p. 254) the learned Master of the Rolls, in dealing with the question of the defendant being sued by his official title, said this :

> " I am not myself satisfied that Sir Andrew is not in this respect upon the horns of a dilemma. If the whole thing is a nullity and all he seeks to do is to restrain a particular individual, who happens at the moment to be the Secretary of State for the Home Department, I am not satisfied that he ought not to sue him in his personal capacity as for an ordinary wrong - though, in that case, it would not be clear

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> to me what breach of duty to the plaintiffs he was engaged in committing. On the other hand, if he does sue him, and rightly sues him, in his capacity as Secretary of State for the Home Department, then I am not satisfied (though I express no final view on it, as we have not heard full argument) that the case is one which, having regard to the terms of the Crown Proceedings Act, 1947 will lie. And I am not satisfied, having regard to section 21 of that Act, that, on this alternative, the plaintiff could, in any event, obtain an injunction ..... "

It seems that the Master of the Rolls can be said to be saying that if the Home Secretary was sued in his personal capacity s. 21 of the Act of 1947 would not stand in the way of an injunction being obtained against him. This part of his judgment was, however, **obiter and the report does not show that there was** any argument at all on the interpretation of s. 21(2).

For the defendants, it was submitted that s. 16(2) is not concerned with an officer in his official, or representative, capacity because no action lies against him in that capacity. It was submitted that the provisions of the sub-section can only apply where action is brought against an officer personally. It was argued that where what gives rise to any liability of the Crown or officer is the same, the position of the Crown and that of the officer cannot, as a matter of substance, be differentiated. Any order made against the officer in those circumstances, it was said, is bound to have an effect on the Crown and must, therefore, come within the prohibition of s. 16(2).

In order to arrive at the true meaning of the provisions of sub-s. (2) of s. 16, they must be examined and construed in their context and in the context of the Act as a whole. To discover the meaning of "officer of the Crown" one would naturally look first at the definition section. There, in s. 2(2), "officer" is defined as follows :

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> " 'officer', in relation to the Crown, includes any servant of Her Majesty, and accordingly(but without prejudice to the generality of the foregoing provision) includes a Minister of the Crown. "

On the face of it, this definition (which appears to be exhaustive) embraces servants of Her Majesty in their personal capacity. There is nothing in the definition itself to limit it to servants in their official capacity. That it is not so limited is plainly shown by the use in several sections of the Act of the phrase "officer of the Crown as such " (see ss. 3(3), 18(2)(b), 20(1) and 22(1)(a)). It would hardly be necessary to use this phrase if "officer of the Crown" throughout the Act meant such officers in their official or representative capacity. So, contrary to the contention of the plaintiff, the words "officer of the Crown" in sub-s. (2) of s. 16, prima facie, refer to such officers in their personal capacity.

Do the words refer to officers in their personal capacity only, as the defendants contend ? The basis of this contention is very cogent. Since no action lies against an officer in his official, or representative, capacity, it was argued, sub-s. (2) of s. 16 cannot refer to him in that capacity. Graham-Perkins,J. had to consider the question of the liability of an officer of the Crown to be sued in his official capacity in Lewis v Minister of Labour and National Insurance and ors. (1966) 9 W.I.R. 459. The learned judge showed by an examination of the authorities that at common law an officer was not so liable either in contract or in tort and he held that the Crown Proceedings Acts had made no alteration in the law in this respect. He said, at p. 462 :

> " An examination of the Crown Proceedings Law does not reveal any intention in the legislature to attach liability to a servant of the Crown in his official capacity in respect of his official acts. In my view, there is no warrant for holding otherwise. "

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This would be conclusive of the matter were it not for the fact that reference is made in s. 20(1) & (4) to orders in civil proceedings against "officers of the Crown as such." The implication is that civil proceedings can be brought against officers in their official capacity. S. 3(4) also refers to "the liability of any Government department or officer of the Crown in respect of any tort committed by that department or officer" and "if the proceedings against the Crown had been proceedings against that department or officer." I find these provisions extremely puzzling in the light of the clearly established rule that Government departments and officers in their official capacity were, and are, not liable to be sued. I think that part of the explanation may be due to the fact that the provisions of our Crown Proceedings Act are, almost entirely, a reproduction of the provisions of the United Kingdom Act of 1947. One significant difference between the two Acts is that whereas in ours, by s. 13, civil proceedings by or against the Crown must be instituted by or against the Attorney General, in the United Kingdom, by s. 17 of their Act, such proceedings are instituted by or against authorised Government departments or, where none is appropriate, the Attorney General. The learned author of Hood Phillips' Constitutional and Administrative Law (3rd edn.), in dealing with the liability of Crown servants before the (U.K.) Act of 1947 took effect, said, at p. 647: "Parliament occasionally, in a haphazard and often cryptic manner, used language referring to the bringing of actions by or against a Government Department or Minister in his official capacity, with or without incorporating that Department or Minister. The effect of such language and the extent (if any) of liability to be sued depended on the interpretation of the words used in the particular statute." Except for the

