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Privy Council Appeal No. 21 of 1993

(1) Trevor Walker and (2) Lawson Richards *Appellants*

v.

The Queen *Respondent*

Privy Council Appeal No. 25 of 1993

Derrick Douglas *Appellant*

v.

The Queen *Respondent*

Privy Council Appeal No. 26 of 1993

Henry Glanville *Appellant*

v.

The Queen *Respondent*

FROM

THE COURT OF APPEAL OF JAMAICA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE
2ND NOVEMBER 1993

Present at the hearing:-

LORD GRIFFITHS
LORD LANE
LORD ACKNER
LORD GOFF OF CHIEVELEY
LORD LOWRY
LORD SLYNN OF HADLEY
LORD WOOLF

[Delivered by Lord Griffiths]

Their Lordships directed that these three appeals should be heard together and immediately after the appeal in *Pratt v. The Attorney-General for Jamaica*. They are further examples of men held on death row for an inordinate period of time awaiting execution. Walker and Richards were convicted and sentenced to death on 17th May 1982 and their application for leave to appeal was dismissed by the

Court of Appeal on 24th October 1984. Glanville was convicted and sentenced to death on 19th January 1982 and the Court of Appeal dismissed his appeal against conviction on 21st June 1985. Douglas was convicted and sentenced to death on 9th July 1984 and the Court of Appeal refused his application to appeal against conviction on 8th June 1987. As the convictions were in each case for murder and as the death sentence for this offence is mandatory there were naturally no appeals against sentence.

Their Lordships who had been informed of the very large numbers held in death row referred to more particularly in *Pratt v. The Attorney-General for Jamaica* took the exceptional course of giving special leave to appeal to the Privy Council, despite the fact that many years had passed since the convictions and the rejection of the appeals. Their Lordships did so, so that they might examine whether they had jurisdiction to deal directly with these cases by way of an appeal against sentence. Their Lordships have been satisfied by the argument of the respondent that they have no such jurisdiction.

The present jurisdiction of the Judicial Committee of the Privy Council is an appellate jurisdiction derived from section 3 of the Judicial Committee Act 1833 and section 1 of the Judicial Committee Act 1844.

These proceedings are not in truth appeals against the judgments delivered by the Court of Appeal. There was no appeal against the sentence of death passed by the judges and if there had been the Court of Appeal would have had no jurisdiction to alter the mandatory death sentence: see section 13(1)(c) of the Jamaican Judicature (Appellate Jurisdiction) Act.

Although the time taken between conviction and appeal was longer than their Lordships hope will be the case in future, it was not suggested either to the Court of Appeal or to their Lordships to be such as would at the time of the hearing of the appeals have infringed the appellants' constitutional rights. There are no grounds upon which their Lordships are invited to hold that the Court of Appeal decisions were wrong at the time they were delivered.

These appellants have adopted the arguments for the appellants in *Pratt v. The Attorney-General for Jamaica* and seek to have their sentences set aside on constitutional grounds based upon the delay that has occurred in the years following the decisions of the Court of Appeal. Their Lordships are being invited to decide this question not as a matter of appeal but as a court of first instance; and this they have no jurisdiction to do. The question of whether or not execution would now infringe the constitutional rights of the appellants has not yet been considered by a Jamaican court. The jurisdiction of the Privy Council to enter upon this question will only arise after it has been considered and adjudicated upon by the Jamaican courts.

The appellants submitted that the jurisdiction of the Privy Council which was originally founded on the Royal Prerogative was of sufficient width to enable their Lordships to assume jurisdiction in these cases and declare that execution would be a cruel and inhuman act in breach of section 17(1) of the Constitution, by allowing a constitutional point to be taken, as it was in *Ong Ah Chuan v. Public Prosecutor* [1981] A.C. 648.

Whatever may have been the original powers of the Privy Council, the powers of the Judicial Committee of the Privy Council are now governed by the Acts of 1833 and 1844 which must be recognised as superseding the Royal Prerogative: see *Attorney-General v. De Keyser's Royal Hotel Limited* [1919] 2 Ch. 197, [1920] A.C. 508. There is power under section 4 of the Act of 1833 for matters other than appeals to be referred to the Judicial Committee but no such reference has been made in these cases. In the absence of such a reference the Judicial Committee's role is confined to acting as an appellate court: see *In re Nawab of Surat* (1854) 9 Moo. PCC 88 and *Thomas v. The Queen* [1980] A.C. 125.

In *Ong Ah Chuan v. Public Prosecutor* the appellants appealed against the imposition of mandatory death sentences for trafficking in drugs. The Judicial Committee permitted the appellants to argue, for the first time, that the Misuse of Drugs Act 1973 in Singapore contained presumptions which conflicted with the presumption of innocence guaranteed by the Constitution and that the mandatory sentence of death for trafficking in more than 15 grammes of heroin was arbitrary and so in breach of the Constitution. These arguments were unsuccessful; but if they had been accepted they would have shown that the trial court ought not to have convicted and that the sentence of death was unlawful. That case is clearly distinguishable from the present appeals in which the attack is not upon the lawful judgment of the court but upon executive action to take place many years after judgment.

These appeals must therefore be dismissed. It is nevertheless apparent that, in the light of the judgment in *Pratt v. The Attorney-General for Jamaica*, unless the sentences of these appellants are commuted on the advice of the Jamaican Privy Council, they have every prospect of making a successful constitutional application to the Supreme Court to have their sentences commuted to life imprisonment.

Their Lordships will humbly advise Her Majesty accordingly.

