

# PRIVY COUNCIL

De Verteuil

Vs.

Knaggs and another

(Earl Loreburn, CJ, Lord Dunedin, Lord Sumner and Lord Parmoor. JJ)

21.3.1918

## JUDGMENT

### **Lord Parmoor J.**

1. The appellant has been for several years the owner of the La Gloria estate in the ward of Upper Caroni, in the Island of Trinidad. The respondent the Honourable Samuel William Knaggs, C. M. G., was at all material dates the acting Governor of the Colony of Trinidad and Tobago, and the respondent the Honourable Arnauld de Boissiere was at all material dates the head of the Immigration Department of the said Colony and the Protector of immigrants. The question involved in the appeal is whether an order made by the acting Governor for the transfer of the indentures of the immigrants indentured on the said La Gloria estate is a valid and effective order. This question was answered in the negative by Blackwood Wright, J. and in the affirmative by the Supreme Court sitting in appeal. The contention of the appellant is that the order of Black-wood Wright, J., was correct, and that the order of the Supreme Court should be reversed.

2. The Immigration Ordinance No. 161, as amended by subsequent ordinances, contains the provisions applicable to the introduction and employment of immigrants in the Colony of Trinidad and Tobago. section 203 provides :

"If at any time it appears to the Governor on sufficient ground shown to his satisfaction that all or any of the immigrants indentured on any plantation should be removed therefrom it shall be lawful for him to transfer the indentures of such immigrants for the remainder of their respective terms of service to any other employer who may be willing to accept their services and pay the remaining indenture fees.

3. It was under this section of the ordinance that the Governor made the order to which the appellant takes objection. There is no doubt that if the acting Governor did act in

good faith within the limits of the authority conferred by the ordinance he is fully protected, and no Court has any power to interfere. The case of the appellant as stated in the endorsement of his writ of summons, is that the order was not made under the proper and statutory exercise of the discretion vested in the acting Governor by Section 203 of the Ordinance, and is consequently null and of no effect. It is clearly within the power and jurisdiction of the municipal Courts to entertain this question and to determine whether the acting Governor, in making the order, which the appellant impugns, acted within the limits of the powers conferred on him by a municipal ordinance.

4. Sect. 203 of the Ordinance empowers the Governor to transfer the indentures of the immigrants "on sufficient ground shown to his satisfaction, that all or any of the immigrants indentured on any plantation should be removed therefrom." The same section empowers the Protector of Immigrants to make a temporary transfer "pending the decision of the Governor," but it is under the earlier portion of the section that the present case has arisen. The Ordinance does not prescribe any special form of procedure, but there is an obvious implication that some form of inquiry must be made such as will enable the Governor fairly to determine whether a sufficient ground has been shown to his satisfaction for the removal of indentured immigrants. The particular form of inquiry must depend on the conditions under which the discretion is exercised in any particular case, and no general rule applicable to all conditions can be formulated. In the particular case under appeal the acting Governor exercised his discretion on a complaint made against the appellant by the Protector of Immigrants with regard to the treatment and condition of indentured immigrants on his La Gloria estate. What is the procedure which in such a case the law will imply when the Legislature is silent? The acting Governor was not called upon to give a decision on an appeal between parties, and it is not suggested that he holds the position of a Judge, or that the appellant is entitled to insist on the forms used in ordinary judicial procedure. It would not be possible to follow such procedure, since the acting Governor has no power to examine witnesses or to administer an oath. There is, moreover, no allegation that the acting Governor did not act throughout in perfect good faith.

5. On the other hand, the acting Governor could not properly carry through the duty entrusted to him without making some inquiry whether sufficient grounds had been shown to his satisfaction that immigrants indentured on the La Gloria estate of the appellant should be removed. Their Lordships are of opinion that in making such an

inquiry there is, apart from special circumstances, a duty of giving to any person against whom the complaint is made a fair opportunity to make any relevant statement which he may desire to bring forward and a fair opportunity to correct or controvert any relevant statement brought forward to his prejudice. It must, however, be borne in mind that there may be special circumstances which would justify a Governor, acting in good faith, to take action even if he did not give an opportunity to the person affected to make any relevant statement, or to correct or controvert any relevant statement brought forward to his prejudice. For instance, a decision may have to be given on an emergency, when promptitude is of great importance; or there might be obstructive conduct on the part of the person affected. Their Lordships, however, do not find any suggestion of such conditions in the case under appeal. Moreover, in this case the Supreme Court, on the evidence before them has found that the acting Governor did give the appellant a fair opportunity of being heard and of meeting statements made to his prejudice, and, for reasons given later, their Lordships fully concur in this finding.