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officials named in s. 18(3) of our Act, all the existing provisions whereby Government officials could sue or be sued in their official capacity were repealed by s. 32 of the Act. So, whereas here it is no longer possible for Government departments and officials to be sued as such, this is not so in the United Kingdom, certainly not as regards Government departments. The provisions of s. 2(4) of their Act, corresponding to s. 3(4) of ours, may, therefore, be quite appropriate. It is of some interest to observe that in s. 25(1) and (4) of the United Kingdom Act, corresponding to s. 20(1) and (4) of our Act, "Government department" is included. It is excluded in ours. In my opinion, the provisions in our Act under discussion can only be referring to statutory exceptions to the established rule that Government departments and officials as such are not liable to be sued either in contract or in tort. The provisions in s. 20(1) and (4) were no doubt included in our Act because of the continuing liability of the officers named in s. 18(3) to sue and be sued in their official capacity. I am unable to find any justification for the inclusion of "Government department" in s. 3(4). Because of both sets of provisions, I am unable to say conclusively that the provisions of s. 16(2) refer exclusively to officers of the Crown in their personal capacity.

It was submitted for the plaintiff that the prima facie meaning of the words used in s. 16(2) are incapable of depriving the court of its jurisdiction and that the words would have to be strained to achieve that effect. This was so, it was said, because although the immunity of representatives of the Crown in their official capacity emanated from the Crown, it was different from, or not identical with, the immunity of the Crown. Consequently, it was argued, in the ordinary course of drafting the legislation one would have expected to find, firstly, the basic provision that no injunction could be granted against the Crown and, secondly, a

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provision designed to ensure that no injunction could be granted against an official in his representative capacity as a means of getting relief against the Crown. That, it was said, is what has been done in s. 16. With due respect, I do not think that this argument is sound. The short answer to it is that it would be pointless providing against the grant of an injunction against an officer in his representative capacity as an action did not lie against him in that capacity, except a statute expressly so provided. But before the Crown Proceedings Acts injunctions could be granted, and were no doubt freely granted, against officers of the Crown in their personal capacity for unlawful or otherwise unauthorised acts, particularly in tort. With this liability continuing after the passing of the Acts, it is more reasonable to expect that protection would be given against the grant of injunctions against the Crown by this means. This would be a logical provision to make since the Crown was being made liable for the first time for torts committed by its officers, who were themselves only liable in their personal capacity. Indeed, the provisions of s. 16(2) would be almost wholly otiose if they did not refer to an officer of the Crown in his personal capacity.

The views I have just expressed are sufficient, in my opinion, to dispose of a further argument for the plaintiff which is similar to the one with which I have just dealt. The argument was that the Act is not, and was not, designed to deal with the personal liability of officers of the Crown, so it is unreasonable to suggest that by a sidewind the court has been deprived of an important aspect of its jurisdiction over officers of the Crown in their personal capacity. As I will endeavour to show later, the provisions of the sub-section do not, in my opinion, entirely

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deprive the court of its jurisdiction to grant injunctions against such officers in their personal capacity. In the end, I hold that the provisions of sub-s. (2) of s. 16 refer to officers of the Crown in their personal capacity. In my opinion, any uncertainty that there is in the meaning of the provisions is as to whether they can be said to refer to officers in their official capacity.

This brings me to the question whether a grant of interim injunctions against the second and third defendants will have the effect of giving relief against the Crown which could not have been obtained in proceedings against the Crown. I agree with the plaintiff's contention that "relief" here means legal relief, but I am afraid that I do not quite understand the submission which was made for the plaintiff that "the prima facie meaning of "relief" is legal relief and does not support any contention based upon practical consequences or practical effect". If any sense is to be made of the provisions, it seems to me imperative that the practical effect of the grant of an injunction against an officer in his personal capacity be considered. The provisions of sub-s. (2) of s. 16 are related to those of sub-s. (1). The grant of injunctions, the making of orders for specific performance and orders for recovery of land or the delivery of property are legal reliefs which may be given in proceedings between subjects but which sub-s. (1) says may not be granted or ordered against the Crown. All I understand sub-s. (2) to say is that an injunction or an order for specific performance or for the recovery of land or the delivery of goods shall not be granted or made against an officer of the Crown if the practical effect of doing so will be that, indirectly, an injunction is granted or an order for specific performance etc. is made simultaneously against the Crown.