6. In *Board of Education v. Rice*<sup>1</sup>, the question raised was whether the Board of Education had properly exercised their statutory duty to decide on appeal a question between parties. The statement of principle made in that case by the Lord Chancellor (Earl Loreburn) is, however, in the opinion of their Lordships, applicable to the conditions under which the decision in this case was given by the acting Governor :

"In such cases the Board of Education will have to ascertain the law and also to ascertain the facts. I need not add that in doing either they must act in good faith and fairly listen to both sides, for that is a duty lying upon every one who decides anything. But I do not think they are bound to treat such a question as though it were a trial.....They can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial to their view." (Cf. *Spackman v. Plumstead District Board of Works*<sup>2</sup> and *Local Government Board v. Arlidge*<sup>3</sup>,

7. The only remaining question to consider is whether the acting Governor did comply with the requirements of a fair inquiry.

8. On 16th December, 1915, the acting Governor ex parte and affording no opportunity to the appellant to make any answer or explanation, made an order for the removal of the indentured immigrants from the La Gloria estate and for the transfer of their indentures to some other employer. The first intimation which the appellant

received was in a letter of 20th December, 1915, from the Protector of Immigrants to the appellant's manager. This letter sets out under four heads the complaints made by the Protector of Immigrants with regard to the indentured immigrants on the La Gloria estate. The complaints are : (1.) That they were not receiving proper medical attention. (2.) That they were dissatisfied because of their isolated condition. (3.) That the number of convictions was high. (4.) That the wages earned were comparatively small.

9. After the receipt of this letter the appellant and his manager sought and obtained a personal interview with the acting Governor on 23rd December 1915. There is some discrepancy as to the statements made at this interview, but the material factor is that the appellant and his manager were granted a fair opportunity of placing before the acting Governor or their answer to the allegations made in the letter of the Protector of Immigrants. At this interview a question was raised as to the accuracy of certain figures, and subsequently on 27th December, 1915, the appellant's manager wrote to the Colonial Secretary enclosing a copy of the register of cases before the Magistrates for the La Gloria estate from 1st October, 1914 to 30th December 1915 and giving particulars tending to show that the authorities had arrived at their figures on a wrong basis and that further inquiry was necessary. On 7th January 1916, the Colonial Secretary wrote to the appellant's manager stating that the letter of 27th December had received careful consideration, but "in view of the report of the Protector of Immigrants, His Excellency regrets that he does not feel justified in cancelling the order made for the removal of the indentured immigrants from the estate in question." After further correspondence the Colonial Secretary on 21st January, 1916, wrote to the appellant's manager, and stated that on the figures submitted, "His Excellency saw no cause to cancel the order made." There appears to have been a further investigation of the figures, and finally on 15th March, 1916, the Protector of Immigrants wrote to the appellant's manager that the acting Governor "has decided that the immigrants on the La Gloria estate must be removed therefrom and transferred to another estate, the manager of which is willing to accept them." It appears to their Lordships that the correspondence, to which reference has been made, shows that the acting Governor did not proceed without giving fair notice to the appellant of the charges made against him, or without giving him a fair opportunity to make an answer to such charges. It is no part of the duty of a Court to review the discretion exercised by the acting Governor, and the evidence directed to this issue is, in the opinion of their Lordships, irrelevant. It was argued on behalf of the appellants that the validity of the order should be tested either as on 16th December 1915, or at the latest as on 21st January,

1916, but there is no reason why the acting Governor may not at any time review or alter a decision previously given, and it may be his duty to do so, in the prudent exercise of his discretion, on a further consideration of all the relevant factors after full inquiry.

10. For these reasons the appeal fails, and their Lordships will humbly advise His Majesty to dismiss the same with costs.

Appeal dismissed.

Cases Referred.

1. [1911] A.C. 179
2. [1885] 10. App. Cas. 229
3. [1915] A.C. 120.