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In answering the preliminary objection, learned counsel for the plaintiff stated that the claim in the action is for a declaration that the Government, in enacting the relevant legislation, was acting in breach of its contract with the plaintiff; secondly, that the statutes are unconstitutional; thirdly, that the regulations are ultra vires; fourthly, that the second and third defendants insofar as they are carrying out powers given them by statute are acting in excess of their statutory powers and will be so acting if not restrained. I pause to point out that no such allegation is made nor is any declaration sought against the third defendant. Learned counsel said that the basic claim is against the Crown and were it not a matter of urgency the second and third defendants would not be joined; that if it were not a matter of urgency the claim for a declaration of rights would be pursued, but this will take time even if there is an order for a speedy trial. This statement is the clearest indication that the plaintiff is seeking to restrain the actions of the Government by the interim injunctions which are sought against the two officers of the Crown in their personal capacity.

Reliance was placed on Jaundoo v Attorney-General of Guyana (1971) A.C. 972 for the steps taken against the second and third defendants. In delivering the judgment of the Board of the Privy Council, Lord Diplock said, at p. 984 :

> " At the relevant time, the executive authority of Guyana was vested in Her Majesty and exercised by the Governor-General on her behalf under article 33 of the Constitution. At the time of the hearing of the motion in the High Court an injunction against the Government of Guyana would thus have been an injunction against the Crown. This a court in Her Majesty's Dominions had no jurisdiction to grant ....."

Then, on p. 985, Lord Diplock continued :

> " A form of relief which would not have been open to these objections would have been a declaration of the landowner's right not to have her land taken. This could properly be made against the Government of Guyana as such.

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> A declaration of rights unlike an injunction, however, is not a suitable form of interim relief pending final determination of the landowner's application. But if the matter were urgent, it would have been open to the landowner to add, as an additional party to the motion, the Director of Works or the Minister in whom the powers of the Director of Works under the Roads Ordinance are now vested, and to claim an injunction against him. This would give the court jurisdiction to grant an interim injunction if the urgency of the matter so required. "

I am afraid this authority does not help the plaintiff because at the time in Guyana there were no statutory provisions similar to our s. 16(2) standing in the way of the grant of injunctions against officers of the Crown.

The production levy, the payment of which the plaintiff is challenging, is a tax imposed by the Bauxite (Production Levy) Act. It is payable to the Government of Jamaica and thus to the Crown. The Crown can only act through its servants or agents. The Act provides that the Collector-General is the Crown servant to whom payment of the tax should be made. If the third defendant is restrained from collecting, or taking any action to collect, the production levy, as is sought in the application before me, the obvious and direct effect of the restraining order will be to restrain the Crown from collecting the tax, which is due and payable until it is declared in the action to be unconstitutional or unlawful. This is what s. 16(2) prohibits.

All minerals in the Country are, by s. 3 of the Minerals (Vesting) Act, vested in and are subject to the control of the Crown. S. 4 of the Act provides that no person shall mine any minerals save in accordance with the law and regulations governing mines and mining and that there shall be paid to the Government such royalties as may be thereby prescribed in respect of minerals mined. Some six weeks after the Minerals (Vesting) Act was passed, the Mining Act came into force. This latter Act was, obviously, passed for the purpose of controlling mining operations,

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to which reference is made in the earlier Act. The Minister of Mining and Natural Resources is one of the Crown servants through whom, by virtue of the provisions of the Mining Act, the Crown exercises its control over its minerals. A direct result of ordering that the second defendant be restrained from revoking the plaintiff's mining lease, as I am asked to do, is that the Crown will be restrained in the exercise of its control over its minerals. This is tantamount to granting an injunction against the Crown which cannot be obtained directly in the action and is prohibited by s. 16(2).

In my judgment, the preliminary objection succeeds on the main contention of the defendants. I should add that, in my opinion, not every injunction that can be granted or order made against an officer of the Crown would have the effect of giving relief against the Crown. One can think of instances in which this would not be so. It would depend, in each case, on the nature of the act sought to be restrained or the order which the court is asked to make.

In my judgment, the additional contention put forward for the third defendant also succeeds. No allegation whatever is made against him in any capacity. Indeed, the only references to the third defendant in the statement of claim are in para. 3, where it states the capacity in which he is sued, paras. 17 and 18, where the provisions of ss. 3 and 4 of the Bauxite (Production Levy) Act are, respectively, quoted, and at the end, where the injunction is claimed. The statement of Lord Diplock in the Jaundoo case (supra), as I have said, was relied on as justifying the joining of both defendants. It must be pointed out, however, that Lord Diplock's statement was made against the background of the facts in that case, which showed that the Ministry of Works and Hydraulics were threatening to construct a new road upon part of the

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plaintiff's land and she made her application to the court for redress on the day after she learnt that commencement of work upon her land was imminent. Learned counsel for the plaintiff said that if the plaintiff succeeds at the trial, the position will be that the second and third defendants in the interim would have been acting without lawful authority in interfering with the plaintiff's proprietary, personal and contractual rights - in the case of the third defendant, in collecting the production levy or taking steps to collect it. In my opinion, it is not sufficient to state in argument the ground upon which relief is claimed against this defendant. Before an order can be made granting an injunction, an allegation of some wrong, committed or threatened, which can give rise to the grant of an injunction, must be made against the defendant. None has been made against the third defendant in this case.

The additional contention in respect of the second defendant, to repeat it, is that no allegations of impropriety can be attributed to him as, at all material times, he had no jurisdiction to revoke the lease and the allegations made in the statement of claim relate to a point of time before he was appointed as Minister. I do not think that there is any merit in this contention. As regards the second defendant's jurisdiction to revoke the lease, s. 16(2) of the Crown Proceedings Act apart, my view is that an order for an injunction could be made against him before his power to revoke the lease arises. Provided, of course, the factual basis for making the order exists. As regards the fact that the allegations made relate to a period before he was appointed Minister, the fact that he is presently the person who exercises the statutory power of revocation would, in my opinion, be sufficient.

I do not, however, find in the plaintiff's claim the

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factual basis upon which, if the power existed, an injunction could issue against the second defendant in his personal capacity. Learned counsel for the plaintiff stated that the basis of the claim for an injunction against this defendant is that any activity by him in connection with the revocation of the plaintiff's lease will involve him in a wrongful and unlawful interference with the plaintiff's proprietary and contractual rights. He said, further, that the plaintiff's case is that the actions of the Collector General and the Minister, in discharge of their duties under the Bauxite (Production Levy) Act and regulations and the Mining Act, as amended, and regulations, constitute actions which are unlawful because (a) the relevant regulations and statutes are ultra vires and unconstitutional and (b) they (the officials) are acting, and will continue to act, in excess or in breach of their statutory authority. The only act which it is sought to restrain the second defendant from committing is the revoking of the lease. As I have said, the defendant's power to revoke it, as Minister, is contained in s. 42 of the Mining Act. There is no allegation that this section is either unconstitutional or ultra vires. This allegation is made in respect of ss. 45C and 95(1) which were added by the Mining (Amendment)(No. 2) Act, 1974 (ss. 47A and 99(1), respectively, of the current statute). There is no allegation of any wrong committed, or threatened, by the second defendant or his predecessor in their personal capacity in respect of the revocation of the lease. Paras. 31 and 32 of the statement of claim, which deal with the allegations and contention regarding the second defendant's consent to the shut-down of the plaintiff's mining operation, refer to the second defendant in his official capacity. The only allegation capable of amounting to a threat that the mining lease might be revoked is contained in para. 34 of the statement of claim and is a state-

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ment made by the then acting Prime Minister about what the Government was doing, in August, 1975, regarding the cessation of mining operations by the plaintiff. The declarations sought on this aspect of the plaintiff's claim are against the Minister of Mining and Natural Resources as such, not against the second defendant. Indeed, in view of the fact that the validity of s. 42 is not being challenged, I do not see on what basis an action can lie, or an injunction granted, against the second defendant in his personal capacity (see Merricks v Heathcoat Amory and anor. (1955) Ch. 567). The preliminary objection suceeeds as respects the second defendant on this additional contention as well.

I uphold the preliminary objection and dismiss the summons with costs to the second and third defendants to be agreed or taxed.